3-12-84
Vol. 49 No. 49
Pages 9163-9406

federal register

Monday
March 12, 1984

Selected Subjects

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

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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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Animal and Plant Health Inspection Service

Surface Mining
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Trade Practices
Federal Trade Commission

Veterans
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Wine
Alcohol, Tobacco and Firearms Bureau

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Presidential Documents

Title 3—

The President

Proclamation 5159 of March 8, 1984

Red Cross Month, 1984

By the President of the United States of America

A Proclamation

Since its beginning, the American Red Cross has been in the forefront of efforts to provide for the well-being of the American people. Its volunteers and staff have kept that tradition going during this past year. They brought needed relief to hundreds of thousands of our fellow citizens who suffered in disasters and spent a record-breaking amount for disaster assistance and preparedness. These dedicated people also implemented programs to improve the health of all Americans through life-style changes, kept our Nation's blood supply strong, and provided morale-building services to the men and women in uniform and their families.

The American Red Cross was founded in 1881 on the principle of service to others and has been sustained since then by millions of Americans who freely offer their time and talents for the benefit of their fellow citizens.

The American Red Cross pioneered in disaster relief, public health, assistance to veterans, and in efforts to enhance the spirits of our military services in war and peace. It also initiated the world's largest system for voluntary blood donations. And through Red Cross Youth Services, it helps our Nation's young people to learn the role of leadership and the value of service to others.

These efforts have been made possible by financial contributions from the public. Without this support, there would not be a Red Cross. It is the goodwill of all of us that perpetuates its efforts and provides such an inspiring example of what the private sector is capable of doing.

In the years ahead, there will be many opportunities for new endeavors as our Nation's social conditions change. The American Red Cross, as in the past, will respond to such challenges and will persevere in its efforts on behalf of human life and dignity.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, and Honorary Chairman of the American Red Cross, do hereby designate March 1984 as Red Cross Month and urge all Americans to generously support the work of their local Red Cross chapter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-6768
Filed 3-9-84; 11:42 am]
Billing code 3195-01-M

Rules and Regulations

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy costs for refrigerators, refrigerator-freezers and freezers have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on April 1, 1983 [1] remain in effect until new ranges are published.

EFFECTIVE DATE: March 12, 1984.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–376–2893, or Lucerne D. Winfrey, 202–376–2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

[1] 48 FR 13973.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [2] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average costs a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [3] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy costs or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual costs or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [4] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[5] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for refrigerators, refrigerator-freezers and freezers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for these product categories have changed by 15% or more since the last publication of the ranges on April 1, 1983.[6]

In consideration of the foregoing, the present ranges for refrigerators, refrigerator-freezers and freezers (Appendices A–1, A–2, and B to 16 CFR Part 305) will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), 42 U.S.C. § 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84–6335 Filed 3–9–84; 8:45 am]

BILLING CODE 6750–01–M

[2] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[3] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[4] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[5] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[6] 48 FR 13973.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Temporary Licenses; Statutory Disqualification From Registration; Statutory Disqualification and Other Regulatory Requirements

Correction

In FR Doc. 84–5722 beginning on page 8208 in the issue of Monday, March 5, 1984, make the following correction.

On page 8217, third column, under "Part 3—Registration", the heading and paragraph 1. should have read:

Subpart A—[Redesignated From §§ 3.1 through 3.33]

1. Sections 3.1 through 3.33 are redesignated as *Subpart A—Registration.*

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 171

[T.D. 84-60]

Filing of Petition for Remission or Mitigation of Fine, Penalty or Forfeiture

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim Regulations.

SUMMARY: This document amends the Customs Regulations to provide for a 30-day time limit for submission of petitions for relief from interested parties in matters involving the seizure/forfeiture of conveyances in certain instances. Current regulations provide a 60-day period for submission of petitions, irrespective of the character of the alleged violation.

The amendment is necessary because of the dramatic increase in seizures of conveyances used to facilitate the illegal importation of drugs and firearms. Immediate action is necessary to expand the effectiveness of drug smuggling enforcement efforts and provide for the expeditious disposition of seized conveyances.

EFFECTIVE DATE: March 12, 1984.

Comments: The amendment is being published as an interim regulation, effective March 12, 1984. However, written comments received on or before May 11, 1984, will be considered in determining whether any changes to the regulations are required before a permanent rule is published.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Office of Regulations and Rulings, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5746).

SUPPLEMENTARY INFORMATION:

Background

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the United States market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users and the major increases in the volume of illegal drug importations in the United States are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures. The Customs Service is playing an increasingly significant role in the Administration's war on drugs. In fact, Customs seizes more conveyances than any other Federal agency. The increased effectiveness of the enforcement efforts places a significant burden on the Customs Service in that the seized conveyances must be stored and maintained, often for extended periods of time.

In order to address this growing problem, it is necessary to take immediate action. Therefore, the Customs Regulations are being amended to provide an expedited petition process for cases involving certain conveyance seizures. Specifically, § 171.12, Customs Regulations (19 CFR 171.12), is being amended to provide that petitions for relief from those seizures of conveyances involved in the illegal transportation of any amount of heroin, 5 pounds or more of cocaine, 10 pounds or more of hashish, 250 pounds or more of other controlled substances, or firearms in a quantity clearly in excess of personal use needs, must be filed within 30 days from the date of mailing of the notice of fine, penalty or forfeiture.

Comments

Before adopting the regulations as a final rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

Because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for immediate action to deal with the rapidly growing number of conveyances under seizure, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is being dispensed with.

E.O. 12291 and Regulatory Flexibility Act

Inasmuch as Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule. If the comments or further Customs review indicate a significant economic impact, a regulatory flexibility analysis will be prepared and published with the final rule.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 171

Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

Amendments to the Regulations

Part 171, Customs Regulations (19 CFR part 171), is amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: February 21, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 171—FINES, PENALTIES, AND FORFEITURES

Section 171.12 is amended by (1) redesignating paragraph (c) as paragraph (d), and (2) adding a new paragraph (c) and revising paragraph (b) to read as follows:

§ 171.12 Filing of petition.

* * * * *

(b) *When filed.* Except as provided in paragraph (c) of this section, or unless additional time has been authorized as provided in § 162.32(a) of this chapter, petitions for relief shall be filed within 60 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

(c) *Petitions for remission of forfeitures of certain conveyances.* Petitions for remission of forfeiture of a conveyance seized in connection with the illegal importation of any amount of heroin, 5 pounds or more of cocaine, 10 pounds or more of hashish, 250 pounds or more of other controlled substances, or firearms in a quantity clearly in excess of personal use needs shall be filed within 30 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

* * * * *

(R.S. 251, as amended sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 84-6526 Filed 3-9-84; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 177

[T.D. 84-59]

Tariff Classification of Footwear Known as "Rubber Duckies"

AGENCY: Customs Service, Treasury.

ACTION: Change of Practice.

SUMMARY: This document changes Customs practice with respect to the tariff classification of certain imported footwear know as "Rubber Duckies". This change, which is based upon a finding that the tongue or flap of the subject footwear should be included in the computation of the exterior surface of the upper, will result in the imposition of a lower rate of duty for future importations of the footwear.

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202)-566-8181.

SUPPLEMENTARY INFORMATION:

Background

This document pertains to the tariff classification of certain footwear known as "Rubber Duckies." More specifically, the merchandise involved is a ladies "Rubber Ducky" with a rubber/plastic molded bottom and a trimmed leather top line extending downward one inch to one and five-eights inches and stitched to a molded bottom.

There is an established and uniform practice of classifying, for tariff purposes, the subject footwear under the provision for other footwear which is over 50 percent by weight of rubber or plastics and is designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals, or cold or inclement weather, in item 700.57, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a Column 1 rate of duty of 37.5 percent ad valorem. This practice is based upon: (1) Uniform liquidations at various ports of entry; and (2) Customs Ruling 800025, dated February 13, 1981, and published in the Customs Bulletin as C.S.D. 81-183 (15 C.B. 1095). In a notice published in the **Federal Register** on June 23, 1983 (48 FR 28673), Customs proposed to change its practice such that the subject footwear would be classified under the provision for footwear of leather for other persons valued over $2.50 per pair, in item 700.45, TSUS, at a Column 1 rate of duty of 10 percent ad valorem.

The proposed change was based upon a finding that the tongue or flap of the footwear at issue, which extends upward from the top line of the shoe, should be included in the computation of the exterior surface of the upper, thereby causing the exterior surface to be over 50 percent leather and excluding the footwear from classification under item 700.57, TSUS.

As explained in the notice, Customs proposed to change this practice, and find that the tongue or flap of the subject footwear should be included in the computation of the exterior surface of the upper, because the leather tongue or flap is not covered by any portion of the upper when the shoe is tied, and because the entire surface of the tongue or flap is visible and tactile.

Discussion of Comments

Only two comments were received in response to the notice. Both commenters took the position that the tongue or flap of the "Rubber Duckies" should not be included in the computation of the exterior surface area of the uppers. Therefore the present tariff classification should be retained.

In support of their position, the commenters cited T.D. 54659 which contains legislative history pertaining to paragraph 1530(e), Tariff Act of 1930. Under this paragraph, rubber-soled footwear with uppers of fabric and certain other materials was originally dutiable at the rate of 35 percent advalorem. The legislative history referred to states that conventional tongues of this type of footwear are not included in the "greater area of the outer surface." It is also asserted that there is nothing in this legislative history which indicates any intention to exclude only certain types of tongues, such as those on the plane lower than a portion of the upper, from the computation of exterior surface area.

It is Customs position that the above-cited legislative history is applicable only to paragraph 1530(e), Tariff Act of 1930. Since the language of the Tariff Act of 1930 was not carried forward to the Tariff Schedules of the United States, Customs does not believe that this legislative history is applicable.

It has consistently been Customs position that the exterior surface area of the upper is whatever is visible and tactile on the surface excepting such things as buttons, strips and other loosely attached appurtenances. In those cases where the tongue was held not to be part of the exterior surface area of the upper, it was on a plane lower than a portion of the upper and was partially or wholly covered by laces and eyelet facings or stays.

The leather flaps or tongues of the "Rubber Duckies" in issue are not covered by any portion of the upper when tied. Their entire surfaces are visible and tactile. For this reason it is Customs position that the current established and uniform practice should be changed so that in this particular type of construction, the flap or tongue should be measured as part of the exterior surface area of the upper.

Change of Practice

After careful analysis of the comments and further review of the matter, the "Rubber Duckies" involved will be classifiable under item 700.45, TSUS, at a Column 1 rate of duty of 10 percent ad valorem, provided leather does in fact occupy over 50 percent of the exterior surface area of the upper. If leather does not occupy over 50 percent of the exterior surface area of the upper, this change of practice would not apply and the "Rubber Duckies" would fall under another provision of the TSUS

which would more specifically describe the imported footwear.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: January 11, 1984.

William von Raab,

Commissioner of Customs.

[FR Doc. 84-6525 Filed 3-9-84; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 1 and 31

[T.D. 7919]

Employment and Income Taxes; Information From Recipients of Gambling Winnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 48 FR 46296 of the final regulations which were the subject of Treasury Decision 7919 relating to withholding on certain payments of gambling winnings and statements furnished by their recipients.

EFFECTIVE DATE: The amendments to the regulations that are the subject of this correction are effective after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1983, the **Federal Register** published final regulations (48 FR 46296) relating to withholding on certain payments of gambling winnings and statements furnished by their recipients. The amendments were issued under the authority of sections 6011 and 7805 of the Internal Revenue Code of 1954.

On February 13, 1984, the **Federal Register** published an amendment to the final regulations effective date (49 FR 5344) in Treasury Decision 7943. This amendment postponed the effective date of those regulations to payments of gambling winnings made after December 31, 1983, rather than November 14, 1983.

Need for a Correction

As published, Treasury Decision 7919 incorrectly amends § 31.3402(q)-1, paragraph (d) by revising Example (3) instead of adding it, and by incorrectly designating a new example as Example (4) instead of Example (11). These errors appear on page 46298, in the left-hand column in the paragraph that is captioned "Par. 2." and in the middle column, first line of the second paragraph under *Examples.*

Correction of Publication

Accordingly, the publication of Treasury Decision 7919 which was the subject of FR Doc. 83-27691, is corrected on page 46298 as follows:

PART 31—[CORRECTED]

1. By revising Par. 2 in the left-hand column to read as follows: **"Par. 2.** In § 31.3402(q)-1, paragraphs (c)(1)(ii) and (f)(1)(vi) are revised and Examples (3) and (11) are added to paragraph (d) as follows:"

2. In § 31.3402(q)-1, paragraph (d), by correctly designating *"Example (4)"* as *"Example (11)"* in the heading of the second full paragraph in the middle column.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-6424 Filed 3-9-84; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-167; Reference Notice No. 468]

Establishment of Pacheco Pass Viticultural Area; California

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule establishes a viticultural area in California to be known as "Pacheco Pass." The Bureau of Alcohol, Tobacco and Firearms believes that establishment of the Pacheco Pass viticultural area and the subsequent use of its name in wine labeling and advertising will enable industry to label wines more precisely, and will help consumers to better identify the wines from this area.

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. H. G. Zanger of Pacheco Pass Vineyard, proposing an area near Hollister, California, as a viticultural area to be known as "Pacheco Pass." In response to this petition, ATF published Notice No. 468 in the **Federal Register** on Thursday, June 2, 1983 (48 FR 24737). This notice solicited public comments in accordance with the Administrative Procedure Act (5 U.S.C. 553). No public comments were received. Therefore, this Treasury decision establishes the Pacheco Pass viticultural area with boundaries as proposed in Notice No. 468.

Pacheco Pass viticultural area extends for a length of about 5 miles and a width of about 1 mile (3200 acres). It is located at the entrance to Pacheco Pass, near the junction of California Routes 152 ("Pacheco Pass Highway") and 156. There are about 17 acres of grapes currently planted in the proposed area, and one bonded wine cellar is operating. The petitioner plans to construct a winery and to plant additional acres of grapes on land that he currently owns in the area.

The name of the area derives from Don Francisco Pacheco, who in 1833 received a large land grant from the Mexican Government. The name of the land grant was "Rancho Pacheco," and the nearby pass over the Diablo Range took the name "Pacheco Pass."

Pacheco Pass is a cut through the Diablo Range and has an approximate total length of 15 miles. The Pacheco

Pass viticultural area occupies only the southern one-third of that total length, because the northern part is unsuitable for viticulture due to shallow, rocky soil. The northern part is also cooler, wetter, and subject to higher winds than the viticultural area.

The viticultural area is distinguishable on the basis of terrain from the surrounding areas to the east and west. The viticultural area is in a valley and generally has flat or gently sloping terrain, whereas to the east and west lie the rugged hills of the Diablo Range. Those hills are too steep for viticulture and are also distinguishable on the basis of soil types.

To the south, the viticultural area is distinguishable from the surrounding area on the basis of both soil and climate. South of the boundaries of the viticultural area, the land is afflicted with high-perched water tables which restrict drainage and boron salts which affect the quality of water. In contrast, the Pacheco Pass viticultural area is free from these defects, having a very good water table and good quality water from Pacheco Creek. Futher, the viticultural area has more rainfall than the Hollister Basin to the south, and it enjoys more moderate temperatures due to winds moving through Pacheco Pass en route to the San Joaquin Valley.

Miscellaneous

ATF does not wish to give the impression by approving the Pacheco Pass viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of the Pacheco Pass wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this final regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

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

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

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

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.88 as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.88 Pacheco Pass.

* * * * *

Par. 2. Subpart C of 27 CFR Part 9 is amended by adding § 9.88, which reads as follows:

§ 9.88 Pacheco Pass.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of Pacheco Pass viticultural area are two U.S.G.S. maps. They are titled:

(1) San Felipe Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(2) Three Sisters Quadrangle, 7.5 minute series, 1954 (photorevised 1971).

(c) *Boundary*—(1) *General.* The Pacheco Pass viticultural area is located in California. The starting point of the following boundary description is the crossing of Pacheco Creek under California Highway 156, about 4 miles north of Hollister Municipal Airport, in San Benito County, California.

(2) *Boundary Description.* (i) From the starting point northwestward along Pacheco Creek to the intersection with the straight-line extension of Barnheisel Road. (Note.—This is an old land grant boundary and appears on the U.S.G.S. map as the western boundary of an orchard.)

(ii) From there in a straight line northeastward to the intersection of Barnheisel Road and California Highway 156.

(iii) From there northward along Highway 156 to California Highway 152 ("Pacheco Pass Highway").

(iv) Then northward along Pacheco Pass Highway to the 37° latitude line.

(v) Then eastward along that latitude line to the land line R. 5E./R. 6E.

(vi) Then southward along that land line, crossing Foothill Road, and continuing southward to a point exactly 2,300 feet south of Foothill Road.

(vii) From there is a straight line to the starting point.

Signed: February 13, 1984.

Stephen E. Higgins,

Director.

Approved: March 1, 1984.

E. T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 84-6601 Filed 3-9-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Modification of Kentucky Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSM, is announcing the approval of an amendment to the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated October 31, 1983, Kentucky submitted a proposed program amendment consisting of amendments to 405 KAR 7:020E and 7:030E pertaining to surface coal mining operations affecting two acres or less.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the modifications to the Kentucky program meet the requirements of SMCRA and the Federal permanent program regulations. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement these actions.

EFFECTIVE DATE: The approval of the program amendment is retroactive to November 25, 1983. See interim final rule published November 25, 1983, (48 FR 53111–53113).

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982 (47 FR 21404–21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

Section 528(2) of the SMCRA, exempts from the requirements of the Act "the extraction of coal for commercial purposes where the surface mining operation affects two acres or less * * *" Regulations implementing this provision (30 CFR 700.11(b)) were originally published on March 13, 1979 (44 FR 15311). When Kentucky's permanent regulatory program was conditionally approved on May 18, 1982, the Secretary found that Kentucky's regulations (405 KAR 7:020E and 7:030E) were no less effective than the Federal standard pertaining to two-acre or less operations.

Since the approval of the Kentucky program, OSM has revised its regulations (47 FR 33424 and 48 FR 14814) pertaining to two-acre operations to clarify the criteria that must be met in order for a site to qualify for an exemption. As a result of its oversight activities, OSM had reason to believe that some sites for which Kentucky had granted a two-acre exemption involved questionable determinations regarding apparent haul roads being classified and approved as county roads, which would be inconsistent with OSM's new rules. Therefore, in a letter dated September 6, 1983, OSM notified Kentucky that pursuant to 30 CFR 732.17(e), a State program amendment was required because conditions or events indicated that the Kentucky program no longer met the requirements of SMCRA and the revised Federal regulations.

OSM also urged Kentucky to proceed with emergency rulemaking to promulgate a rule implementing the new Federal standards and thereby bringing all operators into compliance with SMCRA at the earliest possible time. Therefore, Kentucky promulgated by emergency rulemaking revised regulations intended to bring the Kentucky program into compliance with the current Federal standards.

II. Submission of Program Amendment

In a letter to OSM dated October 31, 1983, Kentucky submitted revised regulations (405 KAR 7:020E and 7:030E) pertaining to two-acre or less operations.

Also, in the October 31, 1983 letter, Kentucky submitted additional revisions to its regulations intended to satisfy conditions (d), (i), (j), (k), (o) and (p) imposed by the Secretary. These additional amendments are the subject of a separate rulemaking.

III. Public Comment

1. The Tennessee Valley Authority (TVA) had no specific comment on the amendment, but in principle supports the amendment.

2. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) comments that it strongly supports, in principle, the State adoption of the Federal two-acre rule. However, ARDFK alleges that the State is allowing three categories of abusive practices associated with the two-acre exemption. The alleged abuses are (1) two-acre operations that proceed to mine more than two acres, (2) related operations each having a two-acre exemption, and (3) the exclusion of certain haul roads from the acreage computation.

ARDFK suggests that OSM demand better enforcement for two-acre operations mining more than two acres. In a letter dated September 6, 1983, OSM notified Kentucky that some two-acre exemption sites involved what OSM considered as questionable determinations in calculating affected area. OSM expects the State to make prudent decisions in approving two-acre exemptions based on its regulatory provisions and to take appropriate enforcement action against any operator mining more than two acres. OSM will monitor the enforcement of the two-acre exemption through oversight activities.

Additionally, ARDFK believes Kentucky's definition of "affected area" has a potential flaw as it relates to underground mining operations. ARDFK fears that because of the definition of "underground mining activities" in the State regulations, it is possible that the proposed modification would exclude all surface areas above underground workings except those which are associated with surface operations.

OSM has reviewed Kentucky's definition of "underground mining activities" as it relates to the proposed definition of "affected area" and disagrees with the commenter's concern that Kentucky's definition does not include all areas overlying underground mine workings as "affected area". Kentucky amended its regulations to bring its program provisions into compliance with the revised Federal regulation published April 5, 1983 pertaining to the definition of "adjacent area" and "affected areas". In the preamble to the Federal rule, OSM discusses the interpretation of adjacent area and affected area as these terms relate to areas potentially affected by underground workings associated with underground mining activities, auger mining and in situ mining. A complete discussion can be found at 48 FR 14815–14821, dated April 5, 1983. However, OSM interprets Kentucky's definition for "affected area" with respect to underground mining, in situ mining and auger mining to mean the area located above the underground workings, including the entire area overlying underground workings. This interpretation is consistent with the Federal definition. OSM will monitor the

State's implementation of its two-acre rule through normal oversight activity and will take appropriate action for any observed abuse of the two-acre exemption.

IV. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment, which subjects two-acre or less operations in Kentucky to the revisions promulgated to its regulations (405 KAR 7:020E and 7:030E), meets the requirements of SMCRA and 30 CFR Part VII.

Finding 1

The Director finds the revised regulations submitted by Kentucky pertaining to two-acre or less operations are no less effective than OSM's revised rules (48 FR 14814 and 48 FR 33424) and will bring sites that might otherwise be exempted into compliance with applicable permitting and performance standards.

Finding 2

The Director finds that Kentucky's new rule defines "affected area" in a manner essentially identical to OSM's rule except that the phrase "underground workings" is modified by the phrase "associated with underground mining activities, auger mining or in situ mining." As discussed in the public comments, OSM interprets Kentucky's definition to include the entire area overlying underground workings consistent with the definition discussed in OSM's revised rule published April 5, 1983 (48 FR 14814–14822).

V. Approval of Amendment

Accordingly, the amendment (405 KAR 7:020E and 7:030E) to the Kentucky program temporarily approved by an interim final rule published November 25, 1983, (48 FR 53111) is hereby approved pursuant to 30 CFR 732.17.

30 CFR Part 917.15 is amended to indicate approval of the program amendment.

VI. Additional Findings

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

Section 917.15 is amended by adding paragraph (f).

§ 917.15 Approval of amendments to State regulatory program.

* * * * *

(f) The following amendment is approved effective on November 25, 1983: Revisions submitted on October 31, 1983, to 405 KAR 7:020E and 7:030E.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84–6600 Filed 3–9–84; 8:45 am]
BILLING CODE 4310–05–M

SMITHSONIAN INSTITUTION

36 CFR Parts 500 and 502

Standards of Conduct

AGENCY: Smithsonian Institution.

ACTION: Final rule.

SUMMARY: The Smithsonian Institution is not a government agency as that term is traditionally used, but for a number of years the Standards of Conduct for Smithsonian employees, and the Standards of its separately administered bureau, the National Gallery of Art, have been published in the format of government agency regulations as Parts 500 and 502 of Title 36 of the Code of Federal Regulations. Parts 500 and 502 are obsolete and are being removed from Title 36 of the Code of Federal Regulations. Henceforth, in keeping with the Institution's status, current Standards of Conduct for Smithsonian employees, and those for National Gallery of Art employees, will be promulgated internally, but are available to anyone upon request.

DATE: March 12, 1984.

FOR FURTHER INFORMATION CONTACT: Peter G. Powers, General Counsel, Smithsonian Institution, Washington, D.C. 20560, Telephone No.: (202) 357–2583.

SUPPLEMENTARY INFORMATION:

List of Subjects in 36 CFR Parts 500 and 502

Conflict of interests.

For the reasons set out in the preamble, Title 36 of the Code of Federal Regulations is amended by removing Parts 500 and 502.

Part 500 [Removed].

(1) Part 500 is removed.

Part 502 [Removed].

Part 502 is removed.

Authority: 20 U.S.C. 41, *et seq.*

Dated: February 29, 1984.

Peter G. Powers,

General Counsel, Smithsonian Institution.

[FR Doc. 84–6540 Filed 3–9–84; 8:45 am]
BILLING CODE 8030–03–M

VETERANS ADMINISTRATION

38 CFR Part 17

Informed Consent

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) has amended its "Medical Series" of regulations by revising the regulation concerning "informed consent" to require that to the maximum extent practicable, all VA patient care be carried out only with full, informed consent of the patient or the patient's representative. The regulation being revised has simply *defined* the term "informed consent". The revision also updates the definition of the term "legally authorized representative" to provide a uniform approach to obtaining substituted informed consent when the patient is unable to consent. Such a uniform approach is deemed to be consistent with Federal law and with the VA's role as a national provider of health care.

EFFECTIVE DATE: March 9, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph Ibson, Office of the General Counsel (023), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202-389-2975).

SUPPLEMENTARY INFORMATION: This revised regulation is intended to implement section 4131 of title 38, United States Code, which requires VA to prescribe regulations establishing procedures "to ensure that all medical and prosthetic research carried out, and to the maximum extent practicable, all patient care "furnished" by VA "shall be carried out only with the full and informed consent of the patient or subject, or, in appropriate cases, a representative thereof."

Comments from five persons were received concerning the proposed informed consent regulation, published on pages 32198 and 32199 of the **Federal Register** of July 14, 1983. Two comments referred specifically to requirements of "State law" in individual States regarding informed consent and the effect of State law in creating new causes of action under the Federal Tort Claims Act, in light of the provisions of the proposed regulation. These comments appear to ignore the fact that the regulation is promulgated pursuant to an express statutory mandate, 38 U.S.C. 4131. That mandate must be read in the context of the VA's role as a *national* provider of medical care to eligible veterans. 38 U.S.C. 4101(a). We find no congressional declaration, express or implicit, in section 4131 that the regulation on informed consent must be subject to provisions of State law. Under the "discretionary function" exception, 28 U.S.C. 2680(a), to the Federal Tort Claims Act, compliance with these regulations should not result in Government liability. In view of the fact that this regulation is promulgated under Federal law, and sets uniform standards for application to a Federal medical system, comments with respect to the applicability of State law do not warrant any change in the regulation.

A comment from one person dealt with the fact that the proposed regulation would permit a "dialogue" between the patient and a "practitioner", although State law in that State requires that the explanation be provided by a "physician." The regulation, in implementing 38 U.S.C. 4131, reflects VA policies which do not require that *all* diagnostic and treatment activities provided by VA in accordance with its mandate under title 38, United States Code, must be performed by *physicians*. Some diagnostic or therapeutic procedures may, for example, be performed, within applicable VA policies, by a podiatrist, a dentist, a nurse practitioner or physician's assistant, or a physical therapist. As discussed above, the provisions of individual States' laws do not foreclose the VA from setting policies by regulation for insuring that patient care in its facilities is provided only with full, informed consent.

One comment also criticized the definition of "informed consent" in terms of local State law, which requires "an explanation by the physician." The proposed regulation did place an emphasis on "dialogue," rather than explanation, i.e., "Informed consent means a careful, thoughtful dialogue between the patient * * * and the practitioner * * *." The proposed definition of informed consent, as published on July 14, 1983, has been revised in the final regulation. As revised, the definition clarifies that the essence of informed consent is not simply dialogue but a freely given consent that follows a careful explanation to the patient. The revised definition represents a more accurate statement of what constitutes informed consent.

One respondent commented on the degree of "detail" required to document generally all medical and surgical treatment. The preceived requirements of the proposed regulation regarding documentation were characterized by the commentator as excessive, and not in the best interests of VA patients. To obviate misunderstanding, the final regulation reflects clarifying changes to differentiate more clearly between the required elements of informed consent (including the content of a practitioner's explanation), as outlined in § 17.34(b), and the requirement of documentation in § 17.34(c). While requiring such documentation in the patient's medical record, the final regulation does not purport to mandate the degree of detail to be included in such an entry. It is felt that such an operational matter can be more appropriately addressed in an Agency manual or similar internal publication rather than in a regulation.

The final regulation does not reflect any change from the proposed regulation as to the circumstances under which the informed consent must be obtained. In that connection, one respondent criticized the requirement that "all patient care" be carried out only with the full and informed consent of the patient as being extraordinary and excessive in non-research patients. As noted above, to limit the scope of the requirement only to medical care involving surgical or other invasive procedures, as the comment appears to suggest, would be to ignore the specific requirement of 38 U.S.C. 4131.

In the same vein, another commentator suggested that the language "all patient care be carried out only with full, informed consent of the patient or the patient's representative," might be construed to include every meal or every service provided on a daily basis. Further, it criticized the need to obtain consent before treatment of a mentally impaired patient who might be dangerous to self or others and who therefore required emergency treatment. The regulation certainly cannot *reasonably* be construed to include meals and daily services involving cleanliness or patient comfort as diagnostic or therapeutic procedures or a course of treatment for which specific consent is required. These are instead inseparable elements of hospitalization to which the patient or his or her representative is deemed to have consented. As regards emergency treatment, it should be underscored that the regulation requires informed consent in connection with patient care "to the maximum extent practicable." The regulation is necessarily general. More expansive and specific delineation of instructions for implementing the informed consent regulation are more appropriate for inclusion in an Agency manual.

In its final form this regulation proceeds from the view that every patient applying for or receiving medical treatment at a Veterans' Administration health care facility has the right to informed participation in decisions involving his or her health care. Under the regulations, diagnostic and therapeutic procedures will be administered, to the maximum extent practicable, only with prior, informed voluntary consent of the patient. When a patient does not understand or lacks the legal capacity to comprehend the nature of the medical condition and the risks and benefits of the proposed treatment the patient's representative may give such informed consent. The patient's representative may be an individual, organization, or other body authorized to consent to treatment of a patient who is incapable of giving informed consent for such medical treatment pursuant to guidelines promulgated by the Veterans' Administration. The patient, as well as the representative, may withdraw consent at any time without prejudice to the individual. The regulation contemplates that if consent is refused or withdrawn, the consequences of such refusal or withdrawal will be carefully explained to the patient or the patient's

representative. In emergency situations when the patient is incapacitated or unable to give consent, an attempt will be made to obtain consent of the patient's representative. However, emergent care will not be delayed in the absence of informed consent from the patient's representative.

As regards the subject of informed consent for medical research, only technical and conforming changes are being made in the final regulation. The VA intends to further amend this regulation in light of the development of a Government-wide model policy to be issued by the President's Science Advisor on the protection of human research subjects.

The Administrator has determined that this regulation is non-major as that term is defined by Executive Order 12291. The regulation will only apply to patients and staff in VA hospitals, outpatient clinics, nursing homes and domiciliaries. Accordingly, the regulation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets. The Administrator certifies, as required by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation is an internal one which is directed to the relationship and communication between the health care practitioner in Veterans' Administration health care facilities and the patient or the patient's representative.

It will, therefore, have no significant impact on small entities (i.e., small business, small private and non-profit organizations, and small governmental jurisdictions.)

(Catalog of Federal Domestic Assistance Numbers: 64.001 through 64.002)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: November 30, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended by revising § 17.34 to read as follows:

§ 17.34 Informed consent.

(a) For the purpose of this section, the term:

(1) *Informed consent* means the freely given consent that follows a careful explanation by a practitioner to the patient or the patient's representative of the proposed diagnostic or therapeutic procedure or course of treatment.

(2) *Practitioner* includes any physician, dentist, or health care professional who has been granted specific clinical privileges to perform the diagnostic or therapeutic procedure involved.

(3) *Representative* means an individual, organization or other body authorized to act on behalf of an incompetent patient pursuant to guidelines promulgated by the VA.)

[38 U.S.C. 4131])

(b) To the maximum extent practicable, all patient care furnished under title 38, United States Code, shall be carried out only with the full and informed consent of the patient or subject or, in appropriate cases, a representative thereof. In seeking such consent, the practitioner who has primary responsibility for the patient or who will be performing the particular procedure or providing the treatment must inform the patient in language understandable to the patient (or where appropriate, the patient's representative) of the nature of a proposed procedure or treatment, as well as of the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results of nothing is done. The patient should be given the opportunity to ask questions, to indicate comprehension of the information provided, and to grant permission freely and without any coercion for performance of a procedure or course of treatment, as well as the opportunity to withhold or revoke such permission at any time without prejudice.)

(38 U.S.C. 4131))

(c) The fact that the patient (or a representative) has been provided appropriate information and counseling and has consented to a proposed procedure or course of treatment in accordance with paragraph (b) of this section shall be documented in the patient's medical record.)

(38 U.S.C. 4131))

(d) If a proposed course of treatment or procedure involves approved medical research in whole or in part, the patient or representative shall be advised of this. Informed consent shall be obtained specifically for the administration or performance of that aspect of the treatment or procedure which is identified as involving such research. This consent shall be in addition to the consent to be obtained for the administration or performance of the noresearch aspect of the treatment or procedure and it shall contain the various elements set forth in paragraph (b) of this section.

(38 U.S.C. 4131)

(e) The Chief Medical Director will establish an appropriate method for the periodic review of patients' consent in order to insure compliance with this section and other regulations and to maintain the protection of the patient's rights.

(38 U.S.C. 4131)

[FR Doc. 84-6520 Filed 3-9-84; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 421 and 434

Medicare and Medicaid Programs; State Medicaid Contracts and Reduction in Number of Providers Dealing Directly With HCFA

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: This document corrects errors published in final rules published on November 30, 1983 (48 FR 54013) and on January 30, 1984 (49 FR 3648).

These rules pertain to State Medicaid Contracts and reduction in number of providers dealing directly with HCFA respectively.

FOR FURTHER INFORMATION CONTACT: Julie Brown, 301-594-9638.

Correction

We are making the following corrections:

1. In FR Doc. 83-31585, beginning on page 54013, in the issue of Thursday, November 30, 1983: On page 54024, in column 1, § 434.34(a), the reference to

"Part 453 of this chapter" is changed to read "Part 456 of this chapter".

2. In FR Doc. 84–2424, beginning on page 3648, in the issue of Monday, January 30, 1984:

a. On page 3659, in column 1, Subpart T, the title is changed to read "Subpart T—Health Maintenance Organizations and Health Care Prepayment Plans".

b. On page 3659, in column 1, in the table of contents, the title of § 421.117 is changed to read "Designation of regional and alternative designated regional intermediaries for freestanding home health agencies and for hospices".

c. On page 3659, in column 2, in the fourth line, the reference to "1395" is changed to read "1395l".

d. On page 3659, in column 3, § 421.103, the title is changed to read "Options available to providers and HCFA".

e. On page 3660, in column 2, § 421.117, the title is changed to read "Designation of regional and alternative designated regional intermediaries for freestanding home health agencies and for hospices".

f. On page 3660, in column 3, in § 421.200, "the Administrator" is changed to "HCFA" and "its" is changed to "HCFA's".

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; No. 13714, Medical Assistance Program)

(Secs. 1102, 1833(a)(1)(A), 1871, 1874, and 1876 (42 U.S.C 1302, 1395l (a)(1)(A), 1395hh, 1395kk, and 1395mm)

Approved: March 2, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-6545 Filed 3-9-84; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 83-1145; Phase I; FCC 84-51]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and Order.

SUMMARY: In this order, the FCC takes action on a tariff filed by the National Exchange Carrier Association (NECA) as part of its investigation of regulations and rates for interstate and foreign access to local telephone exchange service facilities. The purpose of this order is to give the NECA directions on revising its tariff prior to refiling it with the FCC.

EFFECTIVE DATE: February 17, 1984.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Common Carrier Bureau, Federal Communications Commission (202) 632–6387.

List of Subjects in 47 CFR Part 61

Tariffs.

Memorandum Opinion and Order

In the matter of investigation of access and divestiture related tariffs, (CC Docket No. 83–1145 Phase I).

Adopted: February 16, 1984.

Released: February 17, 1984.

By the Commission: Commissioner Patrick not participating.

I. Background

1. In our Access Charge Orders, *MTS/WATS Market Structure, C.C. Docket No. 78–72, Phase I, Third Report and Order,* 93 FCC 2d 241 (1983), (Access Charge Order), *modified on reconsideration* FCC 83–356, released August 22, 1983 (*First Reconsideration Order*) we established a single uniform mechanism through which local telephone exchange companies will recover the costs of providing access services needed to complete interstate and foreign telecommunications. The access charge plan reflected our efforts to adapt existing compensation mechanisms to rapidly changing telecommunications technologies and market dynamics. We sought to allow full and fair competition in interexchange services, and the benefits such competition would provide to consumers, while achieving a proper balance among four primary policy objectives: (1) elimination of unreasonable discrimination and undue preferences among rates for interstate services; (2) efficient use of the local network; (3) prevention of uneconomic bypass; and (4) preservation of universal service.

2. The Access Charge Plan as thus developed had these major features:

- All charges for interstate and foreign access are to be assessed by annual tariffs filed with this Commission, replacing the variety of existing compensation mechanisms.
- An Exchange Carrier Association (ECA) was established to prepare and file tariffs on behalf of carriers wishing to join it and to collect and distribute all Carrier Common Line rate element revenues.
- End user charges for 1984 were to be $2 for residential lines and up to $6 for business lines. These charges would be added to local exchange rates (unless a lifeline waiver were granted in order to preserve universal service) and offset by lower long distance rates.
- Carrier rate elements are to be based on costs computed and allocated as set out in the rules, and generally assessed per access minute of use.
- To reasonably approximate carrier charges for "leakage" (*i.e.*, use of the local exchange for interstate communication without payment of a corresponding usage charge) a surcharge of $25 per Special Access line termination is applied pending development of techniques to measure and charge for actual usage.
- For Special Access (basically local private lines used for access), carriers were to establish appropriate subclassifications, with charges designed to produce the associated revenue requirement and reflect cost differences in a manner that complies with Commission rules and decisions.

3. Tariffs implementing the access charge plan were directed to be filed on at least 90 days' notice to be effective January 1, 1984. Concurrently, the American Telephone and Telegraph Company (AT&T) and the local Bell Operating Companies (BOCs) also filed interstate tariffs reflecting the access tariffs and implementing the massive divestiture of AT&T pursuant to the Modification of Final Judgment (MFJ) adopting a consent agreement with the U.S. Department of Justice.[1] Altogether, by October 3, 1983, about 43,000 tariff pages (including 76 separate access tariffs) and 160,000 pages of associated support material were filed in response to the access charge plan and divestiture.

4. This Commission recognized the important benefits of implementing access tariffs to coincide with the January 1 date for divestiture. However, based on its initial review of the filed material, it was clear that the tariffs presented numerous substantial questions of lawfulness, notably in areas where the Access Charge orders are silent or provide only general guidelines. For example, the tariffs propose substantial ordering charges and other non-recurring charges (an area we pledged to scrutinize carefully) and widely varying Special Access charges. Approximately 50 local carriers also had not filed or joined in access tariffs. AT&T's interstate tariffs reflecting access and implementing divestiture also presented significant

[1] United States v. American Telephone and Telegraph Company, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub. nom.* Maryland v. United States, 103 S.Ct. 1240 (1983).

issues of lawfulness. Altogether, the filed tariffs fundamentally revised the rates and terms for virtually every interstate telecommunications service. Moreover, divestiture could proceed even if access tariffs were delayed. As a result, we concluded that the benefits of early implementation were outweighed by the need for careful review and meaningful opportunity for public comment.

5. Accordingly, the Commission set all the access and divestiture related tariffs for investigation. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC No. 83-470, released October 19, 1983. (*Investigation Order*). We also judged that a three month suspension period would enable us to resolve at least the major issues necessary to achieve workable tariffs. We therefore suspended all the tariffs until April 3, 1984 and established three separate pleadings cycles for public comments and carriers' replies. In this, Phase I of the investigation, concerning the access tariffs filed by local telephone exchange companies (telcos), fifty-five sets of comments were filed raising numerous issues concerning the ECA and other access tariffs. The commenters are listed in Appendix B.

6. Two related matters also affect our evaluation of the filed tariffs. The National Association of Broadcasters (NAB) on December 23, 1983, requested that the Commission separate the issues in this investigation and establish additional procedures; specifically it urged that carriers be required to file "baseline tariffs" containing only those minimal changes necessary to comply with Commission orders, leaving other matters to separate, additional transmittals.

7. Most importantly, in our decision on further reconsideration of the Access Charge Plan, (*Second Reconsideration Order*, FCC 84-36, released February 15, 1984, we adopted a number of important changes to our rules which necessitate changes in the filed tariffs.

- We decided to defer end user charges for residential and single-line business customers until June 1, 1985. This deferral may be expected to require an increase in the carrier portion of common line charges.[2]
- We revised the rates for non-premium access charged to OCCs. The old rates were initially to be priced on a per minute basis at 65% of the premium rate for some elements and the same rate for others. The premium would be phased out on a nationwide average basis as equal access was achieved. The revised rules provide that unequal access is to be priced on a per line, per month basis at 45% of the level of premium access. This monthly rate is based on 9000 minutes, which is typical of OCC usage. This charge will increase yearly based on changes in the Consumer Price Index. The rate differential will end when equal access is offered by individual companies to all OCCs.
- We clarified that FX customers will pay access rates at the open end on a per minute basis, at the level charged to OCCs, (*i.e.*, a per minute rate computed by dividing the monthly rate for equivalent access by 9000 minutes). Where AT&T obtains switched access to provide FX service it will pay the same rate.
- Because expected changes in treatment of the closed end of WATS have not been made for purposes of separations, we modified the access rules to conform. WATS access lines will therefore not be treated as Special Access lines, but in the same manner as other common lines. Minutes of use at the closed end of interstate WATS lines will be counted in calculating and assessing the carrier common line charge, the business end user charge will apply to all WATS access lines, and no special access surcharge will be assessed for the WATS closed end.
- We clarified and modified the application of the $25 Special Access Surcharge to more closely target private lines that "leak." Private line customers certifying that their private line is not interconnected with the local exchange through a PBX or other device capable of switching traffic to or from the local exchange will be exempt from the special access surcharge.
- We clarified that access charges are not applicable to carriers in the Public Mobile Service (Part 22 of the Commission's Rules).
- We reaffirmed our decision to establish a gradual phase-in of end user charges for Centrex-Co users. Accordingly, the end user charge for "embedded" Centrex lines in place or on order by July 27, 1983, will be limited to $2.00 for 1984-85. Only Centrex lines not in place or on order by that date will be charged the full multiline business rate, which could be up to $6.00.
- Each of these changes in the Access Charge Plan and Rules must be given effect by revisions in the pending access tariffs.

II. Discussion

8. As we explained in the *Investigation Order*, our goal is to resolve at least the major issues necessary to assure that generally reasonable, workable access tariffs are in place from the outset. These tariffs substantially transform the relationship among telecommunications customers, carriers and equipment suppliers. Significant unreasonable or unjust provisions could have profound effects on the telecommunications industry and on the public. At the same time because of the novelty, breadth, and complexity of the issues raised by these tariffs, it may not be possible to resolve all issues immediately. Actual operational experience and the rapid changes in technology and market forces may also reveal new issues over time.

9. Our approach in seeking to resolve the major issues in this investigation has been to direct our attention most closely to the ECA tariff. There were several reasons for this. Of the 1540 local telephone exchange carriers in the U.S., 1328 joined the ECA for all rates and regulations as issuing carriers of the ECA access tariff. Many others, including 10 of the BOCs, participated in ECA revenue pools for one or more groups of rate elements. The ECA tariff is also the only complete self-contained access tariff—all local companies participate in the ECA to recover carrier common line revenues, as required by our rules. This element is by far the largest carrier rate element. Moreover, the ECA tariff and accompanying support material were prepared by the Central Service Organization (CSO), which is now maintained jointly by the BOCs, and at that time was a part of the not-yet-divested AT&T. As a result, perhaps, of this common parentage, the ECA tariff was the model for and is identical in format and structure to the tariffs of the BOCs, who provide service to over 80% of all telephone customers; the BOC tariff regulations and provisions also are largely identical to those in the ECA tariff. The other, independent telcos employ provisions which depart somewhat more widely from the pattern of the ECA tariff, but those tariffs also are most often either identical or at least similar to the ECA's. An evaluation of the ECA tariff, in short, will constitute an evaluation of the great

[2] The delay will enable the Commission to conduct supplemental proceedings to devise an exemption for persons who cannot afford to pay any end user charge, reevaluate the transition plan for end user charges, and explore alternative mechanisms to assist customers of small telephone companies. To assist us in making those decisions, we decided to conduct further studies of bypass and the transition plan's effects on universal be removed from the Rules and a new § 69.202, which describes the end user charges for 1984-85, will be substituted. Sections 69.203 and 69.204 are reserved for the new transition rules that we will be adopting in supplemental proceedings.

majority of the terms and conditions of virtually all access tariffs.

10. The filed tariffs do differ from the ECA tariff, and among themselves, in one very important respect: the rates. These differences are often substantial. Rates for identical special access elements, for example, vary by factors as great as a hundred times or more. We cannot with complete reliability judge the reasonableness of one carrier's rates from those of another. Costs of local exchange companies may differ substantially even for identical facilities or services because of the longer distances and lower relative demand factors in less populated or less accessible areas, different salary schedules in different parts of the country, variations in the vintage and types of equipment, and other factors. Nevertheless, the ECA's rates and rate development do provide a useful starting point for considering all the proposed access rates. The ECA averages costs for many different telcos subject to a wide range of cost factors, including for some rate elements both BOCs and large and small independents. The methodology used by the ECA is both similar to that employed in other filings (particularly the BOCs) and generally more completely described. Our conclusions on the validity of that methodology and its correspondence with the access rules, the Communications Act, and the policies we have developed to implement it will apply in large part to the other filings. Such conclusions will be useful benchmarks for analysis of all access tariff rates.

11. The analysis of the ECA rate methodology and the actual rates themselves is presented in the next section. This is followed by a corresponding analysis of the rates proposed in the other access tariffs, a description of our evaluation of the tariff provisions and regulations, a discussion of miscellaneous issues, and specific requirements for the refiling of tariffs to correct the errors and deficiencies we have identified. In the appendices, the bulk of this order, we provide further information on the rates and a section-by-section analysis of the ECA tariff with specific directions for needed changes in tariff language and other further action by the local telcos.

III. ECA Rates

12. The filed ECA rates were developed based on the *Access Charge* and *First Reconsideration Orders*. Thus changes in some of the filed rates will be necessary to implement and reflect the *Second Reconsideration Order*. With the deferral of the residential and single line business end user charges, the carrier common line rate element will presumably increase to recover this shortfall. The flat monthly rate for ENFIA-type access for OCCs may require adjustments in other carrier rate elements. Other rates, such as Special Access, may be indirectly affected because of shifts in demand caused by other rate changes and the revised application of Special Access Surcharges. We have also concluded that rate structure changes are needed for some service categories, notably Special Access. We expect, accordingly, that many of the pending rates filed in the ECA and other tariffs will require revision.

13. We can, nevertheless, review and evaluate the proposed cost and rate development, including many individual rates which are not likely to change substantially, in order to determine the reasonableness of the methodology and support information used in the pending filing. To the extent the methodology is reasonable and information filed in support adequate, only incremental adjustments to the pending tariffs and filings may be necessary under the *Second Reconsideration Order*. On the other hand, should we identify problems with the pending filings which require changes in either the basic methodology or the justification and support, the filing carriers will be able to make needed corrections at the same time that they perform the analysis and revisions occasioned by the *Second Reconsideration Order*. Our immediate review and resolution of fundamental cost and rate development issues should permit reasonable access rates to become effective at the earliest possible date.

14. Although we have mandated some important aspects of access cost identification and rate development in Part 69 of our Rules, the process is nonetheless exceedingly complex, requiring massive amounts of data, complex procedures to allocate raw expense and investment figures to specific cost accounts, the separation of costs between intrastate and interstate categories, the distribution of interstate costs among particular services in an equitable manner, and the development of demand estimates. In the present case, this process is complicated by a further order of magnitude, because it involves all separated interstate costs, all local telcos, entirely new procedures replacing the settlement and division of revenues processes, a wholly restructured industry, thousands of individual rates (many of them for restructured services filed in federal tariffs for the first time) and 76 separate filings. In the specific case of the ECA tariff, each rate is based on costs aggregated from over 1300 different local telcos.

15. Each of these tariffs must carry out the carrier's overall obligations under the Communications Act and implement the specific requirements of our rules. Under section 201(b) and 202(a) of the Act, 47 U.S.C. 201(a), 202(b), all charges must be just, reasonable, and not unreasonably discriminatory or preferential. The Part 69 Access Rules seek to accomplish this by requiring that costs as derived from Separations Manual accounts be distributed to specific, identified rate elements and categories. These rules do not, however, address the issue of the reasonableness of the amounts claimed by telcos as overall system or separated interstate costs. Section 61.38 of our Rules specifies the material which must be submitted in support and justification of new and changed tariff material, including economic data and information. In the case of a proposed rate increase, the data must be in appropriate form to serve as the carrier's direct case in the event it is set for hearing. The burden of proof at any such hearing involving a proposed rate increase is upon the carrier. 47 U.S.C. 204(a).

A. Development of the Overall Revenue Requirement in the ECA Tariff Filing

16. The starting point for developing or reviewing a rate filing is establishing an overall revenue requirement. A carrier is entitled to charge rates which recover allowable expenses and a reasonable return on the investment in property used and useful for service to the public. This amount is the revenue requirement. For Switched and Special Access services, we have allowed telcos a revenue requirement based on a 12.75% return, equal to that allowed AT&T for its interstate and foreign operations since 1981. This is higher than the achieved return of AT&T while it was operating in partnership with the BOCs and the independent telcos before divestiture.

17. Because the ECA itself is not a carrier, its tariff is based on cost information submitted to it by local telcos with respect to the ECA rate element pools in which each participates. To develop these costs the ECA directed data requests to the telcos, separately tailoring requests for BOCs, cost schedule independents, and average schedule independents. The major part of the costs thus developed are taken from the BOCs' reports. For

example, of overall common line rate elements, $8.53 billion of the claimed $10.8 billion revenue requirement, or 79%, was attributable to the BOCs. Of the remainder, $1.93 billion (18%) was for cost schedule independents, and $347 million (3%) for average schedule independents. Possibly because the ECA tariff was prepared by the Central Services Organization (CSO) of the BOCs, the BOC revenue requirement figures were accepted by the ECA. The ECA simply used the overall interstate revenue requirements claimed by each of the BOCs in their individual filings for its development of the ECA rates.[3] To evaluate the claimed ECA revenue requirement, we must therefore examine the revenue requirements claimed by each BOC.

18. These requirements are presented in essentially identical fashion in each of the 20 BOC filings.[4] In each case, the claimed revenue requirement is stated to be the company's estimated 1984 "budget view", that is, the company's "best estimate of future costs" (*e.g.*, New York Tel., Vol. 1, p. 3–2). The budget view is a list of approximately 59 items relating to unseparated investment, expenses, taxes, and reserves listed in workpapers. However, no documentation is presented to explain the source and development of the budget view figures. Although the Budget View is the source for all the figures which are used to derive interstate amounts, and thus the basis for all the access costs and rates, the discussion of the budget view occupies less than two and a half pages in each BOC filing. The following quotation states the main point presented in these pages:

> These estimates (i.e., the budget view) are consistent with the principles and procedures outlined in the modified Plan of Reorganization (POR), which implements the Modification of Final Judgment (MFJ). As such they reflect the estimated financial data subsequent to transfer of assets and personnel to various units of post-divestiture AT&T. (Vol. 2–1, p. 2–1 of each BOC filing.)

The budget view figures are then put through three stages of adjustment and allocation: (1) they are adjusted to delete costs associated with (and recovered from) AT&T–BOC post divestiture contracts; (2) they are put into the separations process to derive detailed interstate category costs; and, finally, (3) they are allocated as the revenue requirement for each access rate element based on estimated demand. Those revenue requirement figures are used by the ECA to calculate the ECA tariff rate elements where some or all of the BOCs participate in the ECA pools; where the individual BOC has not joined the ECA pool for a particular rate element, the revenue requirement is used to derive the rate in the BOC's own tariff. Various comenters urge that the revenue requirements thus claimed in the ECA and BOC support material are not auditable, not cost supported as required by Section 61.38, and otherwise flawed.

19. We discuss first the budget view figures themselves. SBS contends that no information at all is provided for the budget view numbers. MCI and Western Union believe, based on workpapers, that the 1984 budget view figures are derived from 1982 cost data adjusted to reflect "post-divestiture" conditions, but that the data and mechanism used are not presented or adequately documented.

20. In reply, the BOCs and CSO state that the 1984 budget views are based on 1982 accounting records, adjusted for growth to 1984 levels and for the impact of divestiture. They contend the accounting systems used are subject to continuing FCC review and thus auditable, and that back-up documentation is so voluminous as to be both virtually impossible for the telcos to assemble and submit and an intolerable burden on the Commission if filed. They state their willingness to supply information or documentation the Commission may deem essential. The BOCs assert, however, that providing the details of the development of the pieces of the 1984 budget would impose an enormous burden, without commensurate benefits, since serious forecasting errors can be adequately dealt with by monitoring actual experience under an appropriate accounting order.

21. As we pointed out above, the budget view is of crucial importance in these filings as the direct basis for the BOCs' claimed revenue requrements, the root for every individual rate. It is additionally important because of the BOC and ECA "top-down" methodology. That methodology is essentially a mechanism to distribute the budget view figures by applying first allocation and then demand factors to derive rate elements which recover the revenue requirement derived from the budget view. Any errors in the budget view would affect essentially every rate under this approach.

22. We have examined the BOC budget views in light of the comments and reply. As the commenters claim, it is not possible from these filings to evaluate or verify the figures in the budget view. First, the sources of the budget view figures are not clearly specified and cannot be checked. The support material only indicates that the budget views are 1984 estimates, without specifying the basis for such estimates. The BOCs/CSO reply states that the underlying data used to develop the 1984 revenue requirement is the accounting data for 1982 in each of the exchange carrier filings, derived from separations data, and that this data was adjusted by each exchange carrier to reflect both anticipated growth from 1982 to 1984 and the effects of divestiture. Yet without specific tracking of the figures from the 1982 data and specific explanation and justification of the adjustments the figures are not reviewable.

23. The reply suggests first, with respect to adjustments for divestiture, that the intense scrutiny by the Commission and the MFJ court in the course of the divestiture proceeding is sufficient to assure that the adjustments to reflect divestiture are correct. With respect to other adjustments, it urges that the local telephone exchange companies (telcos) have no incentive to overestimate growth in 1984 revenue requirements, because excess earnings might be refunded under an accounting order and the telcos could suffer diminished credibility with this Commission.

24. We cannot accept this reasoning as a substitute for proof. Close scrutiny now is essential to assure both that these initial filings are as reasonable as possible given the substantial changes in the industry, and that later filings correctly reflect modifications which prove necessary. Our responsibility also is to prevent both inadvertent and intentional overstatements of the local companies' revenue requirements; reliance on refunds to correct any errors is an expensive, and undesirable alternative to identifying and preventing them.

25. We recognize that the reply is correct in claiming that a full inquiry into all the background data, assumptions, and studies underlying even the development of revenue requirement would involve massive amounts of information. It is said that support material to reflect divestiture adjustments exceed 250 pages for each BOC. It could be impractical or unproductive to attempt a complete review of such material. Since all BOC

[3] It also proposes a single Transport rate element rather than the separate Common and Dedicated Transport rate elements required by §§ 69.11 and 69.112 of our Rules, as permitted by our one year waiver of those rules, *American Telephone and Telegraph*, FCC No. 83–287, released June 28, 1983.

[4] Diamond State Telephone, a BOC, filed jointly with Bell of Pennsylvania.

filings use a consistent methodology, which does not appear to be unreasonable *per se*, acquiring this level of detail also appears unnecessary. As discussed below, we believe that by requesting specific sample and case study information, the staff can probe the filings sufficiently to make an initial judgment of their reasonableness in order to determine whether the ECA and BOC rates, with any necessary modifications, may be allowed to take effect in April.

B. Adjustments and Allocations of the Budget View Figures

26. The supporting documentation and methodology used to devise individual rates from the budget view figures, also are difficult to evaluate. The assumptions and estimates applied to the figures are often not specified or justified and the process relies on a series of computer programs which are not documented and have not been fully reviewed or approved as accounting mechanisms.

27. Once the 1984 budget view figures for expenses, investment and other categories were obtained, each figure was divided between the state and interstate jurisdictions. This involves three steps. First, 1982 data from the Interstate Settlement Information System (ISIS) was adjusted to estimate what that data would have been if divestiture had occurred at the beginning of 1983. These results (referred to as the "1982 post-divestitures view") were used to develop separations allocation factors. That is to say, the apportionment between state and interstate in these adjusted 1982 figures for each category was calculated for use as an allocation factor to be applied to separate the 1984 budget figures for each corresponding category. Second, non-operational amounts arising from post-divestiture contracts between the BOCs and AT&T were removed from the 1982 post-divestiture view (*e.g.*, leases to AT&T of facilities assigned to the BOCs by the MFJ but used in part by AT&T). These calculations are stated to comply with the MFJ, but no explanation or documentation is provided. Third, these 1982 post-divestiture interstate allocation factors were applied to the 1984 budget view category figures to develop 59 estimated 1984 expense and investment figures. These calculations are shown in the work papers in the support material. However, in many cases, where "known future events or documented trends clearly indicate that 1984 relationships will vary significantly from the 1982 post-divestiture view "(*e.g.* New York Tel. Vol. 2–1, p. 4–6), the BOCs used other allocations factors. For example, Pacific Telephone uses adjustment factors from 1.10 to 1.22 to increase interstate allocations of Central Office Equipment (Pac. Tel. Vol. 2–1, p. 5–33). Other adjustments were made to Traffic, Commercial, and Maintenance Expenses. New York Telephone uses an allocation factor of .29 rather than the calculated factor of .264 for depreciation and amortization expenses, a revision which SBS claims adds $19.25 million to the total 1984 interstate revenue requirement. Where the 1982 post-divestiture view figures are not used, in general no explanation or documentation of the factors actually chosen is provided. The commenters cite in addition numerous specific instances of mistakes, deletions, indecipherable material, and other asserted deficiencies in the ECA and BOC support material.[5]

28. The 59 estimated interstate costs derived from this procedure are then used to determine the access rate elements using the CSO's newly developed Access Charge Analysis System (ACAS), which consists of 8 subsystems. First, the 59 cost items are disaggregated into 740 sub-items. This disaggregation is based on the 1982 separations ratios, adjusted for growth and divestiture. These adjustments are not explained and it is not clear what relation they bear, if any, to the adjustments used to develop the 1984 budget view. Next, each of the 740 items is assigned to a Part 69 access rate element or to a non-access element. Eight special studies were applied to determine allocations, primarily allocations between Switched and Special Access rate elements. Investment accounts are multiplied by the 12.75% rate of return to determine the return requirement, *i.e.*, the allowed profit. A report of these allocations and calculations is then put through a computer program to create a revenue requirement for each of 16 access rate elements.

29. Commenters contend that the models and studies used in this system are not adequately documented. (MCI, Lexitel, Western Union, ITT, U.S. Tel.) They note for example that the adjustments for divestiture and growth are undocumented and that the computer programs are new and have not been reviewed. The BOCs/CSO reply that a full display of the underlying details for divestiture adjustments would be extremely voluminous, and that it made available extensive documentation of these procedures of the allocation process, in response to a detailed request by Western Union as early as August 1, 1983 even though all of this material is not reproduced in the filing.

30. We are sympathetic to both sides on this point. The CSO did, commendably, make available extensive backup documentation before the ECA tariff was even filed. Nevertheless, as we discuss below, further information is needed to evaluate the methods used in the ECA and BOC filings. Additional data will also be necessary with respect to the Special Studies, for which only cursory documentation is submitted.[6] Further information is also necessary to evaluate the computer programs, *see* section 1.363 of the Commission's Rules. 47 CFR 1.363.

31. The final step of the rate development process was to estimate demand for the rate element and derive an initial unadjusted rate—a rate calculated basically by dividing the revenue requirement for that element by the quantity of demand forecasted. This initial rate was then adjusted to reflect the "feedback" effect the rate itself and rates for substitutable services would have on demand. Based on simple supply and demand considerations, a rate increase will tend to suppress demand, and a rate reduction will tend to stimulate it. This demand response, anticipating customer reactions to the end user rates, is used to adjust rates until rates, demand, and costs are balanced.

[5] Although it may be unrepresentative, one allocation module in New York Telephone's support material, cited by MCI, contains unsupported data, questionable treatment of post-divestiture contracts, arithmetic errors, unexplained adjustments to interstate allocations, and missing support information.

[6] The reply agrees with some comments that the allocation approach apparently used in Special Study H is incorrect under Section 69.306(g) or our Rules. The ECA allocated half of the traffic sensitive costs of Feature Group A (FGA, line-side ENFIA A type service) dial equipment minutes (DEMs) in Category 6 Central Office Equipment to Local Transport, to reflect tandem switching in that element. Section 69.306(g) provides that all traffic sensitive COE 6 shall be assigned to the Local Switching element. The reply agrees that the COE 6 costs allocated to Local Transport should thus be reallocated to Local Switching, specifically to LS 1 which is the rate element for FGA switching. Because the ECA filing assigns two DEMs to each FGA access minute (reflecting two dial switch connections for each line side connection), the effect would, it is estimated, double the LS 1 element which applies to FGA. Local Transport rates would not change measurably. As MCI points out, however, at least some FGA traffic will make a single local switch appearance, in instances where a single end office serves both the IC and its customer. Doubling the access minutes thus apparently over-allocates costs to LS 1. The reply suggests that readjustment of the LS 1 rate could be deferred and we believe such deferral is the better course for purposes of developing the monthly FGA rate.

32. The ECA and BOC demand methodology parallels the cost methodology. Baseline demand estimates were harvested from the 10 BOCs who participated in the non-mandatory carrier's carrier rate elements in the ECA tariff. Those estimates of 1984 interstate minute volumes are said to be based on actual 1982 minutes of use that would have been subject to interstate access charges if divestiture had taken place in 1982. No documentation is provided for these Corporate Views. The corporate view figures were then disaggregated into forecasted access minutes for categories of service [*e.g.*, intra- and inter LATA, intra- and interestate, and into mileage bands] using the LATA Analysis Data System (LADS) computer program. Forecasts of other Switched Access, Special Access and Billing Collection demand quantities were also developed. Special Access demand was estimated from the inventory of private lines in service in 1982 which were "grown to 1984 levels using broad aggregate private line service rates." ECA, Vol. 4, p. 3–3. A surrogate flat rate for FG A lines which were not measured (*i.e.*, ENFIA and FX/ONAL lines from switching machines without measurement capability) was also computed based on usage data submitted by the BOCs. Similar demand data was collected from the independents.

33. The ECA asserts that there is no historical demand from which future access tariff demand can be forecast directly. Based on certain simplifying assumptions, however, it developed forecasts for pre- and post-access charge end user service prices. These forecasts (which of course predate changes mandated by the *Second Reconsideration Order*) are as follows for major services:

PERCENTAGE CHANGE IN SERVICE PRICES (NATIONAL)

Service	Estimated percentage price change
Residence MTS, MTS-Like	−12.34
Business MTS, MTS-Like	−12.34
WATS and WATS-like	−15.55
Private Line	+16.04

Based on these estimates, estimates of cross-elasticities of demand for these services, and estimates of traffic that will bypass the local network in 1984, changes in service quantities from the 1984 baseline forecast were calculated. The independents were assumed to closely approximate the aggregate of the BOCs for the demand response. The final rates were based on demand figures derived from this process.

34. An example of this process can be seen in calculation of the Carrier Common Line rate element. Initial estimates of total MTS and WATS access minutes (excluding closed end WATS) and OCC minutes, subject to a 65% non-premium discount, were used to calculate the preliminary Carrier Common Line rate as follows:

CARRIER COMMON LINE CHARGE

1. Revenue requirement	$6,902,455,420.
2. Total MTS and open end WATS access minutes.	131,358,256,006.
3. ENFIA A, B, and C OCC minutes.	19,481,097,272.
4. Premium carrier common line charge L1/(L2+(L3 ×.65)).	$0.0479 per minute.
5. Nonpremium carrier common line charge (L4×.65)	$0.03115 per minute.

(ECA, Vol 3–6, p. 5–9)

The demand response was then calculated based on the following projections of the effect on end user demand of the per line access charges, surcharge, and other rate changes: the total revenue requirement would increase slightly; demand would decline for local private lines by 1.11%, for residence lines by 0.7%, and for business lines by 0.88%; OCC minutes were estimated to increase by 5.10% and MTS and WATS minutes by 4.39%. These estimates reflect shifts in usage from the private line services (projected to experience rate increases) to MTS, WATS and OCC services (projected to experience rate reductions.) These demand responses were then used as the basis for the final Carrier Common Line calculation.

CARRIER COMMON LINE CHARGE WITH DEMAND RESPONSE

1. Revenue requirement	$6,930,015,875.
2. Total MTS and open end WATS access minutes.	137,125,148,875.
3. ENFIA A, B, and C OCC access minutes.	20,473,685,625.
4. Premium carrier common line charge L1/(L2 + (L3 X .65)).	$0.0461 per minute.
5. Nonpremium carrier common line charge L4 X .65.	$0.0299 per minute.

(ECA, Vol. 4, p. 8–20.)

35. Our concerns with the demand methodology are similar to those for costs. The corporate view from which all disaggregated demand figures are derived is said to be "grown" from actual 1982 demand figures, but the bases for the growth factors are not stated or documented. The reply states, again, that that material would be extremely voluminous yet the demand figures are essential to the rate calculations under the "top down" methodology. The estimates of AT&T and OCC minutes of use directly determine the Carrier Common Line rate element, as we have seen, as well as the other usage—sensitive carrier rate elements. Any error in the demand forecasts would directly affect the rate. *Cf, AT&T, (DDS)*, 62 FCC 2d 774, 780–81 (1977). The fact that the demand figures are based on estimates from the corporate views, the basis for which are not stated, is thus of substantial concern in evaluating the resultant rates. For example, demand for long distance telephone service is significantly affected by overall economic conditions. Without information on the assumed status of the national economy it is impossible to evaluate whether the projections from 1982 data are likely to be accurate, or indeed whether they are reasonable in view of actual 1983 data. The private line (Special Access) demand forecasts also are lacking in substantiation. For example, New York Telephone (which joined the ECA for these services) based its estimates of Special Access rate elements on studies of its private line inventory dating back to 1977 and its estimates of 2 and 4 wire access connections and voice grade protocol combinations on the views of panels of experts. (NYT, Vol. 4, p. SAI–1–2.)

36. We recognize that demand forecasts inevitably require assumptions and guesses. We expect these to be reasonable and educated guesses. Moreover, substantial changes in the communications industry and in the rate elements create specific conceptual problems here. As the reply points out, forecasting "is especially difficult here, where it is necessary to predict demand under the access charge structure in the post-divestiture environment." BOCs/CSC reply, p. II–61. The ECA and BOCs have also submitted substantial amounts of data and background on the disaggregation of demand. Nevertheless, because the initial corporate view figures are unsupported and many aspects of the disaggregation process are unclear or based on unknown assumptions, further information is necessary. The demand forecasts also need to be clarified to prepare us to monitor actual demand and determine how closely it corresponds to the forecasts.

C. Switched Access Rates

37. Switched Access services are those that involve use of local switching by the telco's end office for access. In the *Second Reconsideration Order*, we

deferred end user charges for residential and single-line business customers for Switched Access until June 1985. For the Switched Access provided to ICs, we prescribed eight rate elements, to be assessed where the IC used the service provided under the element. The ECA has filed rates for each of these elements with the exception of Limited Pay Telephone for which it reports no service.[7] These rates are listed in the accompanying table:

PROPOSED ECA SWITCHED ACCESS RATES

Element	Rate
Carrier common line:	
Premium	$0.0461 per minute.
Nonpremium	$0.0300 per minute.
Line termination	$0.0070 per minute.
Local switching:	
LS 1 (OCC's)	$0.0058 per minute.
LS 2 (AT&T)	$0.0090 per minute.
Intercept	$0.0085 per 100 minutes.
Information:	
Directory assistance	$0.4963 per DA call.
Directory transport	$0.0020-.0203 per call (based on distance).
Transport:	
Call miles	Rate per minute.
0 to 1	$0.0044.
Over 1 to 8	$0.0101.
Over 8 to 16	$0.0117.
Over 16 to 25	$0.0126.
Over 25 to 50	$0.0203.
Over 50 to 100	$0.0285.
Over 100	$0.0453.
Billing and collection	Various rates for recording, billing, billing analysis, and billing information.

The tariff also proposes an additional nonrecurring Access Connection charge (which we discuss in the Nonrecurring Charge section, *infra*) and other service and optional charges. There is also a minimum monthly usage charge.

38. As we discussed in our review of the overall methodology for allocating costs, we can not accurately judge the reasonableness of specific rates without further information. Moreover, the changes mandated in the *Second Reconsideration Order* will require adjustment of many of these charges, and will alter or moot some of the issues raised by the comments. No definite conclusions can be made with regard to these rates as filed. In general, however, although various questions remain with respect to assumptions, allocation methods, and details, the overall methodology appears to conform to that prescribed by the Part 69 Rules.

39. Some issues raised by the comments can usefully be addressed here. SBS and other commenters assail the Local Transport rate structure and choice of mileage bands. SBS contends that a fairer structure would have a flat per mile charge rather than the declining per mile charge as rate bands are passed which the ECA and BOCs propose. The BOCs/CSO reply contends that the proposed structure more accurately reflects the mix and costs of transmission facilities used to provide Transport. We have not determined a single reasonable Transport rate structure. Facility costs and types are likely to vary among carriers and we are not prepared to conclude that one or another structure is correct. In the access tariffs at least three different approaches are proposed. The ECA and BOCs as we have seen propose a declining rate per mile. The GTE companies propose a flat per mile. Rochester proposes a flat rate for all Transport, regardless of distance. None of these is unreasonable facially, for the important issue is the underlying costs of all aspects of Transport, including general overhead and administrative costs, the nature of the facilities network, and the cost characteristics of the facilities. We will allow each of these approaches to be used pending a determination of a preferred or optimal rate structure.[8] We are concerned, however, about the choice of rate bands and the associated rate jumps in the ECA tariff. The "0–1 mile" band is quite small and the rate increase abrupt, 120% for an extra mile or more. The rate increase from the 1–8 to the 8–16 band, by contrast, is only 15%. We are requesting further justification for the specific rate bands. See Appendix D, Section 6.

40. Some commenters urge that the cost of nonchargeable options available only to AT&T to provide WATS should be made chargeable features, or should not be provided solely to AT&T at all. While we agree that the optional features for WATS (such as blocking and screening) should be accurately assessed to that service, and probably unbundled eventually, it appears that facilities limitations in this as in other cases prevents making these features available to other ICs immediately. We also have no specific basis for concluding that the costs of these options are not recovered from the overall charge.

41. Significant rate variations do exist among the Switched Access rate elements filed by various carriers, although not nearly as extreme as the variations among Special Access rates. Changes will be required in many of these rates to comply with the *Second Reconsideration Order* and this order. Given the substantial changes in the industry, the difficulty of projecting costs and demand, and the need to establish initial access charges, we believe generally that it will be preferable to allow Switched Access rates to become effective if not obviously unreasonable and if adequate information is provided to understand their development. Monitoring of the effects of the rates should be more practical and effective than attempting to fine tune these rates initially.

D. Special Access Rates

42. Special Access includes a variety of services and facilities which we have included in the access charge plan so that the divested BOCs may offer them under access tariffs as mandated by the MFJ. These include segments of interstate or international private lines, ranging from telegraph grade and voice grade to high capacity analog and digital channels. Neither the access charge plan nor the MFJ requires changes in the rates, rate structures or provisions currently applied to these services, with certain limited exceptions.[9] Although we contemplated that Special Access could be unbundled into several separate subelements, we did not specify a structure. We emphasized, however, that the subelements must be consistent with applicable Commission rules and decisions and that we would scrutinize carefully the choice of subelements and data to ensure compliance with the Communications Act. *First Reconsideration Order*, para. 12 and § 69.113(d) of the Commission's Rules.

43. The Special Access portion of the ECA tariff is 230 pages long and lists hundreds of separate rates plus extensive technical material. It is the most controversial section. Commenters point out that the rate structure is totally changed and the rates generally increased substantially from existing rates for these facilities. Rates in many cases are 200 to 400% higher. Rates for identical facilities also vary substantially, by factors of a hundred or more in some cases, among the various access tariffs. Ordering requirements are more onerous and associated nonrecurring charges are also subject to dramatic increases.

44. The ICs (except for AT&T) currently obtain these facilities under

[7] It also proposes a single Transport rate element rather than the separate Common and Dedicated Transport rate elements required by Sections 69.11 and 69.12 of our Rules, as permitted by our one year waiver of those rules, *American Telephone and Telegraph*, FCC No. 83-287, released June 28, 1983.

[8] We grant Rochester's request for waiver pending further consideration of this issue.

[9] The tariffs must implement the MFJ with respect to LATA boundaries and the offering of services to AT&T on the same terms as other ICs. The tariffs must also apply the Special Access Surcharge we developed to recover a reasonable contribution to local exchange revenues from unmeasured traffic which "leaks" into the local exchange by means of PBXs and other switching devices.

the various BOC tariffs providing Facilities for Other Common Carriers (OCCs), filed in the mid-1970s to implement the Docket 20099 Settlement Agreement. Because of the basic changes in the rate structure it is impossible to compare rates directly—there are no comparable rate elements. Comparing typical channels indicates the magnitude of the proposed increases as they would be experienced by the ICs and, since these charges are generally passed through directly, by the ICs' customers. For a two wire voice grade local loop from an end user to an IC within the same wire center the price would increase by from 117 to 855% in selected BOC filings, and the total cost from current rates as low as $4.20 to proposed rates as high as $80.20.

CURRENT AND PROPOSED MONTHLY SPECIAL ACCESS CHARGES: TWO-WIRE VOICE GRADE INTEREXCHANGE, INTRA-WIRE CENTER—3 AIRLINE MILES; ZERO SPECIAL TRANSPORT

	PA	SD	CA	NY (ECA)	TX (ECA)	IL	Dc
Current OCC charges, total	$13.78	4.20	8.81	12.93	9.10	5.11	8.40
Proposed SA charges, total	29.92	26.44	41.17	61.39	61.39	32.96	80.20
Percent increase	117%	530%	367%	217%	575%	545%	855%

Other facility arrangements would experience similar or greater rate increases. It appears to be the case that virtually all Special Access loop rates would at least double in price and many would increase 8 times or more.

45. The proposed rates also vary enormously from one tariff to another. The two-wire special access line (SAL) rate element is $9.39 for South Dakota, $34.28 for the ECA and $58.50 for the District of Columbia. The four-wire SAL varies from $26.50 in Missouri to $74.81 in D.C. Other charges are far more widely split. C-type conditioning which costs $.42 in Delaware and $1.15 in Ohio costs $15.38 in Maryland and $45.12 in California. A NO/NO voice grade to telex facility interface which is less than a dollar in 5 states [10] costs over $10 in ECA regions and three other jurisdictions. [10A] See Appendix A which summarizes selected Special Access rates.

46. Individual customers report similar increases. Dow Jones states that rates for local connections in its private line network will increase by 152 to 551%, its installation charges by 580 to 2000%, and its overall yearly costs for local loops on one multipoint circuit from $3.4 million to a minimum of $8.6 million. The American Library Association states that the cost of private lines used to access the largest bibliographic data base would be increased by 60 to 84% and that an increase of this magnitude could threaten the viability of many library databank systems. Western Union calculates that its monthly charges for Special currently to $36 million, an increase of 1800%. Some of its individual circuits would experience rate increases as great as 11,000%. The effect of passing through these charges, it estimates, would be a 40% increase in its telex rates, which would cause a drastic shrinkage in its subscriber base. It estimates that 50% would discontinue telex service, especially because AT&T's competing Dataphone service is scheduled to decrease in price. Western Union asserts that if the Special Access charges proposed by the ECA and the BOCs is permitted to take place, it will seriously threaten the viability of all non-AT&T services employing Special Access facilities.

47. The comments argue strenuously that these major rate increases are unreasonable and unjustified, based on inflated or misallocated costs, flawed or undocumented studies, and a discriminatory rate structure. They contend that the telcos have failed to bear the burden of proving that the rates are cost justified. They urge the Commission to hold unlawful and cancel the proposed charges, or at the very least phase in the increase over an adequate transition period. The BOCs/CSO reply defends the overall allocation of costs to Special Access and the particular approaches to disaggregate those costs to Special Access rate elements. It defends the variations in loop and other costs on grounds that costs vary significantly among jurisdictions and costs also are affected by the extent to which AT&T is colocated with an exchange carrier. For example, it cites figures indicating that composite N- and T-carrier unit investment costs are 60% higher in Arizona than in Georgia. It does not dispute the rate increases calculated by the commenters, but argues that short haul channels have been underpriced in comparison to longer haul and that the filings correct this.

48. As we discuss in detail in Appendix B, with respect to Section 7 of the tariff, we have concluded that the proposed Special Access rate structure is unreasonable, discriminatory, and violative of Commission decisions and policies. The filed structure will therefore have to be replaced. The proposed nonrecurring charges are also unlawful, as we discuss in the next section. We also have inadequate information upon which to judge the reasonableness of the overall allocation of costs to Special Access by way of the budget and corporate views or the specific allocation of costs to Special Access services. The shift of WATS closed end loops to Switched Access will also cause significant changes in Special Access costs. It is apparent as well that additional information will be necessary in to understand the bases and justification for the proposed rate changes. The magnitude of the increases makes it clear that the telcos are proposing to radically change the manner in which local private lines are priced and provided. While we recognize that even large precentage increases may be justifiable in those instances where rates have not changed over a long period of rising costs, the present filings provide virtually no information on these matters.

49. It is clear from these circumstances that the Special Access section must be substantially replaced, at least to correct its structure. Further information and, most likely, a further investigation will also be needed to probe the development and justification for these rates. Although we could adopt the suggestion of some of the commenters and prescribe the continuation of the OCC Facility Tariff rates until an acceptable lawful filing can become effective, or require the filing of a "baseline" Special Access tariff which implements only changes necessary to implement access charges and divestiture (proposed by the National Association of Broadcasters and other parties), or extend the suspension period an additional two months while we investigate Special Access (proposed by Western Union), we have decided to defer the possible application of some or all of those approaches at least for the moment. Because a new Special Access section will be necessary in any event, and we wish if at all possible to implement a complete access tariff by our April 3 target date and avoid the need to extend the BOC–AT&T contracts any further past the January 1 date of divestiture,

[10] Missouri $.60; Ohio (Ohio Bell) $.64; Nebraska and Wisconsin $.92; and Delaware $.98.

[10A] District of Columbia $11.90; Idaho (Pacific Northwest Bell) $12.10; ECA $13.30; and Washington $16.88.

we will give the telcos an additional opportunity to file Special Access provisions which can be allowed to go into effect April 3. The filing must explain fully the basis for any change in rates proposed, not just the top-down allocation process described in the present filings and the overall projected revenue changes which the carriers will experience. We will scrutinize the proposed filings carefully within the notice period to determine whether they may be allowed to become effective.

50. Some commenters argue that there is an independent legal ground requiring rejection of the Special Access rates, arising from the Docket 20099 Settlement Agreement. Pursuant to that agreement, AT&T and the BOCs filed the OCC Facility tariffs and agreed also that during an interim period they would make changes in the rates only upon 6 months' notice (including any period of Commission suspension) and supported as required by Part 61 of the Commission's Rules.[11] The interim period ends when the revised rates become effective. Western Union contends that the support information filed does not comply with Part 61 and that the "outrageous multiplicity" of rates indicates that the numbers must simply have been made up. It argues that part of the bargain in the Agreement was that the rates would be cost supported, and that this bargain circumscribes the normal discretion of the Commission in rate setting matters, citing *MCI Telecommunications Corp. v. F.C.C.*, 665 F.2d 1300 (D.C. Cir. 1981). We differ somewhat in our view of the Agreement, which we believe does not limit the Commission's discretion. The Agreement provides only for longer than normal notice and the support information normally required under Part 61. The OCCs will have received the required six months' notice by April 3 and substantial cost support, including specific information on the costs of providing OCC and ENFIA facilities for 1982, the most recent calendar year for which data are available. This is all the parties bargained for. What they are now entitled to is the same as any other party or member of the public—that the Commission will carry out its duties to ensure just and reasonable rates. By suspending and investigating the filings we have sought to carry out these duties. We will seek to probe the support information further to determine whether the further Special Access filing is lawful, but the rights of parties under the Settlement Agreement will terminate by operation of that Agreement when Special Access rates become effective, either under section 204 of the Act or further Commission order.

E. Nonrecurring Charges

51. The Access Charge Rules and Orders provide no specific directions for nonrecurring charges (NRCs) to cover the planning, development and installation of facilities. We decided to scrutinize such charges carefully when filed and, if necessary, develop guidelines for costs that may be recovered from such charges. *First Reconsideration Order*, para. 145.

52. For Switched Access, the major NRC is the Access Connection rate element. This is essentially an installation charge. The ECA explains that the NRC cost "covers the activities required to negotiate and process the service order, design the circuit, assign equipment and facilities, and install the service between the IC and the entry switch." To compute the revenue requirement to be recovered by this rate element, the ECA and BOCs disaggregated these upfront costs from other costs of Local Transport. The charge for Access Connections is based on the capacity ordered, measured as Busy Hour Minutes of Capacity (BHMCs).[12] The proposed ECA rate is $10 per BHMC. Since a voice grade line is considered to represent capacity of 30 BHMCs, the Access Connection charge for a voice grade local loop would be $300. Channels of higher bandwidth would have correspondingly higher charges. This charge varies substantially among other telcos. Among the BOCs who have not joined the ECA for Switched Access, the lowest charge is $6.08 in Michigan. The highest is Bell of Pennsylvania which would charge $17.78 in Pennsylvania and $48.96 in Delaware. A comparison of the proposed ECA rate with selected BOC and independent company rates is presented in the following table:

Access Connection Rate Element per BHMC: Selected Exchange Carriers

ECA	$10.00
Rochester	None.
Ohio Bell	10.00
Bell of Penn	17.78
United Tel.—Ohio	1.00
New Jersey Bell	11.41
Illinois Bell	12.59
Pacific Tel	15.37

Other NRCs apply to performance options.

53. The rationale for basing the nonrecurring Access Connection rate element on BHNCs given by the carriers is that the MFJ requires of the BOCs that "the charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area. . . shall be equal per unit of traffic. . ." MFJ, 552 F. Supp. at 233–34.

54. Many of the comments vigorously oppose the Access Connection charge, arguing that it is exorbitantly high to recover the costs associated with ordering and installing service, that the methodolgy used is flawed and arbitrary, and that the wide variation in charges demonstrates the lack of justification for the proposed charges.

55. We have examined the support information and conclude that the development of the Access Connection costs and rates is seriously flawed and lacking in adequate support. First, conceptually, we should point out that while nonrecurring costs can generally be more efficiently and equitably recovered by nonrecurring charges, if those charges accurately reflect costs, this is not essential; nonrecurring costs need not be charged separately. Some or all of those costs are often included in the overall costs recovered by the monthly rate for the service, in this case Local Transport. We did not require that Local Transport costs be disaggregated, nor is it always easy to separately identify those costs which are part of overall operations and those which should be assigned to individual service requests. Several of the independent telcos have, for example, proposed no Access Connection charge for Switched Access.

56. In addition, the rationale for assessing the Access Connection rate per BHMCs is unpersuasive. The only basis cited is that the MFJ requires it. In fact, however, the MFJ provides no apparent support for BHMCs, as Allnet for example points out. The MFJ requires that the rate for local transport shall be equal per unit of *traffic* for all ICs. The Access Connection charge, by contrast, imposes a rate for local transport costs per unit of *installed capacity*. The difference is substantial, particularly in its effect on the rates charged to AT&T and competing ICs. AT&T will pay no Access Connection charges for the capacity in place to carry its traffic; it will pay only a rate based on use, per minute of traffic. The newer ICs, who will be initiating or expanding their networks, will require more installation and rearrangements. They will thus be likely to pay greater relative shares of any charge based on capacity and will, in addition, pay the same per minute charge for traffic.

[11] *AT&T*, 47 FCC 2d 660 (1974), 52 FCC 2d 727 (1975), *aff'd sub nom.* Carpenter v. FCC, 539 F.2d 242 (D.C. Cir. 1976).

[12] The busy hour is defined as the average time-consistent busy hour for the highest twenty consecutive business days in a calendar year.

57. Even if the MFJ supported use of BHMC, the carriers would still be required to demonstrate that the practice is consistent with the Communications Act and Commission rules, policies, and requirements. The distribution of nonrecurring costs by rates based on BHMCs, however, is unreasonable as a form of equitable cost recovery. It is unlikely that all the up-front administrative and technical costs of beginning transport service are related in any direct way to the capacity ordered. Many of the functions are likely to be identical whether the order is for 2 circuits or 200. Other costs, such as installation costs, where not already recovered in usage rates, may well be higher when greater capacity is installed, but probably not in direct, linear proportion. It may, for example, be little more costly to connect one high capacity channel than one voice grade, and it probably is not ten times as expensive to connect ten circuits as it is to connect one. Setting nonrecurring charges on the basis of BHMCs ignores these actual cost considerations. While some averaging of costs by setting NRCs on the basis of the size of an order might be reasonable, an explanation and justification would be necessary. Here the only justification is the apparently baseless one that the MFJ requires it.[13]

58. The actual methodology used to establish the revenue requirement for nonrecurring costs is also of serious concern. As in the case of other aspects of cost development, the ECA uses the BOCs' methodology, studies, and actual figures. Yet because of the variations and gaps in these methods, and differing adjustments, the figures and results appear to be highly unreliable. A similar approach was used for Special Access nonrecurring charges, and it has similar problems. An analysis of the nonrecurring charge cost and rate development is included in Appendix A.

59. In summary, we find that the rate structure proposed for Access Connections, which bases the rate on BHMCs ordered, is unreasonable. Although a nonrecurring charge which better expresses up-front costs could be reasonable, we also conclude that the development of the nonrecurring costs in the present ECA and BOC filings is nevertheless inadequate as a basis for such charges. Based on these conclusions, and the need to bring workable Switched Access rates into effect as soon as possible, we are directing the ECA and BOCs to eliminate the Access Connection element for switched access. On an interim basis, carriers may recover nonrecurring Local Transport costs in either of two ways. First, the legitimate costs which the ECA and BOCs disaggregated from the overall Local Transport revenue requirement may be recovered by inclusion in the Local Transport rate element. Second, while we will consider proposals for other nonrecurring charges in future filings, on an interim basis, for purposes of the tariff filings we are ordering in this decision, any nonrecurring charge for Switched Access shall be no higher than the existing charge under the OCC Facility tariffs. This will allow the status quo to continue and a reasonable opportunity to consider other proposals under normal notice periods. Carriers wishing to propose such charges must specifically reference the charge and its application from the corresponding OCC tariff in their support material.

F. Section 61.38

60. Section 61.38 of our Rules specifies the material to be submitted in support of tariff offerings.[14] For changed matter, this includes a cost of service study for all elements of costs for the most recent 12 month period. (Section 61.38(a)(i), 47 CFR 61.38(a)(i).) The ECA and BOCs did not submit a general cost of service study with their filings,[15] stating that the rates filed are for new service offerings. They also contend there is no experience with the filed access rates from which to develop a study, and that the complete restructuring of access terms and conditions would render the attempt to develop one impossible or meaningless. ITT contends that access service is not new, but a repackaging of an old service which requires a past year study.

61. We believe that the ECA and BOCs are correct that a past year cost of service study would be burdensome and of little value given the major changes in services, arrangements, and the carriers themselves. We are, however, directing an information request to carriers which we hope will elicit comparable information in a more useful form.

G. Conclusions on Rates and Rate Methodologies and Further Information Requests

62. Our review of the ECA and BOC filings reveals no unacceptable approaches in the cost and rate methodology. A "top-down" approach is not unreasonable *per se;* there are various cost and rate development methodologies which may be acceptable to develop costs and rates. The chosen apprach also corresponds to that anticipated in our Part 69 rules, including the use of 1984 estimates (*e.g.*, section 69.502(a), 47 CFR 69.502(a)), the use of Separations Manual procedures to assign cost elements, and the calculation of specific Commission-designated rate elements. The ECA and BOCs have also submitted subtantial support information, which for the most part appears to describe adequately the process as a whole and its specific stages.

63. Nonetheless, the filings do present substantial problems and issues which lead us to conclude that further information is needed before we can conclude that the tariffs should be allowed to become effective. As described above, the budget views, of which the rates and rate levels are direct mathematical descendants, are undocumented. It is impossible to judge their initial reasonableness, nor will we be able to identify how closely they correspond to actual operational experience. The company view used to project demand is similarly undocumented, and equally important. In the absence of further information, we cannot evaluate the basic assumptions determining the filed rates. Because no comparisons with past rates are provided, we also cannot accurately assess the changes which these filings represent for telcos, ICs, and customers. In addition, the many assumptions, judgments and estimates used throughout the cost development processes present formidable problems to both initial and continuing review.

64. Our goal in this investigation remains to resolve the major issues necessary to assure that the initial access tariffs are generally reasonable. Although further information is needed, we believe that a limited information request to clarify and test the major assumptions in the ECA and BOC filings and fill in important gaps will allow us to meet this goal, if the information confirms the reasonableness of the filings. The Common Carrier Bureau is accordingly preparing a letter describing the necessary information to be supplied by the ECA and BOCs with revised tariff

[13] The failure of BHMC pricing to reflect nonrecurring costs also has a snowball effect on other provisions in the ECA and BOC tariffs. Nonrecurring charges are used generally as a basis for calculating rearrangement, move, and cancellation charges, and short notice-short duration surcharges. To the extent that BHMCs do not correlate with nonrecurring costs, these other rates are also likely to be distorted.

[14] Section 69.1(b) of our Access Rules expressly provides that access tariffs be filed and supported as provided in Part 61, which includes Section 61.38..

[15] The BOCs did submit historical information for 1982 on ENFIA and OCC facility costs.

filings implementing revisions mandated by the *Second Reconsideration Order* and other sections of this order. The letter requests primarily additional specific information on the budget and corporate view figures and assumptions, plus further details on the methodology as it was applied in practice by a specific BOC. Because a single overall methodology was used, this case study should provide useful insight into the process without unmanageable and unnecessary submissions. One exception to this approach is for the Information or Directory Assistance rate element. We are requiring additional information on local and state rates and costs for directory assistance in order to develop data to consider issues of costs, potential discrimination, and the likely advantages of a phase-in for long distance directory assistance charges.

65. The information request should be useful in preparing us to monitor the effects of the access tariffs on customers and the extent to which operational experience corresponds to the projections on which the rates are based. Some of the commenters have also suggested that we establish a specific monitoring plan for this purpose. We believe this is desirable, particularly in view of the major changes in the industry resulting from divestiture, the changes in relationships which will result from access tariffs, and the responsibility we have assumed to assure that the access charge process accomplishes our goals. Accordingly, the Bureau is directed to prepare a further information request to monitor how closely the telcos meet the projections on which their rates are based and what their actual numbers are.

66. If we are to avoid additional delay in the effective date of access tariffs, the filing schedule we establish must necessarily be more limited than we prefer. The carriers will require time to make changes to comply with this order and the *Second Reconsideration Order*. We will require sufficient notice between the filing and scheduled effective dates to verify such compliance. This filing schedule is set out in the conclusion of this Order. With respect to the costs and rates, it is particularly important that telcos comply fully with this information request and that necessary rate changes are properly filed. Failure to comply fully will of course require further delay in the effectiveness of the tariffs of non-complying carriers.

IV. Tariff Provisions and Regulations

67. Our review and investigation of the access tariff provisions—the regulations, restrictions, format, structure and other non-rate aspects of the tariffs—have been directed to assure both their general justness and reasonableness and their compliance with Commission rules, orders, and policies. Tariffs are required to show, in schedules open to public inspection, all charges and the classifications, practices and regulations affecting such charges. Section 203(a) of the Act 47 U.S.C. 203(a). Unjust or unreasonable terms and conditions, unreasonable discrimination or preferences are forbidden. Section 202(a), 47 U.S.C. 202(a). A tariff states the terms of the contract for service the carrier offers to all eligible members of the public.

68. That offering must comply with both technical and substantive requirements. Technically, under Part 61 of our Rules, the tariff must contain "clear and explicit terms regarding rates and regulations * * * so as to remove all doubt as to their proper application." Section 6155(f), 47 CFR 61.55(f). All rules, regulations, exceptions and conditions are to be clearly stated, section 61.55(g), 47 CFR 61.55(g), and all charges stated in a simple or systematic manner, section 61.55(h), 47 CFR 61.55(h). The tariffs must comply with these and the other filing, format and content requirements in order to ensure that their terms are explicit, understandable, and reviewable.

69. Substantively, the access tariffs must properly carry out both the Part 69 Access Charge Rules and other Commission orders and policies. A fundamental Commission goal is to foster a competitive market, open to all, for communications services and equipment. Tariffs, may not generally prohibit or restrict resale, *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied* 439 U.S. 875, or the interconnection of equipment, *Carterfone*, 13 FCC 2d 420, 14 FCC 2d 471 (1968), or services, *AT&T, Interconnection of Private Line Services*, 60 FCC 2d 939 (1976). Customers may use communications services in any way which is privately beneficial, so long as it is not publicly harmful, and the burden of demonstrating public harm is on the carrier proposing the restriction, *Hush-A-Phone Corporation v. U.S.*, 238 F.2d 266 (D.C. Cir. 1956), *Carterfone*. A carrier also may not have different tariffed rates for like service, absent justification for applying different rates, *Western Union International, Inc., v. FCC*, 568 F.2d 1012 (2d Cir. 1977), *cert. denied* 436 U.S. 944 (1978), *American Trucking Ass'n v. FCC*, 377 F.2d 121 (D.C. Cir. 1966), *cert. denied* 386 U.S. 943 (1967).

70. Based on the record in a notice and comment investigation such as this, if we conclude that a tariff charge, classification, regulation, or practice is or will be unlawful, we may, within the broad limits of our discretion, select from a number of options to remedy the defects. We may, for example, prescribe reasonable provisions, section 205(a), 47 U.S.C. 205(a) and section 201(a), 47 U.S.C. 201(a), direct the carrier to file revisions correcting the unlawfulness, *National Association of Motor Bus Owners v. FCC*, 460 F.2d 561 (2d Cir. 1977), or take such other action not inconsistent with the Act as may be necessary to exercise our functions. Sec. 4(i), 47 U.S.C. 154(i) *Lincoln Telephone and Telegraph Company v. FCC*, 659 F.2d 1092 (D.C. Cir. 1981). We may institute broad policy changes while leaving fine-tuning for future proceedings, *AT&T v. FCC, 572 F.2d 17 (2 Cir. 1978), cert. denied* 439 U.S. 875, *cf. WJG Telephone Company v. FCC*, 675 F. 2d 386 (D.C. Cir. 1982).

71. Our section-by-section review of the ECA tariff, the comments, and the reply is presented in Appendix D. These findings, both in the overview and individual modules, constitute the bulk of our decisions and orders. We have attempted to review all sections of the tariff, but have not listed all necessary changes. Where changes in other sections are necessary to conform to the decisions in an overview or specific section, these also are required. Overall, the ECA tariff appears to be a functional vehicle for implementing access charges, although changes will be necessary to implement the *Second Reconsideration Order*. Many of our comments and directions are editorial in nature, to eliminate ambiguity or duplication, or to obtain further explanation. In other circumstances, we might have been able to remedy these problems informally in the course of the tariff review process. However, we also find that numerous specific provisions and a number of important segments of the tariff are unreasonable or unjustified. This is particularly true in areas for which the Commission did not draft specific rules, but left implementation to carrier initiative and close scrutiny in the tariff review process.

72. In each case, where changes proved necessary, we have sought to select the most appropriate remedy within the span of our authority and discretion, balancing the needs of telcos, equipment vendors, and customers. In some cases we have deferred action to a later proceeding, for examply by requiring the carrier to file revisions or further information at or before the time

of the 1985 tariff filing. In other cases we have requested additional justification immediately before permitting a provision to take effect. In yet another cases, we have prescribed interim remedies pending further action based on a more complete record. We have also prescribed terms and conditions, where we have concluded both that the existing provision would be unjust, unreasonable, unreasonably discriminatory, or unlawfully vague, and that another provision would be just and reasonable.

73. The ECA also proposed to include in the access tariff extensive technical material dealing with interconnection and transmission standards. We are concerned with both of these areas. The interconnection sections propose to apply our Part 68 rules for terminal equipment to carrier-carrier interconnection, by largely incorporating but in some cases modifying those rules. Applying Part 68 to carriers, however, would apparently impose new restrictions on carrier-carrier arrangements, stricter than those in currently effective OCC tariffs which have proven effective in protecting the network from harm. No justification is provided for new restrictions, and we conclude that the proposed approach is thus in conflict with principles of *Hush-a-Phone and Carterfone*. As an interim matter, we are requiring carriers to maintain the standards in existing carrier tariffs by extracting the relevant material and incorporating it in the access tariff by a technical reference. We are considering tariff requirements and appropriate procedures for arriving at standards in MTS and WATS-Market Structure, Notice of Proposed Rulemaking, Structure Phase III, C.C. Docket No. 78–72, FCC 83–178, released May 31, 1983. The inclusion of a somewhat modified version of Part 68 in the tariff could also be confusing (and improper) where Part 68 applies: a carrier may not alter our rules by tariff. We direct the carriers to remove the Part 68 material and reference the rules directly.

74. Some commenters claim that the proposed transmission standards are lower than currently provided and in some cases unacceptable to meet service needs. The BOCs/CSO reply that standards in most cases meet or exceed current standards. It is difficult to compare standards because of questions as to what the standards mean (for example, whether they represent guarantees of minimum performance or signals triggering the need for maintenance) and because the standards do not apply when the facilities are grandfathered or whenever the standards cannot be met. The circuit elements to which standards are applied have also changed in some cases. In general, the standards do not appear unreasonable despite these concerns, but they do raise a more fundamental concern. Before divestiture, a single network manager, the Bell System, could often provide end-to-end service by choosing among design and routing options that normally exist to optimize performance. Impairments in transmission[16] along particular portions of a route[17] could be accommodated to provide an end-to-end service which met a customer's needs while making optimal efficient use of the network. Trade-offs could be made. We believe the benefits of this optimization process should be maintained to the extent feasible in the post-divestiture environment, though the Bell System can no longer serve as a single network manager. Within this content, proposals for standards which would apply to one segment of the network must be considered as elements in the overall network optimization process. We believe that resolution of such technical issues can best be handled by an industry-wide forum, as proposed in our CC Docket No. 78–72, Phase III Notice, *op. cit.* Our decisions in this case are thus tentative and interim in nature.

A. Other Matters

75. We have attempted in this order to deal with all major issues in this phase of this docket. Some specific matters warrant further mention.

76. As we noted in the *Investigation Order*, approximately fifty exchange carriers neither joined the ECA tariff for all its provisions nor filed or participated in any other access tariff. Without an access tariff on file these carriers could not recover the revenue requirements associated with the access rate elements. We contacted each of these carriers to ask how each proposed to comply. Apart from carriers mistakenly omitted from the ECA tariff, twenty-five carriers wished to join the ECA tariff, six wished to join the Small Exchange Telephone Company tariff, and seventeen carriers wished to concur in the Pacific Telephone and Telegraph Company tariff. We decided to permit the carriers to join the respective tariffs (see CCB Mimeo 1358, released December 15, 1983), because it allowed the carriers to participate in access revenues and the effect on the rates and revenue pools was *de minimis*.

77. New York Telephone and Pacific Telephone and Telegraph filed requests for somewhat different "lifeline waivers" of the $2 end user charge. Because the $2 charge was deferred until June 1985 in the *Second Reconsideration Order*, those petitions are moot.

78. The ECA and other tariffs contain no rate element for Limited Pay Telephone, *i.e.*, pay telephones and coinless pay telephones which can access the services of only one interexchange carrier. The ECA states that public phones such as Charge-a-Call Station are not dedicated to the interexchange services of a particular carrier. We will monitor these services to verify that they are correctly rated.

79. Some commenters (Allnet, AT&T), urge that the per minute rates for Switched Access should properly be time-of-day sensitive, with lower evening and night rates to reflect the lower costs of such offpeak usage. While we agree that a time of day structure should eventually be established for these rates, we have not required this additional step in these initial access tariffs. Other comments also raise issues not properly within the scope of this proceeding, *e.g.*, issues considered and resolved in the *Second Reconsideration Order*. We do not address these here.

80. A general problem in the ECA tariff is the use of a single rate, $26.21, for a wide range of administrative activities, including the altering of an address, the switch to a different presubscribed carrier, and the modification of an order. We have found no explanation for how this charge was established; the charge also does not take into account likely differences in the typical costs of such functions. It may also be counterproductive for a telco to impose a charge in some cases, for example, to correct inaccurate or changed customer information, since the customer's failure to come foward may cause the telco's own records to remain inaccurate. We request further justification for the charge and its application.

81. Foreign exchange (FX) service presents a number of problems. Interstate FX is presently priced as a composite service, including an interstate private line component and local exchange service. In the *Second Reconsideration Order*, both to eliminate the discrimination inherent in pricing FX at a very different rate than the essentially indentical ENFIA–A, and to reflect the very different usage of many FX and ENFIA customers, we retained FX billing on the basis of

[16] *E.g.*, maximum noise on a channel, signal dropouts, envelope delay, impulse noise.

[17] *E.g.*, local loop interexchange plant, toll plant.

minutes of use even though we prescribed interim flat rates for OCC ENFIA–A type services. A small percentage of local end offices, however, are not presently equipped to measure FX usage. In these offices, per minute rate cannot be applied. The ECA has proposed a monthly rate based on 4076 minutes. However, this figure would impose a substantial hardship on a small user who would pay the higher assumed rate if it happened that the local telco end office was not equipped to measure usage. The average also does not appear to be based solely on end user usage in those exchanges. As an interim measure, until measurement capability is available, we will permit telcos either to continue to charge a rate equivalent to the local business rate to end users receiving FX or to propose alternative usage surrogates. Another problem involves so-called "string FXs," a local exchange service provided across adjacent state borders or telephone company boundaries which is generally little different from other local exchange service. In some cases the "FX" line might be simply across a highway which is also a border. Regions using string FX are generally rural areas which look to a cross-border town for community services. A number of exception rates are included in current applicable tariffs (e.g., AT&T Tariff F.C.C. No. 260, Section 3.2.2(C)(1)(d)) which bar imposing interstate private line rates upon the facilities used. We have received a number of letters and petitions from communities subject to such rates suggesting that applying access charges or eliminating exception rates could result in very substantial rate increases for no changes in service. We will examine carefully any carrier requests to eliminate these exceptions or any other actions which have that effect. The carriers should, at a minimum, explain why other alternatives, such as modifying the exchange boundary or an Extended Area Service arrangement, would not be preferable and better recognize the essentially local character of such services.

V. Major Conclusions Requiring Further Action

82. Special Access is a primary concern. Neither the Access Charge Orders nor divestiture required changes in the rates or rate structures for the private line services provided under Special Access. The ECA and other access tariffs, however, propose to restructure these offerings radically, although little justification is given for the need for such changes. Rates would also increase enormously in many cases. Moreover, the rates for carriers ostensibly using the same methodology vary drastically for the same services and facilities. These differences are so great as to forfeit the credit which might be placed in any of the rates. The rate structure is also seriously flawed, as we describe more fully in Appendix D.

83. Directory assistance charges present analogous problems on a smaller scale. One of our basic policy goals is to move toward rates which recover the costs of service from the cost-causer where feasible. The costs of long distance directory assistance appears to be a service where calls can and should be recovered from those who place the calls, rather than spread to all long distance callers. A high proportion of long distance information calls are in fact made by large businesses such as credit agencies which have taken advantage of directory assistance being provided as a free good. Others, including local residential customers, should not bear the burden of such costs. Assigning an accurate rate to these calls will also encourage overall efficiency in use of the service, and possibly competitive offerings. A cost-based rate should thus be both more equitable and more efficient.

84. In the present case, however, the cost basis for the directory assistance rates is very doubtful. The rates vary widely for no discernable reason. For example, the rate in the District of Columbia is $.22 and in West Virginia $.93 though both are C&P Telephone companies. The support material also present substantial questions, including whether costs are fairly assigned to state and interstate use. These rates are also substantially higher than the state rates in most cases, and state rates generally permit a number of free calls. The charging of very different rates to customers for the same service is a matter of concern. For these reasons—to move toward rates fairly based on costs, and to permit consideration of the actual costs and possible issues of discrimination—we are prescribing an interim one year charge no higher than 25 cents for the directory assistance service call element of access tariffs for carriers whose charges are on a per call basis. We are also requesting further information from the carriers in order to resolve issues relating to directory assistance and will consider these issues later in this investigation.

85. The proposed ordering arrangements, including the planned facilities order provision, are also unjustified and in substantial part unreasonable. The nonrecurring charges represent large increases to existing charges, though no obvious changes in costs are involved and it is unclear that the increases are reasonably related to costs. Many of the features would also allow telcos to decide arbitrarily the amount an IC would pay and the obligations to which it would be subject.

IV. General Conclusions and Directions to Local Exchange Carriers

86. In the *Investigation Order* which began this proceeding less than four months ago, we expected that enormous effort would be required by this Commission, the carriers, and the interested public. This was not an overstatement. The mass, detail, and level of analysis of the comments and reply give testimony to the importance and range of the issues for carriers equipment suppliers, and the public. Much has been accomplished and many issues resolved. Yet even more may remain to be done. The Common Carrier Bureau will very shortly be sending further information requests to certain carriers and the ECA. It will also act on delegated authority to adopt an order addressing changes needed in other, non-ECA access tariffs. Although the policy decisions and specific corrections required by this order apply to all access tariff provisions which are the same or relatively similar to the ECA's, others with differing provisions raise separate problems. These are relatively scattered in the other 75 access tariffs and those carriers should proceed with the work of preparing whatever changes are necessary in their tariffs because of this order. Where we have addressed specific provisions of non-ECA tariffs, the respective carriers should of course prepare to implement our conclusions. The Bureau will release the order for non-ECA tariffs to give additional directions as soon as possible. We will also consider orders dealing with the divestiture related tariffs in Phase II of this docket, including AT&T's interstate tariffs, within the next few weeks.

87. We expect that the information supplied with the new filings and the specific rates and provisions will comply with this order, so that we may allow the revised tariffs to become effective. In any event, we will continue this investigation to monitor the filings and consider the additional issues which we have not fully or permanently resolved here, and the many new issues certain to arise. Any issues which have not been fully addressed or resolved in this order will be included in the continuing investigation.

88. Because of the tight schedule we are trying to meet and the mass of material the filing carriers must prepare

and we must review, by this order we are establishing a specific set of requirements for all revised access filings:

• Filing carriers must make no changes in section or page numbers of pending access tariffs except as specifically required in this or in forthcoming orders. Revisions required by these orders should be made without changes in section numbering. Section numbers of provisions required to be deleted should not be used for new material, except where the new material is a replacement dealing with the same subject.

• Filing carries must make no revisions, corrections, alterations, or other changes in the rates, terms, or conditions of the access tariff in the prescribed filing (other than to correct typographical errors such as spelling) except as expressly required or approved in this order and the *Second Reconsideration*. These revisions shall conform to the applicable rule requirements in Part 61 of our Rules, particularly the symbolization requirements of § 61.55(e), 61.94 and 61.118(a). However, the carriers need not symbolize material reissued without change as is required by § 61.118(b). To do so would result in symbolization that would be confusing. Specific instructions concerning the administrative details of filing these revisions can be found in Appendix C. Other changes which the filing carrier wishes to propose must be made in a separate filing pursuant to Part 61 of the Commission's Rules. 47 CFR 61.

• The filing carrier shall file in a separate volume as part of its support material a report specifying all revisions on a section-by-section basis, listing the language now pending, the proposed language (if any) and a reference to the specific Commission order, page and section or paragraph number which is implemented. The carrier may include any explanation or justification of the proposed revisions in a separate section-by-section format.

89. We do not expect to modify or waive the requirements of this order before the effective date of conforming tariffs absent exceptional circumstances. Reconsideration petitions or additional tariff filings should provide adequate opportunities to present any claims that revisions are needed. If a carrier does wish to request a waiver to allow a tariff provision which does not conform with this order to become effective immediately, it should present a full explanation and justification for all requests for immediate relief in the form of a single waiver request submitted no later than February 29, 1984.

90. Carriers are directed to file revised tariffs conforming with this order no later than March 15 to be effective April 3, 1984. We will strive to maintain this schedule. However, we realize that the task of revision will be a lengthy and difficult one. It is nonetheless of crucial importance to meeting the April 3 date that filings be done correctly and well—and even more important that they be done quickly. We have completed this initial review of the tariffs well before the overall target date so that it might be possible for new tariffs to become effective April 3 as planned. We hope that the information provided and modifications made by carriers to the provisions and structure of their tariffs will remedy most of the problems identified concerning rates. However, as can be seen from the body and appendices of this order, many of the problems we have identified, both rate and others, are serious; it may be difficult for carriers to correct the provisions or demonstrate that no correction is needed. We need to know as soon as possible whether the carriers will be able to meet this schedule. We therefore direct the ECA to poll the filing carriers and report to us no later than February 29, 1984 whether the carriers will be able to meet the March 15 filing date. If the carriers require more time, an appropriate motion for extension should be filed with the February 29 report.

91. Several telcos have submitted applications for special permission to file various revisions to their respective access tariffs. Subsequent to the filing of these applications, modifications required by this Order and by the *Second Reconsideration* have rendered many of the revisions requested in those applications inappropriate or inaccurate. Accordingly, we are denying the pending applictions for special permission listed in Appendix C.

92. Nonsubstantive revisions (correction of typographical errors such as spelling) may be made at the same time as required modifications under this Order.

Ordering Clauses

93. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201, 202, 203, 204(a) and 205, of the Communications Act, 47 U.S.C. 154(i), (j), 201, 202, 203, 204(a), and 205, that the tariff material submitted under Exchange Carrier Association Transmittal No. 1 is unlawful to the extent indicated herein.

94. It is further ordered, that the Exchange Carrier Association shall file revised tariff material in compliance with this order no later than March 15, 1984 with a scheduled effective date of April 3, 1984.

95. It is further ordered that the Exchange Carrier Association shall reference appropriate AT&T and BOC Tariffs for Other Common Carriers (and other applicable material resulting from meetings on interconnection pursuant to CC Docket 20099) as existed on April 2, 1984, to the extent necessary to substitute for material in Section 2.5 found unlawful. For this purpose, a waiver of Section 61.74 of the Rules is granted. To the extent that no existing tariff contains necessry connection provisions (for example, those for services such as HCIC–4), any special provisions such as the Interim Programs for customer provided CSU and CSU-equivalent connections should be delineated in the ECA tariff. Moreover, it is ordered that the appropriate material referenced by the ECA tariff, including any presently used documents which resulted from the CC Docket 20099 meetings on interconnection, should be retained in posting locations required pursuant to Section 61.72 of the Rules.

96. It is further ordered, that §§ 61.58, 61.59, 61.74 and 61.118(b) of the Commission's Rules, 47 CFR 61.58, 61.59, 61.74 and 61.118(b) are waived to the extent required to file tariff revisions implementing this Order, effective February 17, 1984.

97. This order is exempt from the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It involves a rule applicable to particular rates and to practices relating to such rates within the meaning of the exemption contained in 5 U.S.C. 601[2].

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–6491 Filed 3–11–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 174 and 177

[Docket No. HM–189A; Amdt. Nos. 172–89, 174–45, 176–19, 177–62]

Hazardous Materials; Editorial Corrections and Clarifications

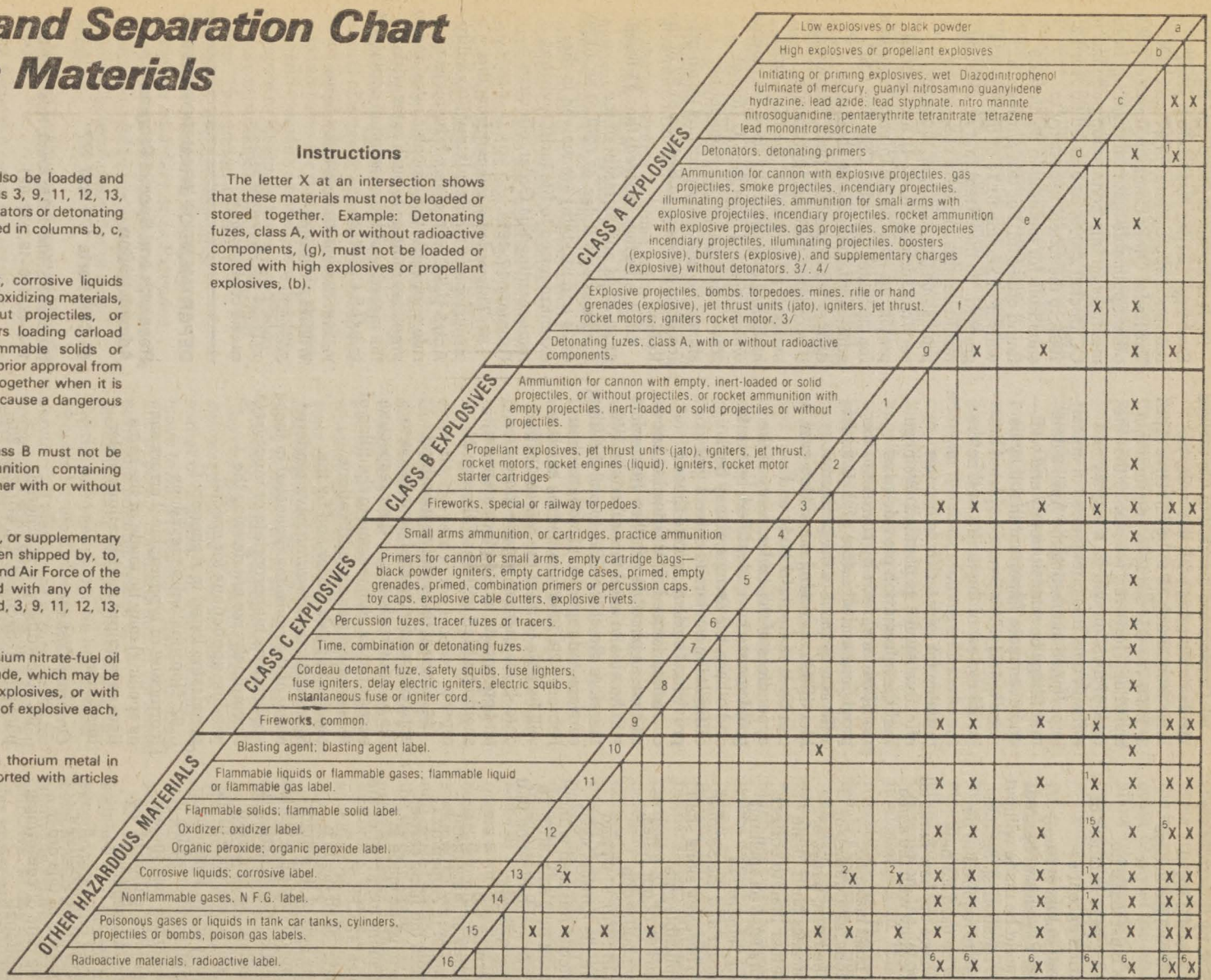
Correction

In FR Doc. 84–5283 beginning on page 7384 in the issue of Wednesday, February 29, 1984, make the following corrections.

1. On page 7386, the table for § 174.81 should have appeared as set forth below:

BILLING CODE 1505–01–M

Segregation and Separation Chart of Hazardous Materials



Footnotes

1. Detonators, class C explosives, may also be loaded and transported with articles named in columns 3, 9, 11, 12, 13, and 14. Loading and transportation of detonators or detonating primers, in any quantity, with articles named in columns b, c, e, or f is prohibited.

2. Unless loaded in opposite ends of car, corrosive liquids must not be loaded with flammable solids, oxidizing materials, ammunition for cannon with or without projectiles, or propellant explosives, except that shippers loading carload shipments of corrosive liquids and flammable solids or oxidizing materials and who have obtained prior approval from the Department may load such materials together when it is known that the mixture of contents will not cause a dangerous evolution of heat or gas.

3. Explosives, class A, and explosives, class B must not be loaded or stored with chemical ammunition containing incendiary charges or white phosphorus either with or without bursting charges.

4. Bursters (explosive), boosters (explosive), or supplementary charges (explosive) without detonators when shipped by, to, or for the Departments of the Army, Navy, and Air Force of the United States Government may be loaded with any of the articles named except those in columns c, d, 3, 9, 11, 12, 13, 14, 15 and 16.

5. Does not include blasting agents, ammonium nitrate-fuel oil mixtures, or ammonium nitrate, fertilizer grade, which may be loaded, transported, or stored with high explosives, or with detonators containing no more than 1 gram of explosive each, excluding ignition and delay charges.

6. Normal uranium, depleted uranium, and thorium metal in solid form may also be loaded and transported with articles named in columns a, b, c, d, e, f, and g.

Instructions

The letter X at an intersection shows that these materials must not be loaded or stored together. Example: Detonating fuzes, class A, with or without radioactive components, (g), must not be loaded or stored with high explosives or propellant explosives, (b).

2. On page 7389, the table for § 177.848 should have appeared as set forth below:

Segregation and Separation Chart of Hazardous Materials

Footnotes

1. Detonators, class C explosives, may also be loaded and transported with articles named in columns 3, 9, 11, 12, 13, and 14. Loading and transportation of detonating primers, or detonators, except as prescribed in §177.835, in any quantity with articles named in columns b, c, e, or f is prohibited.

2. Corrosive liquids must not be loaded above or adjacent to flammable solids, oxidizing materials, ammunition for cannon with or without projectiles, or propellant explosives, except that shippers loading truckload shipments of corrosive liquids and flammable solids or oxidizing materials packages and who have obtained prior approval from the Department may load such materials together when it is known that the mixture of contents would not cause a dangerous evolution of heat or gas.

3. Explosives, class A, and explosives, class B must not be loaded or stored with chemical ammunition containing incendiary charges or white phosphorus either with or without bursting charges.

4. Bursters (explosive), boosters (explosive), or supplementary charges (explosive) without detonators when shipped by, to, or for the Departments of the Army, Navy, and Air Force of the United States Government may be loaded with any of the articles named except those in columns c, d, 3, 9, 11, 12, 13, 14, 15 and 16.

5. Does not include blasting agents, ammonium nitrate-fuel oil mixtures, ammonium nitrate, fertilizer grade, which may be loaded, transported, or stored with high explosives, or with detonators containing not more than 1 gram of explosive each, excluding ignition and delay charges.

6. Normal uranium, depleted uranium, and thorium metal in solid form may also be loaded and transported with articles named in columns a, b, c, d, e, f, and g.

Instructions

The letter X at an intersection shows that these materials must not be loaded or stored together. Example: Detonating fuzes, class A, with or without radioactive components, (g), must not be loaded or stored with high explosives or propellant explosives, (b).

		a	b	c	d	e	f	g	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
CLASS A EXPLOSIVES	Low explosives or black powder																							
	High explosives or propellant explosives.																							
	Initiating or priming explosives, wet: Diazodinitrophenol, fulminate of mercury, guanyl nitrosamino guanylidene hydrazine, lead azide, lead styphnate, nitro mannite, nitrosoguanidine, pentaerythrite tetranitrate, tetrazene, lead mononitroresorcinate.																							
	Detonators, detonating primers.																							
	Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, ammunition for small arms with explosive projectiles, incendiary projectiles; rocket ammunition with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles; boosters (explosive); bursters (explosive), and supplementary charges (explosive) without detonators. 3/, 4/.																							
	Explosive projectiles; bombs; torpedoes; mines; rifle or hand grenades (explosive); jet thrust units (jato), igniters, jet thrust, rocket motors, igniters rocket motor. 3/.																							
	Detonating fuzes, class A, with or without radioactive components.																							
CLASS B EXPLOSIVES	Ammunition for cannon with empty, inert-loaded or solid projectiles, or without projectiles; or rocket ammunition with empty projectiles, inert-loaded or solid projectiles or without projectiles.																							
	Propellant explosives, jet thrust units (jato), igniters, jet thrust, rocket motors, rocket engines (liquid), igniters, rocket motor, starter cartridges.																							
	Fireworks, special or railway torpedoes.																							
CLASS C EXPLOSIVES	Small arms ammunition, or cartridges, practice ammunition.																							
	Primers for cannon or small arms, empty cartridge bags—black powder igniters, empty cartridge cases, primed, empty grenades, primed, combination primers or percussion caps, toy caps, explosive cable cutters, explosive rivets.																							
	Percussion fuzes, tracer fuzes or tracers.																							
	Time, combination or detonating fuzes.																							
	Cordeau detonant fuze, safety squibs, fuse lighters, fuse igniters, delay electric igniters, electric squibs, instantaneous fuse or igniter cord.																							
	Fireworks, common.																							
OTHER HAZARDOUS MATERIALS	Blasting agent; blasting agent label.																							
	Flammable liquids or flammable gases; flammable liquid or flammable gas label.																							
	Flammable solids; flammable solid label. Oxidizer; oxidizer label. Organic peroxide; organic peroxide label.																							
	Corrosive liquids; corrosive label.			[2]X						[2]X	[2]X													
	Nonflammable gases; N.F.G. label.																							
	Poisonous gases or liquids in tank car tanks, cylinders, projectiles or bombs; poison gas labels.			X	X	X	X					X	X	X										
	Radioactive materials; radioactive label.																							

BILLING CODE 1505-01-C

Proposed Rules

Federal Register
Vol. 49, No. 49
Monday, March 12, 1984

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

Farmers Home Administration

7 CFR Part 1942

Community Facilities Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding loans and grants for Community Facility Projects. The proposed action is being taken to include the incomes of single-person households in determining interest rates and the amount of grant funds an applicant can receive. The intended effect of this proposed action is to more effectively serve the needs of rural communities participating in FmHA's Community Facility programs.

DATE: Comments must be received by April 11, 1984.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, South Building, Room 6348, 14th and Independence Avenue, SW, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, D.C. 20250, telephone: (202) 382-9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, organizations, government agencies, or geographic regions. There will be no adverse affects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency. Additional efforts to administer the proposed changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

The FmHA programs and projects which are affected by this Instruction are subject to State and local review under Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act. The Catalog of Federal Domestic Assistance programs affected are No. 10.418, Water and Waste Disposal Systems for Rural Communities and No. 10.423, Community Facilities Loans. This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Charles W. Shuman, Administrator has determined that the proposed action will not have a significant economic impact on a substantial number of small entities because the proposed action will only effect a small number of rural communities.

This proposed action requires no change in recordkeeping or reporting requirements imposed upon the public.

This action amends FmHA's policies for making loans and development grants. These loans and grants assist in financing the development cost of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

Alternatives were considered as follows:

Community Facility Loans

Alternative 1—Make no change in the regulations.

Effects: To continue the current use of median family income in determining interest rates would not be representative of the income in rural communities served by FmHA.

Alternate 2—Amend the present regulations. This is the alternative chosen by FmHA. The proposed changes are to use median household income in determining three categories of interest rates.

Effects: The use of median "household" income in determining interest rates would include the approximately 27 percent of the people not counted in the 1980 Census definition of a "family". The people that are not included in the Census family definition are mainly those in single-person households, who generally are those with lowest income. This is because a large percentage of single-person households are widows or widowers on fixed low incomes.

Development Grants for Community Domestic Water and Waste Disposal Systems

Alternate 1—Make no change in the regulations.

Effects: The use of the Bureau of Census's 1980 median family income for grant determinations does not include single-person households in the family definition. Therefore, rural communities that do not qualify for a grant, but find it necessary to proceed with a project due to an urgent need would continue to result in the residential user rate being excessively high.

Alternate 2—Amend the current regulations to use median household income in grant determinations. This is the alternative chosen by FmHA.

Effects: Approximately 27 percent of the people counted in the 1980 Census are not included in the family definition that FmHA is presently using to determine the amount of grant funds an applicant can receive. The people that are not included in the family definition (mainly those in single-person households), generally are those with the lowest incomes. This is because a large percentage of single person households are widows or widowers

living on fixed low incomes. However, this group of people is included in the household definition used by the Census. Thus the more representative income of rural communities served by FmHA's grant program would be *median household income.*

FmHA proposes to amend Subpart A of Part 1942 as follows:

1. Sections 1942.17 (c)(2)(iii)(C)(*2*) and (c)(2)(iii)(C)(*3*) to make the selection priorities criteria consistent with the use of median household income in other sections.
2. Section 1942.17 (f)(2) is renumbered and the introductory paragraph of paragraph (f)(2) is revised.
3. Section 1942.17 (f)(2)(ii) is revised to reference median household income.
4. Section 1942.17 (f)(3) is revised and renumbered to reference median household income.
5. Section 1942.17 (f)(4) is renumbered and revised.
6. Section 1942.17 (f)(6) is revised.

FmHA proposes to amend Subpart H of Part 1942 as follows:

1. Section 1942.355 (a)(12) is revised to reference median household income.
2. Section 1942.356(b) is revised to incorporate the use of median household income.
3. Section 1942.356 (b)(2) is revised by eliminating reference to median family income.
4. Section 1942.356 (b)(2)(i), (b)(2)(ii) and (b)(2)(iii) are revised to reference median household income.
5. Section 1942.356(b)(3) is revised to reference median household income.
6. Sections 1942.356 (b)(4)(i) and (b)(4)(ii) are revised to reference median household income.
7. Section 1942.356(b)(7) is revised to reference median household income.

List of Subjects in 7 CFR Part 1942

Community development, grant programs—Housing and community development, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

Accordingly, as proposed, Subparts A and H of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations are amended as follows:

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

1. Section 1942.17 is amended by revising paragraphs (c)(2)(iii)(C)(*2*) and (c)(2)(iii)(C)(*3*) and redesignating paragraphs (f)(2) as (f)(4), (f)(3) as (f)(2), (f)(4) as (f)(3) and by revising the introductory paragraph of paragraph (f)(2), (f)(2)(ii), (f)(3), (f)(4), and (f)(6) to read as follows:

§ 1942.17 Appendix A—Community Facilities.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) * * *

(*2*) More than the poverty line but less than 85% of the State's nonmetropolitan median household income—20 points.

(*3*) Between 85% and 100%, inclusive, of the State's nonmetropolitan median household income—15 points.

* * * * *

(f) * * *

(2) *Poverty line rate.* The poverty line interest rate will not exceed five per centum per annum. It will apply to loans for which the loan approval official determines both the following conditions exist:

* * * * *

(ii) The median household income of the service area is below the poverty line for a nonfarm family of four as prescribed by the Office of Management and Budget (OMB) as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is not more than 85 percent of the nonmetropolitan median household income of the State.

(4) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraphs (f)(2) or (3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

* * * * *

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area and the nonmetropolitan median household income for the State will be determined from the U.S. Department of Commerce, Bureau of Census, Publication PC (1)–C Series, or from unpublished Bureau of Census data for individual enumeration districts. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Such information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State should be updated, using reliable data from State or Federal sources as such data becomes available.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.355 is amended by revising paragraph (a)(12) to read as follows:

§ 1942.355 Grant limitations.

(a) * * *

(12) Pay any cost of a project when the median household income of the service area is more than 85 percent of the nonmetropolitan median household income of the State.

* * * * *

3. Section 1942.356 is amended by revising the introductory paragraph of paragraph (b), paragraph (b)(2), (b)(3), (b)(4)(i), and (b)(4)(ii), and (b)(7) to read as follows:

§ 1942.356 Determining the need for development grants.

* * * * *

(b) Grants will be used for water and waste disposal projects serving the most financially needy communities to reduce user costs to a reasonable level for farmers, ranchers, and rural residents. Other rural users whose needs are met or, if there is no meter, could be met by a single residential-size water meter may also be considered eligible. For example, a user on a waste system may be considered for a grant when the water needs of the waste user are met or could be met by such residential-size meter. This method of computing grants will be used for all water and waste disposal projects. Reasonable user rate is defined as that which is not less than existing prevailing rates in communities being served by an established system constructed at similar cost per user and having similar economic conditions. User costs shall include charges, taxes, and assessments attributable to the project. An exception to the reasonable

user rate may be granted by the FmHA National Office in justifiable cases for areas of extremely low income when it is necessary to meet the needs of a particular community. Such an exception will only be considered when comparable systems are not available or the user rates from the comparable systems appear to be too high for the average user of the applicant, and the median household income in the applicant service area is less than $4,000. When it is determined that such an exception should be considered, the FmHA State Director will submit information to the National Office concerning health conditions of the area, median household income of the service area, and user rates and median household incomes of other like or most similar communities in the region, employment conditions, and any other information to justify the recommendation for the exception.

* * * * *

(2) Ordinarily, an applicant will be considered for grant assistance only when the debt service portion of the average annual user cost for either water or waste service, for only those users in the applicant service area, exceeds the following percentages:

(i) .5 percent when the median household income of the service area is below the poverty line. The poverty line will be that income prescribed by the Office of Management and Budget for a nonfarm family of four, as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

(ii) 1.0 percent when the median household income of the service area is not more than 85 percent of the nonmetropolitan median household income of the State.

(iii) No FmHA grant funds will be used in any project when the median household income of the service area is more than 85 percent of the nonmetropolitan median household income of the State.

(3) The median household income of the service area and the State's nonmetropolitan median household income will be determined in accordance with paragraph (b)(7) of this section. Except as provided for in paragraphs (b), (b)(5), and (6) of this section, the grant will not exceed an amount necessary to reduce the debt service portion of the average annual user cost to the applicable percent level listed above. This procedure shall not be used to result in a rate below that deemed to be reasonable as defined in paragraph (b) of this section. However, an exception to the reasonable user rate may be authorized by the FmHA National Office in accordance with paragraph (b) of this section.

(4) * * *

(i) Be considered as part of the total by averaging the median household incomes of the systems involved and averaging the debt service portion for the particular service of the other systems; or

(ii) Consider the median household income and the debt service portion for the particular service for each entity separately.

* * * * *

(7) The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area or those reference communities used in comparing the proposed system with similar systems, and the nonmetropolitan median household income for the State will be determined from the U.S. Department of Commerce, Bureau of Census, Publication PC (1)—C Series, or from unpublished Bureau of Census data for individual enumeration districts. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Such information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State should be updated, using reliable data from State or Federal sources as such data becomes available.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: February 23, 1984.

Charles A. Jewell,

Acting Administrator, Farmers Home Administration.

[FR Doc. 84-6599 Filed 3-9-84; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Parts 1944 and 1965

Security Servicing for Multiple Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulations regarding security servicing for multiple family housing loans. This action is necessary to reflect changes which have previously occurred in the respective loan programs involving rural rental housing, farm labor housing, rural cooperative housing, and rural housing site loans. This action also incorporates changes desired by borrowers and FmHA field staff which will allow more efficient operation of the programs. The proposed regulation prescribes the actions necessary to process security servicing actions including transfers, reamortizations consolidations, and other servicing actions. This regulation is intended to improve the response time by FmHA to servicing requests from borrowers, initiating servicing action by the field staff, and establishing a uniform procedure for processing these requests and the accompanying servicing actions.

DATE: Comments must be received on or before May 11, 1984.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA Room 6348, South Agriculture Building, 14th and Independence Avenue, SW, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular office hours at the above address. The collection of information requirements contained in this proposed rulemaking have been submitted to OMB for review under 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Dean Greenwalt, Multiple Housing Servicing Officer, Multiple Family Housing Servicing Property Management Division, Room 5321–S, Farmers Home Administration, USDA, 14th and Independence Avenue, SW, Washington, D.C. 20250. Telephone (202) 382–1615.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There

will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers and titles for programs affected by this action are: 10.405 Farm Labor Housing Loans and Grants, 10.411 Rural Housing Site Loans, 10.415 Rural Rental Housing Loans, 10.427 Rural Rental Assistance Payments.

There is no impact on proposed budget levels, and funding allocations will not be affected because of this action. We have determined that this regulation maximizes net benefit to society at the lowest net cost.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements". It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and Environmenatal Impact Statement is not required.

The purpose of this proposed regulation is to clarify the security servicing activities relating to the rural rental housing (RRH), rural cooperative housing (RCH), farm labor housing (LH), and rural housing site (RHS) loan programs.

Present regulations relative to security servicing for these loans have been found to impede the timely processing of servicing actions and impose restraints not necessary for program administration. Furthermore, present FmHA security servicing regulations are not clear in the assignment of responsibility for these loans at the State and District Office level. However, the intent of the regulation remains that FmHA loans be serviced according to the security instruments of the loan in the manner which will assure that the long-term loan objectives are met and are consistent with the respective loan program requirements. These regulations are also intended to improve the Agency's ability to assure the continued availability of the facilities financed under the FmHA multiple housing programs to eligible users.

The alternatives to issuance of the proposed regulations which were considered included not changing existing regulations, partial revision of selected portions of the current regulations, and allowing each FmHA State Office to establish procedures consistent with local practices. Each of these alternatives was rejected because it did not promote efficiency in Agency operations, assure long-term compliance wth the objectives for which the FmHA assistance was provided, and could lead to a proliferation of regulations and requirements more stringent than necessary and confusing to the public, especially for borrowers with operations in more than one jurisdiction. On this basis, the Agency has determined that the chosen alternative maximized the net benefit to society at the lowest net cost.

The major aspects of this proposed action are as follows:

1. Section 1944.211 adds provisions describing the "long-term"ownership commitment required by rural rental housing borrowers.

2. Section 1965.52 places the definitions in alphabetical order.

3. Section 1965.61 provides for changes in project designation based upon changes in the market area being served.

4. Section 1965.63 clarifies when the provisions of this paragraph are applied, distinguishes it from a transfer of title, clarifies the actions to be taken when membership interests in various types of borrower organizations are changed, and clarifies the information which must be presented as part of the borrower's request.

5. Section 1965.65 distinguishes its applicability to transfer situations, provides guidance for submitting and processing the borrower's request, clarifies the conditions under which the transfer will be considered, and imposes a transfer fee for processing the change. This section has also been reorganized and renumbered to improve the flow of the material. If further clarifies FmHA's position on equity payments and reflects the Agency's concerns for assuring continuity of ownership and management of the project to avoid unnecessary disruption of the tenant population in FmHA financed rural rental housing projects.

6. Section 1965.68 differentiates the requirements for consolidating loans and consolidation of loan agreements.

7. Section 1965.74 provides additional guidance in handling divorce actions affecting ownership of multiple family projects.

8. Section 1965.79 clarifies use of the loan subordination authority.

9. Section 1965.83 permits the use of funds provided by other sources at no interest for energy conservation measures and under certain conditions to be secured by a junior lien on the project.

10. Section 1965.85 provides Agency personnel with additional guidance in handling borrower defaults and liquidation action.

11. Section 1965.90 provides Agency personnel guidance in cases where prepayment of the FmHA loan is not accepted.

12. Section 1965.92 establishes a routine uniform system of information exchange between the Agency and the Internal Revenue Service on transfers, voluntary conveyance, foreclosures, and 100% membership changes in FmHA financed projects.

13. Throughout the regulation other editorial changes have been made to correct spelling, sentence structure, and other typographical errors.

List of Subjects

7 CFR Part 1944

Administrative practice and procedure; Aged; Handicapped; Loan programs-housing and community development; Low and moderate income housing—rental; Mortgages; Nonprofit organizations; Rent subsidies; Rural housing.

7 CFR Part 1965

Administrative practice and procedure; Low and moderate income housing—rental; Mortgages.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1944—HOUSING

* * * * *

Subpart E—Rural Rental Housing Labor Policies, Procedures, and Authorizations

1. Section 1944.211 is amended by adding paragraph (a)(11) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(11) Be willing to honor the long term commitment associated with receipt of a Section 515 loan. Borrowers or principles of borrower organizations, who have sold or transferred loans less than 5 years old will not be considered eligiblie for further participation in the program as a borrower or principle (i.e., a general partner in a limited partnership) for at least 5 years from the date of the loan or assumption closing. The State Director may waive this provision only if the transfer or sale was authorized and closed prior to (effective date of 1965–B revisions) or under the hardship provisions of § 1965.65 (a)(3) of

Subpart B of Part 1965, and the applicant meets all other eligibility requirements.

* * * * *

2. Subpart B of 1965 is revised to read as follows:

PART 1965—REAL PROPERTY

* * * * *

Subpart B—Security Servicing for Multiple Housing Loans

Sec.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.51 General.

This subpart prescribes the policies, procedures, and authorizations for servicing and liquidiating all Farmers Home Administration (FmHA) multiple housing type loans and labor housing grants. These loans include Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Farm Labor Housing (LH). The servicing functions described in this Subpart are for the purpose of assisting the borrower in meeting the objectives of the loan, repaying loans on schedule, complying with FmHA agreements and regulations, protecting the interest of FmHA, and maintaining the security property. Borrowers will be required to pay their debts to the FmHA and other creditors according to their agreements. Borrowers shall be required to operate their facilities according to FmHA regulations and applicable State and local laws and regulations. State Directors with the assistance of the Office of General General Counsel (OGC) should issue necessary State Supplements to assure compliance with State laws. After careful analysis, any borrower in default who does not evidence prospects of attaining successful operations within a reasonable time will have its loan(s) liquidated according to authorizations contained in this Subpart and Subpart A of Part 1955 of this chapter.

§ 1965.52 Definitions.

(a) *Borrowers.* "Borrowers" means all individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations which have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

(b) *Case file.* "Case file" includes the total cumulative records concerning a borrower.

(c) *District Director.* For the purpose of this Subpart, the term also includes the Assistant District Director, and other qualified District Office Staff who may be delegated responsibilities under this Subpart according to the provisions of Subpart F of Part 2006 (available in any FmHA office). Area Supervisors and Island Directors, and other qualified members of their staff in Alaska and Hawaii, respectively, are included in this definition. In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff.

(d) *FmHA.* "FmHA" means the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture; it also includes FmHA's predecessor agencies.

(e) *Governing body.* "Governing body" means those elected or appointed officials of an organization or public agency type borrower responsible for compliance with the security instruments and the operations of the project.

(f) *Mortgage.* "Mortgage" also includes deeds of trust and similar real estate security instruments and, where appropriate, chattel security instruments.

(g) *Note.* "Note" includes any note, bond, assumption agreement, or other evidence of indebtedness, including the obligations of LH grant only recipients operating under a grant agreement. All LH grant only recipients will be serviced in strict accordance with their grant agreement, appropriate program regulations, and this Subpart.

(h) *OGC.* "OGC" means the Regional Attorney or the Attorney in charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(i) *Servicing.* "Servicing" includes the broad scope of activities undertaken by FmHA to see that the objectives of the loan are carried out; to assure compliance with the respective policies, procedures and authorizations set forth for each respective loan program; or to bring to a successful conclusion each loan or grant made by FmHA through transfer, sale, reamortization, payment or liquidation.

§§ 1965.53—1965.54 [Reserved]

§ 1965.55 Authority of State Director.

(a) Each State Director is authorized to perform the following functions upon determining that the action will not be to the financial detriment of FmHA:

(1) Require additional security in accordance with § 1965.89 of this subpart.

(2) Require borrowers to carry insurance of the types and amounts determined necessary on the real estate and chattel property mortgaged to the FmHA. The borrower must carry adequate liability insurance as required by Exhibit B, paragraph XV B 3 of Subpart C of Part 1930 of this chapter. Evidence of insurance is required for Multiple Housing loans according to the provisions of Subpart A of Part 1806 (FmHA Instruction 426.1).

(3) Approve the issuance or transfer of stock, change of beneficial interests, change of membership, admittance of new or subsitute partners, or withdrawal of partners from a

partnership; provided, the State Director determines that the requirements of § 1965.63 of this subpart have been met, and that the change will not jeopardize the successful operation of the project, the soundless of the loan, or the eligibility of the borrower.

(4) Approve transfers with assumption of FmHA loan accounts when all development has been completed and the unpaid principal balance and accrued interest does not exceed the State Director's loan approval authority as set forth in Subpart A of Part 1901 of this chapter for the type of loan(s) involved. Transfers will be processed according to §1965.65 of this subpart.

(5) Approve the reamortization of FmHA indebtedness that is within the State Director's loan approval authority as set forth in Subpart A of Part 1901 of this chapter for the type of loan(s) involved according to the provisions of §1965.70 of this subpart.

(6) Consent to the sale, exchange, or release of security property according to the applicable provisions of § 1965.77 of this subpart.

(7) Accept prepayment of RRH, RCH and LH loans subject to the provisions of § 1965.90 of this subpart.

(8) Approve subordination of FmHA lien position if the total debt against the security after the transaction is within the State Director's approval authority as set forth in Subpart A of Part 1901 of this chapter for the type of loan(s) involved according to the provisions of § 1965.79 of this subpart.

(9) Approve requests from borrowers for the creation of additional indebtedness on the security property. Such approvals must take into account the provisions of loan resolutions or other agreements with FmHA and other existing creditors. If the proposed additional debt would make the total outstanding obligations of the borrower exceed the FmHA loan approval limit of the State Director as set forth in Subpart A of Part 1901 of this chapter, complete documentation, and the State Director's recommendations must be sent to the National Office for prior review and authorization to approve.

(10) Renew existing security instruments in accordance with FmHA State Supplements or after consulting with OGC.

(11) Approve, with the concurrence of OGC, changes in a borrower's legal organization such as revisions to certificates of limited partnership, partnership agreements, articles of incorporation or charter, bylaws, or trust agreements when the changes proposed will promote better borrower organization and business operation, and will not adversely affect the repayment of the loan, impair the security rights of the FmHA, or make the borrower ineligible for the existing FmHA loan or grant assistance.

(12) Approve the borrower's execution, extention, renewal modification, or cancellation of contracts of types not covered elsewhere in this section when the State Director, with the advice of OGC, determines that the action is in the best interests of both the borrower and the FmHA, and, in the case of RRH, RCH, and LH projects, will not be detrimental to the tenants.

(13) Approve the extension or expansion of facilities and services in accordance with the respective loan program regulations when the action will best serve the interest of both the borrower and the FmHA.

(14) Approve the lease of security property according to § 1965.61(e) of this subpart.

(b) The State Director may reject any servicing request not in accordance with the guidelines of this Subpart.

(c) Any borrower directly and adversely affected by action under this Subpart will be granted the appropriate appeal rights according to Subpart B of the Part 1900 of this chapter.

(d) The State Director may request from the National Office any authority not specifically delegated to the State Director. Written requests consistent with the intent and requirements of each respective loan program must be submitted to the National Office for prior authorization and include the complete docket and the State Director's specific recommendations.

§§ 1965.56—1965.57 [Reserved]

§ 1965.58 Responsibilities.

(a) District Directors will:

(1) Keep sufficiently informed of borrower operations to know whether they are operating successfully and complying with their obligations to the FmHA,

(2) Furnish borrowers with information, notices, reminders, fair housing posters, advice and assistance, and take other actions, regarding the loan obligations and compliance therewith as considered necessary to determine whether borrowers are operating successfully, are complying with their loan obligations, and are likely to continue with compliance. This includes conducting all civil rights compliance reviews to determine compliance with all appropriate legislation regarding nondiscrimination in federally financed programs, in accordance with FmHA Instruction 1901–E,

(3) Promptly report to the State Director the failure of any borrower to comply with the terms and conditions of its agreements with FmHA after noncompliance has been brought to the attention of the borrower and recommended corrective action has not been taken,

(4) Furnish training and technical guidance not readily available through other sources to borrowers to protect the FmHA's interests. This training and guidance may relate to business operations, project management, personnel training, membership activities, fair housing requirements policy, or any other phase which vitally affects the borrower's operations,

(5) Maintain the Management System Card System according to Subpart A of Part 1905 (available in any FmHA office) to assure prompt compliance by borrowers with FmHA requirements relating to repayments, budgets and reports, taxes, insurance and bond renewals, reports required by State law or regulations as indicated in State Supplements, security instrument expirations, and other items of loan and security servicing,

(6) Maintain the official borrower case files according to the requirements of Subpart A of Part 2033 (available in any FmHA office),

(7) Promptly collect FmHA loan payments and service security for the FmHA loans.

(b) State Directors will:

(1) Coordinate and direct loan servicing activities relating to borrowers and perform other functions as prescribed by this subpart,

(2) Designate appropriate State staff member(s) to be responsible for loan servicing, appraising and providing District Directors with technical guidance, training and follow-up supervision to service loans,

(3) Ensure that District Directors carry out their responsibilities,

(4) Coordinate as appropriate with OGC,

(5) Maintain necessary liaison with State and local officials.

§§ 1965.59—1965.60 [Reserved]

§ 1965.61 General loan servicing requirements.

(a) *Payments.* Payments will be handled according to the applicable provisions of Subparts A and B of Part 1951 of this chapter, and Subparts D and E of Part 1944 of this chapter.

(b) *Borrower reports, audits, and analyses.* Borrower reports, audits, and analyses, including the approval or disapproval of annual operating

budgets, requests for rent changes, and occupancy problems will be processed and handled according to Subpart C of Part 1930 of this chapter.

(c) *Maintenance.* Project maintenance is of utmost importance. All projects must be adequately maintained by the borrower not only to protect the Government's interest, but also to attract potential clients (tenants for rental projects, purchasers for RHS). Maintenance should be reviewed during each supervisory visit and appropriate recommendations made to the borrower. The District Director will inspect the real estate security as required by Subpart C of Part 1930 of this chapter.

(d) *Actions by third parties affecting FmHA security.* Cases including third party action will be handled according to the provisions of § 1872.2 (c) of Subpart A of Part 1872 (paragraph II C of FmHA Instruction 465.1), except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) *Lease of security property.* The leasing of property (except to tenants for specific program purposes) serving as security for multiple housing loans and grants other than as indicated in this section is not authorized. Approval of leases by the State Director is authorized in the following cases:

(1) *Leases to public housing authorities.* RRH or RCH borrowers may be permitted to renew and continue leasing all or part of the housing facilities to a housing authority with the benefits of the HUD Section 23 leasing program. No new leases will be entered into. The lease will be on a form provided by the housing authority and must be on terms that will enable the borrower to continue the objectives of the loan and make payments on schedule.

(2) *Lease of a portion of the security property.* When the RRH or RCH or LH borrower will continue to operate the facilities for the purpose for which the loan or grant was made, the State Director or his/her designee may approve the leasing of related facilities such as kitchens, laundries, commissary stores, recreational facilities and community buildings, subject to the applicable provisions of § 1944.212 of Subpart E of Part 1944 of this chapter for RRH and RCH and § 1944.158 of Subpart D of Part 1944 of ths chapter for LH and under the following conditions:

(i) The lease is advantageous to the borrower and the tenants, and will not impair the FmHA's interest.

(ii) The amount of the consideration is adequate. The consideration must be sufficient to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(iii) The lease should provide at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and FmHA.

(iv) Consent to the lease shall not exceed one year at a time unless the State Director determines with the prior written concurrence of the National Office that a longer lease is clearly more advantageous to the borrower, the tenants, and the FmHA.

(v) If foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions from OGC or the U.S. Attorney, as appropriate.

(vi) When another lienholder's mortgage requires consent of that lienholder to a lease, written consent will be obtained prior to FmHA approval of the lease.

(vii) The authority to approve the lease of laundry facilities or commissary stores may be redelegated in writing to the District Director by the State Director.

(3) *Mineral leases.* Mineral leases will be handled according to § 1872.8 (d) of Subpart A of Part 1872 of this chapter (paragraph VIII D of FmHA Instruction 465.1) except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

(4) *Processing.* When a borrower requests consent to lease a portion of the security property or the District Director discovers that the borrower is leasing the security without consent, Form FmHA 465–1, "Application for Partial Release, Subordination or Consent," will be prepared.

(i) The form will show the terms of the proposed lease and will specify the use of proceeds, including any proceeds to be released to the borrower.

(ii) The form will be submitted through the District Director to the State Director, along with a copy of the lease, official borrower case files, the District Director's comments and recommendations, and any other information pertinent to the transaction.

(iii) The State Director will review the material, obtain the guidance of OGC prior to indicating approval or disapproval on Form FmHA 465–1, and provide additional servicing instructions to the District Director.

(f) *Consent of lienholders.* Before FmHA consents to any transaction which affects its security or lien position, the written consent of any other lienholders must be obtained. The consent will include an agreement on the disposition of any funds resulting from the transaction and will be consistent with the respective loan program requirements.

(g) *Changing project designation.* Generally projects designated for families, elderly or handicapped persons will be used for the original purpose throughout the life of the FmHA loan. However, if it becomes necessary to change the designation of a project (i.e., from senior citizens to family, etc.) due to housing market changes which inhibit the borrower's ability to maintain occupancy levels sufficient to sustain the project, the State Director may change the designation with the prior written concurrence of the National Office. No change in the plan of operation (limited profit, nonprofit or full profit) will be authorized in conjunction with the change in project designation. Project design must meet senior citizen requirements when changing the designation to senior citizen. The National Office will only consider such requests on a case by case basis when all of the following information has been provided:

(1) The complete borrower case files have been submitted together with the State Director's specific recommendations and analysis of the present and long term situation.

(2) A market needs survey which substantiates the rationale for the change has been provided by the borrower. (The market survey must clearly indicate the long term marketability of the project and include the appropriate demographic information which reflects the population trends in the area.)

(3) A summary of all servicing actions taken by fmHA to aid the borrower in maintaining the present designation.

(4) A summary of all action taken by the borrower to effectively market the units to potential eligible tenants.

(5) A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole.

§ 1965.62 [Reserved]

§ 1965.63 Issuance or transfer of stock, or change in membership, or membership interests in organizations indebted to FmHA.

Organizations which may be indebted to FmHA include, but are not limited to: public bodies, broadly-based nonprofit corporations, nonprofit organizations of farmworkers, associations of farmers, RCH consumer cooperatives, profit and limited profit corporations, trusts, profit and limited profit general partnerships,

and limited partnerships. This section describes the policy of FmHA in approving changes of members, ownership interest, and transfer or issuance of stock in these organizations, to determine the continued eligibility of the borrower enitity. It *does not* apply to the sale or exchange of title to the security property, or the conversion from one form of ownership to another such as changing a general partnership to a limited partnership. Stock, partnership, or membership changes which the State Director is not authorized to approve under the conditions of this section will be sumbitted to the National Office for handling.

(a) *Profit and limited profit corporations, general partnerships, limited partnerships, and trusts.* Ownership changes of *100 percent* within a twelve-month period will be treated as transfers and processed according to § 1965.65 of this Subpart. Ownership changes in *excess of 50% but less than 100%* will be subject to § 1965.65(a)(3) of this subpart which covers hardship provisions and the restrictions on subsequent changes. However, changes in limited partner interests in a limited partnership will not be subject to the restrictions of § 1965.65(a)(3) of the subpart when completed in accordance with the approved partnership agreement even though they may reflect as high as a 95% change within a twelve-month period. Other ownership changes of *less than 50%* within a twelve-month period will be processed without restriction. Any changes of less than 100% will be processed according to paragraph (e) of this section.

(b) *Public bodies, broadly-based nonprofit corporations, or nonprofit organizations of farmworkers.* FmHA consent will not be required for broadly-based nonprofit corporations or nonprofit organizations of farmworkers indebted to FmHA to change or transfer membership. Each organization, however, must maintain the number and type of members required by its Articles of Incorporation and Bylaws. Organizations will only permit membership changes as authorized by the organizational documents previously approved by FmHA. Should the minimum number of required members in any organization fall below that prescribed by their organizational documents, the following actions will be taken:

(1) The District Director will provide the State Director with a complete written report of the circumstances, including the organization's plan for obtaining additional membership, and the continued operation of the project. The District Director should submit this report only after he or she has personally met with the governing body and found that they will not be able or willing to comply with FmHA requirements. The report should be precise and include recommendations on further servicing actions.

(2) The State Director will review the report and evaluate any adverse effect the noncompliance will have on the loan. If it appears that the interest of the United States will be adversely affected, the State Director will forward the material together with appropriate comments and recommendations, to the OGC for review and guidance in the continued servicing or liquidation of the account as appropriate. The State Director will provide the District Director with instructions for servicing the account.

(c) *Associations of farmers.* Changes in membership will be governed by the organizational documents previously approved by FmHA and any eligibility requirements set forth in program regulations. (See Subject D or Part 1944 of this chapter.) In those cases where proposed membership changes are not covered in the documents or are in conflict with the provision of Subpart D of Part 1944 of this chapter, case files will be submitted for National Office consideration.

(d) *RCH consumer cooperatives.* Changes in the membership of RCH consumer cooperatives will be processed according to the provisions of the Subscription Agreement and the Occupancy Agreement. (See Exhibits A and B of Subpart F of Part 1822 of this chapter (FmHA Instruction 444.7) which are available in any FmHA office.)

(e) *Processing organizational membership changes.* Organizations are required by their loan agreement or resolution to obtain prior FmHA consent to transfer stock, to transfer any interest or to change any interest in the borrower entity. Therefore, when organizations request FmHA consent to: issue additional stock, transfer stock, change membership or membership interests, admit new or substitute general partners of any kind, withdraw general partners of any kind, alter the beneficiary of the trust, admit limited partners, or when such a change has taken place without prior FmHA consent, the District Director shall process and submit Form FmHA 465–1 to the State Director. The State Director is authorized under § 1965–55 (a) of this subpart to approve or disapprove these transfers or changes or Form FmHA 465–1. For approval, the State Director must determine that the following conditions have been met:

(1) The borrower has provided a listing showing the name, address, Employer Identification or Social Security number, and percent of ownership of each member, stockholder, partner, or beneficiary of a trust that will have an interest in the organization.

(2) All new or substitute general partners, and all new or substitute trustees, members, stockholders, or beneficiaries that will hold an interest in the organization in excess of 10 percent have submitted a current, dated, and signed financial statement showing assets and liabilities, with information on the status and repayment schedule of each debt. Each limited partner in a limited partnership will submit a dated and signed a statement certifying the approximate net worth of the limited partner or the statement used in the syndication as long as it indicates the current net worth. All financial statements submitted must comply with the reporting requirements set forth in Exhibit A–6 to Subpart E of Part 1944 of this chapter. A resume must also be submitted, together with a statement setting forth any identity of interest as described in Exhibit A–6 to Subpart E of Part 1944 of this chapter. The resume should explain the past performance, experience, qualifications, and abilities of the individual or organization, except for limited partners in a limited partnership, who are obtaining an interest in the borrower organization. A determination must be made on whether the incoming individual or organization meets the eligibility requirements of Subpart E of Part 1944 of this chapter.

(3) The borrower is unable to provide the housing or other facilities from its own resources and is unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the borrower to refinance the FmHA indebtedness and operate the project for amounts within the payment ability of those eligible to occupy the housing or benefit from the project. When tenants are benefiting from any FmHA or other Government subsidy program, the continued availability of the subsidy will be considered in making this decision. For profit and limited profit organizations, the assets of the individual general partners, members or stockholders will also be considered.

(4) The type of change must not adversely affect the operations of the project. Liens may not be taken against the FmHA security. Payments on any debt incurred for the purchase of the

stock or interest in the organization will *not* be considered authorized debt payments and will not be included in project operations as a budgeted expense. In those cases where the withdrawing member or ownership interest proposes to use a security agreement or other document to secure an equity payment, the State Director must determine that:

(i) The payment is not contingent on the future sale of the project or ownership interests,

(ii) An assignment of interest to secure a promissory note, in the case of a limited partnership, is restricted to the limited partners interests only and *not the general partner* interest,

(iii) In cases other than the limited partner's interest in a limited partnership, that there is no reversionary interest held in the entity, and

(iv) Any security agreement or equity note, clearly indicates the necessity of FmHA approval before any substitutions take place, regardless of any default on the equity note.

(5) In the case of the sale of the interest of a general partner, or the admission of a substitute general partner, in either a limited partnership or a general partnership, the new or substitute general partner must agree to assume the responsibilities and obligations of the original general partner under the terms of the FmHA promissory note, mortgage, and the borrower's partnership agreements. The assumption of personal liability by the general partner in a limited partnership may be waived by the State Director with the advice of the OGC if the organizational papers require that liability be limited to the assets of the partnership according to § 1944.221(a)(2) of Subpart E of Part 1944 of this chapter. After consulting OGC, the State Director will require the new or substitute general partner to execute an agreement as follows for inclusion in position 5 of the official case file:

Assumption of Original or Withdrawing Partner's Obligations

In consideration for being approved by the Farmers Home Administration (FmHA) for admission as a general partner into ——— (the partnership), the undersigned hereby assumes all responsibilities and obligations of ——— under the terms of the Partnership Agreement dated ——— the terms of (a) (all) note(s) or assumption agreement(s) dated ——— in the respective amount(s) of ———, and the terms of the FmHA security instrument(s) taken on the partnerhip property dated ——— and filed for record in the ——— office at Document No. or Book and Page No. ———
Date ———
Signature of New or Substitute Partner ———

(6) Any withdrawing stockholder, member, or partner personally liable for the FmHA indebtedness will not be released of liability unless the new stockholder, member, or partner is made personally liable for the FmHA debt on an agreement approved by OGC, and the State Director determines that the assets and net worth of the new stockholder, member, or partner are substantially the same as or greater than that of the party to be released.

(7) The State Director must determine that approval of the transaction will not adversely affect the FmHA program in the area, that the objectives of the loan will not be changed, and that the successful operation of the project will not be jeopardized. In making this determination, the State Director must consider the past performance, experience, qualifications and abilities of any individual or organization obtaining an interest in the borrower organization, other than a limited partner holding a minority interest in a limited partnership. Serious consideration must also be given to an individual having a record or reputation for discriminating against individuals because of their race, color, national orgin, handicap or other prohibited basis. However, the past performance, experience qualifications and abilities of any individual or organization will be considered when that individual or organization is obtaining the majority of the limited partners' interests in a limited partnership and the partnership agreement permits the limited partners to remove and replace the general partner by a consensus of the majority of the limited partners.

(8) Organizational papers must be amended to reflect the changes and a copy submitted to FmHA to be retained in the case files. The amendment should specify that FmHA must approve all membership changes or transfers, if they do not already do so. OGC will review any proposed changes of beneficial interests in a trust to determine that all applicable program requirements have been met.

§ 1965.64 [Reserved]

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) *General.* Borrowers should be properly informed during loan processing that each applicant must have the ability and intention to own and operate the proposed housing project for the purposes for which the loan is made. They should also be advised to properly organize their venture at the outset. As required by Subpart G of Part 2033 of this chapter, the Multiple Family Housing Information Status, Tracking and Retrieval System (MISTR) should be used for tracking and identifying the status of transferors and transferees as a routine part of the transfer and assumption process. Only RHS loans can be approved or closed for applicants that plan to sell their projects within a short period of time.

(1) The requirements of this section apply when:

(i) Title to the security property is transferred;

(ii) Sale of a project has occured or will occur through a land contract or similar contract;

(iii) The liability for the FmHA indebtedness has been or will be assumed by an organization, entity or individual who is not presently liable for the debt;

(iv) There has been or there will be a change in the borrower entity such as, an individual changing to a limited partnership; or

(v) Membership interests within a borrower entity have been or will be changed 100 percent a twelve-month period as indicated by § 1965.63(a) of this subpart,

(2) When the mortgage or deed of trust requires FmHA consent to the sale or other transfer of real estate security, the borrower should be advised of its provisions. Before firm agreements are reached between the borrower and the proposed purchaser or transferee, the borrower should notify the District Director of the proposed sale or transfer. The District Director shall then explain the requirements of this Subpart.

(3) Proposed transfers must not be to the detriment of the FmHA or the tenant. LH loans will only be transferred under this Subpart when they will continue to be used to provide housing for farm laborers as defined in Subpart D of Part 1944 of this Chapter.

(4) The transfer of projects are defined in §1944.205(j) of Subpart E of Part 1944 of this chapter, in which the initial and subsequent FmHA loans (except subsequent loans(s) made for repairs to existing units) are less than 5 years old or a transfer occurred less than 5 years previously should be discouraged unless the transfer will serve the best interests of the FmHA and/or the eligible tenants, or the transfer is needed to remove a hardship which adversely impacts the present borrower and was caused by circumstances beyond his/her control, such as:

(i) Illness or death of the principals;

(ii) Court order requiring the division of security property;

(iii) The individual borrower faces serious financial difficulties due to

circumstances beyond the borrower's control, which will force him/her out of operation. These circumstances do not include transferring the property to obtain the equity needed to permit the borrower to apply for additional FmHA loans or raising capital to support the borrower's other financial interests not involving the FmHA financed project. Borrowers under this type of hardship must be able to show that they have acted in good faith; demonstrated their managerial skills and financial abilities; and otherwise complied with all other agreements made with FmHA. Hardship transfers due to construction cost overruns will only be considered in the case of individual borrower accounts. (If additional funds are needed to cover cost overruns for any other type of borrower entity, consideration should be given to the admission of new partners, sale of stock, etc., under the provisions of § 1965.63 to continue ownership of the project.)

(5) When the State Director determines that a hardship is present and the official case files have been adequately documented to clearly identify the hardship, a transfer may occur without penalty to the transferor. When a hardship is not present and the loan(s) are less than 5 years old, the transferor (including principals) will be ineligible for further loans or participation in the transferee or other RRH applicant entities for the remainder of the 5 year period. The 5 year period begins on the date of FmHA loan closing and/or any subsequent transfer.

(6) Transfers of RRH projects with initial or subsequent loans (except loans for the purpose of repairs to existing units) that are at least 5 years old will be processed according to the provisions of this subpart without penalty to the transferor. The transferor (including the principals) may continue to participate in the RRH program through new and existing projects assuming he/she has performed satisfactorily and meets the eligibility criteria of § 1944.211 of Subpart E of Part 1944 of this chapter.

(7) In all cases, the purchaser is required to provide evidence of its inability to obtain credit elsewhere on rates and terms that will not cause rental rates in excess of what low- and moderate-income tenants could afford.

(8) A nonrefundable transfer fee will be assessed at the time the RRH transfer application is submitted to the FmHA District Office. This fee will equal ¼ percent of the original loan amount for each loan being transferred to a full profit, limited profit, or ineligible applicant. This fee is not applicable when the transferee is a public body, consumer cooperative or nonprofit corporation as defined by the respective FmHA multiple housing program regulations.

This fee will be identified as a transfer fee and submitted to the Finance Office using Form FmHA 1944–9 to be credited to the Rural Housing Insurance Fund.

(b) *State Director authority.* The State Director is authorized under § 1965.55 (a)(4) of this subpart to approve initial and subsequent transfers, with an appropriate assumption of the FmHA unpaid loan balance(s) when the principal amount plus accured interest is within the State Director's loan approval authority, subject to the following general conditions and requirements'

(1) Transfers will be made to either eligible or ineligible applicants. Eligible applicants are those applicants meeting all of the eligibility criteria as defined by the appropriate loan program regulations. Ineligible applicants are those applicants failing to meet the eligibility requirements for the respective loan type. Transfers to eligible applicants will receive preference over transfers to ineligible applicants, provided recovery to FmHA is not less than it would be if the transfer were to an ineligible applicant.

(i) Transfers to eligible applicants will generally be completed on the basis of the same terms if the loan account is current or can be brought current when the transfer and assumption is closed.

(ii) Eligible applicants assuming loans which are delinquent and cannot be brought current at the time of closing, and transfers to ineligible applicants, will be transferred on the basis of new terms.

(2) If the State Director determines that the total secured FmHA debt(s) exceeds the present market value of the security, the transferee must assume an amount at least equal to the present market value less any prior liens. In those cases, the transferor will not be released from liability and the remaining debt will be processed according to the applicable provisions of Part 1864 of this chapter (FmHA Instruction 456.1). Otherwise, the transferee will assume the total FmHA secured debt(s). The approval official must determine that the security is adequate for the FmHA indebtedness being assumed. Security will be upgraded if necessary to meet FmHA standards.

(3) The transferor should not receive any equity payment unless the *total* unpaid FmHA indebtedness is assumed, all real estate taxes are current; and the FmHA loan payment and the reserve account are on schedule at the time of transfer, less any authorized withdrawals; if the requirements of this paragraph cannot be met, the State Director may request the National Office to authorize an equity payment when all other alternatives, including liquidation, would not be in the best interests of the FmHA and the tenants. Any equity payment due the transferor should be paid in cash at the time of transfer. However, if paid on terms, the terms and conditions must be documented in the file and the transferee must be able to show that the obligations can be met from outside sources of income without jeopardizing the operation of the project. Any equity payment to be made on terms shall *not* be considered an authorized debt payment of the project. Furthermore, any equity payment which is not paid in cash at closing is not authorized unless all of the following conditions are met as part of the transaction:

(i) No rental or other project income will be used to make payments on the note,

(ii) No present or future liens will be attached either to the secured property, project operating accounts, or to pay revenue from operation of the property,

(iii) The equity payable to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those identified in the transferee's organizational documents approved by FmHA,

(iv) The seller does not and will not have a reversionary interest in the FmHA encumbered property,

(v) In the case of a limited partnership, the right of FmHA to approve or disapprove the substitution of general and limited partners had not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by FmHA for partner changes in the case of default; and the right to assign partnership interests is restricted to only the limited partners' interests and such right does *not* include the general partner's interests,

(vi) An opinion is provided from the transferor's legal counsel certifying that the financial and other arrangements comply with all FmHA requirements of this section,

(vii) An assignment of project income will be taken by FmHA in accordance with the requirements of § 1944.221(b) of Subpart E to Part 1944 as additional security with the advice and guidance of OGC.

(4) If a payment to the transferor is to be made in connection with the transfer, the total FmHA debt on the property must be assumed unless the payment

received by the transferor is applied on a prior lien or to the portion of the transferor's FmHA debt not assumed. When the full amount of the FmHA secured debt is assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any equity payment be applied on those debts.

(5) There must be no lien, judgment, or other claims against the security being transfered other than those by FmHA and those authorized prior liens to which FmHA has previously agreed, unless prior written approval is obtained from the National Office.

(6) When the loan(s) is secured by both chattel and real estate, all chattel security must be transferred, sold, or liquidated by the time of closing the transfer of the real estate.

(7) The transferee must complete and submit Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for the State Director's approval as required by § 1901.203 of Subpart E of Part 1901 of this chapter.

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through the use of Form FmHA 460–9, "Assumption Agreement (Same-Terms-Eligible Transferee)," on the same rates and terms if the spouse is determined to be an eligible applicant according to the applicable provisions of the respective loan program and this subpart.

(9) The transfer must be completed with the advice and closing instructions of the OGC.

(10) The rents to the tenants can be increased only if the provisions of paragraph XI of Exhibit B to Subpart C of Part 1930 of this chapter are met. In considering any rent increase, the rents of comparable units in the community must be considered. In no case should the rents be higher than comparable rents in the area for units available to low and moderate income tenants.

(11) The transferee will be required to submit reports according to § 1930.124 of Subpart C of Part 1930 of this chapter.

(c) *Transfers to eligible applicants.* Transfers of security with an assumption of FmHA debts by transferees who are eligible applicants for the type of loan being assumed may be approved subject to the general conditions contained in paragraph (b) of this section and the following:

(1) All necessary improvements to assure that the housing will be decent, safe and sanitary should be made prior to the transfer, whenever possible. When repairs cannot be completed prior to closing, the necessary funds will be executed and the repairs will be identified, agreed upon prior to closing and documented as specified in § 1924.5 of Subpart A of Part 1924 of this chapter. Also any improvements required by FmHA to meet the accessibility requirements of Section 15 b.41 of Subpart F of Part 15b of Subtitle A (See § 1944.215 (a)(9) of Subpart E of Part 1944 of this chapter) should be considered part of any substantial rehabilitation work undertaken as part of the transfer. All repairs will be in accordance with the provisions of Subpart A of Part 1924 of this Chapter. Funds for such improvements will be from the sources in the following priority: transferor's equity; contributions by the transferee, if loan funds are available, from the use of an RRH or LH loan as appropriate; reserve account being transferred.

(2) For rental projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds, will be transferred to the transferee. Any RA payments not received by the transferor, will be assigned to the transferee. Every attempt should be made to have the funds in the reserve account at the scheduled level and transferred to the transferee at the time of transfer.

(3) Any excess development funds held in a supervised bank account must be refunded to the respective loan account upon receipt of the transfer request.

(4) A loan and/or grant may be made in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may *not* be used, however, to pay equity to a transferor.

(5) The transferee must prepare operating budgets, as required by the appropriate program regulations governing the kind of loan being transferred, covering the first partial year and the next full year's operation. The budgets must be realistic and reflect sufficient funds to pay operation and maintenance expenses, maintain any required reserve, and keep the FmHA account(s) current. The charges for the use of the facility or services must be within the payment ability of those it is intended to serve. A current utility allowance must also be prepared when required by program regulations.

(6) For transfers of RRH loan accounts, current executed tenant certifications using Form FmHA 444–8, "Tenant Certification," or a HUD approved form of "Certification or Recertification of Tenant Eligibility" for any tenants receiving Section 8 subsidy, must be on file with FmHA or provided for each tenant, as required by paragraph VII F of Exhibit B to Subpart C of Part 1930 of this chapter, evidencing that the units are or will be occupied by eligible tenants when the transfer is closed.

(7) For transfers of RRH and LH loan accounts, all leases should also be assigned to the transferee no later than the date of closing.

(8) The proper type of loan agreement or loan resolution for the type of transferee involved must be in effect and secured by the mortgage or deed of trust at the time of transfer. If changes are needed in the existing loan agreement or loan resolution to accomplish this, amendments must be made to the existing loan agreement or resolution secured by the mortgage on the security property with the advice of transferee's attorney and approval of OGC or by any other method acceptable to OGC. If the RRH transferee wishes to convert to the loan agreement/resolution format of Form FmHA 1944–33, "Loan Agreement," 1944–34, "Loan Agreement," or 1944–35, "Loan Resolution," as appropriate, the transferee may accomplish this by amending the existing loan agreement/resolution with the advice of transferee's attorney and concurred in by OGC.

(9) A limited profit RRH transferee's initial investment and rate of return in the project will remain the same as that originally provided to the transferor. However, If a loan to a nonprofit or profit type borrower is being transferred to a limited profit type transferee, the initial investment to be shown in the loan resolution or agreement will be "None unless an exception is made by the National Office. Any initial investment established by the National Office should not exceed 5 percent of the original loan amount with a rate of return which will not exceed the rate set forth in § 1944.215(l) of Subpart E of Part 1944 of this chapter when the transfer is approved. An exception will be considered when:

(i) The transferee contributes funds for repairs or authorized improvements beyond those which would have been paid from the transferor's equity as indicated in paragraph (c)(1) of this chapter, or

(ii) The transferee contributes sufficient cash to reduce the debt being

assumed to no more than 95% of the original development cost, or

(iii) The transferee's total contributions for the repairs and debt reduction identified in paragraph (c)(9)(i) and (ii) of this section, exceed 5% of the purchase price, and

(iv) The transfer is referred to the National Office with the appropriate recommendations and a request to establish an initial investment for the transferee.

(10) If the transfer involves an RRH or RCH loan using interest credit with a Form FmHA 1944–7 or 444–7, "Interest Credit and Rental Assistance Agreement" in effect, it will be cancelled as of the date of the transfer. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the loan is eligible for interest credit according to Exhibit B to Subpart E of Part 1944 of this Chapter. A new Form FmHA 1944–7 will be executed by the transferee, attached to Form FmHA 460–5, "Assumption Agreement (New Terms)" or 460–9 "Assumption Agreement (Same Terms), as appropriate and submitted (simultaneously with any interest credit cancellation for the transferor) to the Finance Office when the transfer is closed.

(11) A transferee may participate in the rental assistance program if the transferor's project is an eligible project and the transferee is an eligible borrower according to Exhibit E to Subpart C of Part 1930 of this Chapter. If the transferor participates in the rental assistance program, the transferee may assume the remaining portion of the transferor's rental assistance agreement when the transferee is eligible. When the transferee is assuming the transferor's rental assistance agreement, the transferor's rental assistance agreement will be described on the assumption agreement (Form FmHA 460–5 or 460–9, as appropriate) in Table II giving the date executed, number of units, term of agreement, and the amount of obligation remaining. If the transferee will not be assuming an existing rental assistance agreement, the agreement will be cancelled and the Finance Office notified of the cancellation using Form FmHA 1944–26, "Request For Obligation of Rental Assistance."

(12) If a project operates under the HUD Section 8 program the Housing Assistance Payment (HAP) contract must also be assigned to the transferee with prior approval from HUD. This approval must be obtained so that the assignment of the HAP contract occurs no later than the closing of the transfer.

(13) The transferee must thoroughly understand all loan requirements including the tenant eligibility, management, reserve account, audit, and reporting requirements of applicable FmHA regulations; and the loan agreement or loan resolution and the content of the signed Form FmHA 400–4, "Assurance Agreement." Before the transfer is closed the District Director shall carefully review with the transferee Subpart L of Part 1944 of this chapter, Subpart C of Part 1930 of this Chapter, the applicable loan program regulations, and the loan agreement or resolution with the transferee.

(14) Release of liability will be considered according to the following:

(i) When all FmHA security is transferred and the total outstanding debt is assumed, the transferor will be released from liability.

(ii) In those cases where the value of the security transferred and debt assumed is less than the full amount of the FmHA debt, the transferor may be released from liability if the State Director determines that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer, and certifies that the transferor has cooperated in good faith, has used due diligence to maintain the security property against loss, and has otherwise fulfilled the convenants incident to the loan to the best of the borrower's ability. The approval official must execute a memorandum containing the following statement for inclusion in the official case file:

(Transferor's name), in our opinion, does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the transferor be released of personal liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security property.

(d) *Transfers to ineligible applicants.* The transfer of an FmHA loan account to a transferee who is an ineligible applicant for the type of loan involved will be considered only when the transfer is needed as a method for servicing a problem case in which the objectives of the original loan cannot be realized and an eligible transferee is not available. Transfers will not be considered when they basically serve as a method or provide a means by which members of a borrower-organization can obtain an equity payment, or when they serve basically as a method of providing a source of credit for purchasers. The State Director is authorized to approve transfers to ineligible applicants, subject to the general conditions of paragraph (b) of this section and the following:

(1) Ineligible applicants can only be approved when a downpayment is made equivalent to a minimum of 10 percent of the remaining loan balance to be assumed. Each ineligible transferee will be encouraged to make as large a downpayment on the FmHA secured indebtedness as the transferee is financially able.

(2) The transferee must have the ability to pay the FmHA debt(s) according to the assumption agreement and must possess the legal capacity to enter into the contractual agreement.

(3) The balance of the FmHA indebtedness assumed must be scheduled for repayment in two years or less for RHS accounts, and usually 10 years or less for other types of multiple family loan accounts. If longer terms are needed for LH, RRH, or RCH projects with multiple unit structures, the State Director may authorize longer terms up to 20 years. (Single family type structures may be sold on terms for 15 years or less.) Amoritized monthly or annual installments will be charged with interest to the transferee at the rate currently applicable to above-moderate RH loans, including insurance charges, or at the rate of interest specified in the note(s) being assumed, whichever is greater. Form FmHA 460–5 will be executed by the transferee.

(4) The State Director may release the transferor from liability under the same provisions as stated in paragraph (c)(10) of this section only when all of the real estate security for a loan is transferred; the total outstanding indebtedness or that portion of the debt equal to the present market value of the security is assumed; and the debt assumed by the ineligible transferee is scheduled for repayment in five years or less from the date of the assumption agreement.

(5) When an ineligible transferee assumes an FmHA loan where the present borrower has personal liability and it is scheduled for repayment in more than 5 years from the date of the assumption agreement, the transferor must acknowledge their continued liability for the debt by signing an agreement as follows:

Continued Liability Agreement of Present Debtors

The undersigned hereby acknowledges the continued personal liability for the indebtedness owed to the FmHA and assumed by (assuming parties) under assumption agreement dated ———.

Date ———.

(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's District Director case folder, and a copy provided the transferor.)

(6) Transfers to ineligible applicants of loans made on or after December 21, 1979, will not be authorized without the prior consent and authorization of the National Office. Authorization must be requested in writing and include all the information required in paragraph (e) of this Section.

(7) Those loans which are transferred to ineligible applicants will be classified as Other Real Estate (ORE) and serviced according to this Subpart to the extent possible. Those case which cannot be serviced according to this Subpart will be forwarded to the National Office for advice and guidance.

(e) *Submission to National Office.* In those cases where the proposed transfer cannot be made in compliance with paragaphs (a) and (b) or (c) of this section, the State Director may submit the entire proposal, complete with all the case files, the State Director's specific recommendations and justifications to the National Office for review, consideration, and any special instructions for handling the account(s). The State Director must have determined prior to submission however, that it is in the best interest of the FmHA to permit the transfer before submitting the proposal for consideration. All transfers where the total indebtedness (principal and interest) exceed the State Director's approval authority must be submitted to the National Office for prior review and authorization to approve the transfer request.

(f) *Processing transfers.* (1) Form FmHA 465–5, "Transfer of Real Estate Security," must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the proration of taxes and insurance, title, legal and filing fees, equity and method of payment, assignment of project accounts and leases, and other appropriate items. The effective date of the transfer is the actual date the transfer is closed and Form FmHA 460–5 or 460–9, as appropriate, is executed.

(2) FmHA Form 460–9 or 460–5 will be executed according to the applicable FMI. The unpaid principal balance and accrued interest to be shown on Form FmHA 460–5 or 460–9 will be computed from Form FmHA 451–26, "Transaction Record," or Form FmHA 451–11, "Statement of Account." The transferee will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date, any payments required to bring any monthly or annual payments current and the amount needed to bring the reserve account current less any authorized withdrawals. If the loan or reserve accounts cannot be brought current or less than the total debt is assumed, the transfer will be closed on new terms at the note rate or current interest rate, whichever is greater.

(3) When the property transferred will continue to be used for the same or a similar purpose for which Federal financial assistance was extended, the transferee must sign Form FmHA 400–4, "Assurance Agreement."

(4) An appraisal will be required for each transfer except those completed on a same terms basis and for which the State Director is satisfied that the security is adequate. (An appraisal will *always* be required for transfers or new terms.) An FmHA Designated MFH appraiser will be responsible for preparing an appraisal report when the transferor or transferee does not submit an acceptable appraisal, the total indebtedness will not be assumed or the State Director requires that one be prepared. If the last appraisal is less than one year old and the transfer is within the State Director's authority, the FmHA designated appraiser will supplement the present appraisal report by attaching information on the present market value. A new appraisal will be prepared according to the requirements of Subpart B of Part 1922 of this Chapter when the current appraisal is over one year old or when the State Director determines a new appraisal report is needed. The State Director may accept, at his or her option, an independent appraisal from the tranferor or transferee in lieu of an FmHA prepared appraisal provided:

(i) The expense of the appraisal will be paid by the transferee or transferor without obligation to FmHA,

(ii) The appraisal will be prepared by an accredited Senior Real Property Appraiser (SRPA), Senior Real Estate Analyst (SREA) or Member, Appraisal Institute (MAI) real estate appraiser. The State Appraiser/Trainer may accept an appraisal report from other than an accredited SRPA, SREA or MAI appraiser if he or she determines that:

(A) There are no accredited appraisers within a reasonable distance from the project location, and

(B) The individual preparing the appraisal has satisfactorily completed a minimum of *80* hours of accredited appraisal courses.

(iii) The appraisal report form will be Form FmHA 1922–7, Appraisal Report for Multi-Unit Housing," or the Federal Home Loan Mortgage Corporation form, FHLMC Form 71A, and it will include adequate documentation to support the appraised value.

(iv) The total FmHA debt will be assumed by the transferee.

(v) The appraised value of the property is sufficient to secure the existing FmHA debt, planned subsequent FmHA loan(s), and any authorized junior liens.

(vi) A review of the appraisal will be made by the State Appraiser/Trainer according to FmHA Instruction 1922–B using FmHA Form 1922–13, "Reviewer's Appraisal Analysis."

(5) Form FmHA 460–9, will be executed according to the FMI when the full debt will be assumed at the same rate and terms. The loan account(s) must be current at the time of the transfer and the reserve account on schedule, less any authorized withdrawals, if the transfer is to be at the same rate and terms.

(6) Form FmHA 460–5, executed according to the FMI when an account cannot be brought current at the time of transfer or less than the full debt is assumed. The loan repayment period may be extended to the maximum term authorized by the appropriate loan program, considering the value of the remaining security. Transfers on new terms are also subject to the following conditions:

(i) The interest rate charged for all loans except LH loans will be the current rate being charged for those loans, or the note rate, whichever is greater. The interest rate on LH loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farmworkers, and broadly-based nonprofit corporations for LH purposes may be at a one percent interest rate regardless of the rate specified in the note if the State Director determines that the reduction is necessary in order to maintain rental rates at a level affordable to the tenants. If the State Director determines that the transfer at one percent is necessary for other types of LH transferees, the case should be submitted to the National Office, with the State Director's recommendations and justifications for consideration.

(ii) Loans for RRH and RCH projects which are amortized on an annual payment basis and are transferred on

new terms through the use of Form FmHA 460–5, shall be converted to a monthly payment amortization. This may be accomplished by changing the date to be inserted for item 15 of the Forms Manual Insert (FMI) for Form FmHA 460–5 to the date which is one month from the effective date of Form FmHA 460–5. Also, the words "each January 1" on the fifth line of payment alternative (a) on the reverse of Form FmHA 460–5 should be deleted. In their place should be the word "the" followed by the numerical day of the month in which Form FmHA 460–5 is effective (or 28th, whichever is less), and the words "day of the month".

(iii) All transfers of RRH, RCH and LH loans approved prior to December 21, 1979, which are transferred to eligible applicants on new terms will become subject to the prepayment requirements of Section 502(c) of Title V, Housing Act of 1949, as amended. The appropriate restrictive language concerning prepayment set forth in § 1944.176(c)(2) of Subpart D of Part 1944 of this chapter for LH loans or § 1944.236(b)(4) of Subpart E of Part 1944 of this chapter for RRH and RCH loans must be inserted in Form FmHA 460–5 and in the Loan Agreement or Resolution. For transfers on new terms the prepayment restriction period will begin on the date the transfer and assumption is closed.

(7) The following paragraph is to be inserted in the Form FmHA 460–5 or 460–9 whenever the full amount of equity has not been paid in cash: "The assuming party covenants and agrees that irrespective of any other agreement to the contrary, (i) no present or future lien(s) have or will be attached to the partnership property encumbered by FmHA or the income therefrom, (ii) the equity payable to the seller will be provided from outside sources or from any authorized return on investment and not from a planned sale of the project, (iii) the right of FmHA to approve or disapprove the substitution of partners in a general or limited partnership transferee organization (this phrase may be stricken when the transferee is an individual) has not and will not be superseded by any agreement between the purchaser and seller that implies prior consent by FmHA on partner changes in the case of default, (iv) the seller does not and will not have a reversionary interest in the FmHA encumbered property, and (v) the requirements of section 1965.65 of FmHA Instruction 1965–B [7 CFR Part 1965 have been met."

(8) When the transfer docket forms are completed, the approval official must determine that:

(i) The proposed transfer conforms to the applicable procedural requirements and that determinations of hardship status, eligibility, etc., are clearly documented in the casefile,

(ii) Each form is prepared correctly according to the FMI or other appropriate regulations, and

(iii) Items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which those items appear.

(9) The District Director will record in the Running Case Record or in memo form, the pertinent information concerning the negotiations made between an eligible tranferee, FmHA personnel, the applicant's creditors, and other lenders concerning the availability of other credit. The investigation on the availability of other credit for eligible transferees will be documented in the case file as required for the kind of loan being assumed. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain credit elsewhere on rates and terms that would not cause rental rates to be in excess of what low and moderate income tenents could afford will be included in the docket.

(10) A compliance review should be conducted as required by Subpart E of Part 1901 of this chapter, if a current one has not recently been completed.

(11) The District Director will forward the transferee's application docket and the official case file, with any comments and recommendations to the State Office. The following table will be used as a guide in distributing the necessary forms for a transfer docket:

Form number	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
AD–625 *	Application for Federal Assistance (Short Form)	3	1	2–O and 1 C	1–O
HUD Form 2530 *	Previous Participation Certificate	2	1	2–O and 1 C	1–C
	Information to be Submitted with Preapplication for Loan as required by program regulations specifically related to applicant eligibility *	0	1–O	1–C	
	Letter of Application with applicable attachments as required in Subpart G of Part 1822 of this Chapter (FmHA Instruction 444.8) or Subpart D or E of Part 1944 of this Chapter *.	2	1	1–O	1–C
	Evidence of Legal Authority (Copies of citation of specific provisions of State constitution, statutory authority, etc.)* *.	2	1	1–O	1–C
	Proof of Organization (certified copy of Charter, Articles of Incorporation, or Certificate of Limited Partnership, etc.)* *.	2	1	1–O	1–C
	Certified copies of bylaws, partnership agreement, or regulations * *	2	1	1–O	1–C
	List of names, addresses, and social security or tax identification Numbers of officers, directors, and members, and ownership interest held by each * *.	2	1	1–O	1–C
	A current financial statement from the transferee, and others, as required by appropriate program regulations * *.	2	1	1–O	1–C
	Credit Report(s)*	1		1–O	
FmHA 465–5	Transfer of Real Estate Security [2]	3	1–O	1–O	1–C
FmHA 1930–7	Statement of Budget, Income, and Expense (Excluding Depreciation) (Operating Budget—first year) (Operating Budget—typical year).	2	2–O and 1–C	1–O	1–C
HUD 935.2	Affirmative Fair Housing Marketing Plan, or evidence of being signatory to a HUD approved voluntary agreement.	2	1–O	1–O	1–C
FmHA 400–1 *	Equal Opportunity Agreement	2	2–O and 1–C	1–O	1–C
FmHA 400–4 *	Assurance Agreement	2	2–O and 1–C	1–O	1–C
FmHA 1940–1	Request for Obligation of Funds [3]	3	2–O and 1–C	1–O and C	1–C
FmHA 26	Transaction Record (most recent)	1		1	
FmHA 451–10*	Request for Statement of Account	2		2–O and C (O to FO)	
FmHA 451–11	Statement of Account	1		1	
FmHA 451–25 *	Status of Account	2	O	2–O and C	
FmHA 1922–7*	Appraisal Report for Multi-Unit Housing (see paragraph (f)(3) of this Section)	1		1–O	
FmHA 1922–13 *	Reviewer's Appraisal Analysis				
FmHA 1922–8 *	Residential Appraisal Report	1		1–O	
FmHA 426–1 *	Valuation of Buildings	1		1–O	
FmHA 424–1 *	Development Plan	2	1–O	2–O and C	1–C
FmHA 460–5 *	Assumption Agreement (New Terms)	4	1–O	1–O	1–C

Form number	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 460-9 *	Assumption Agreement (Same Terms Eligible Transferree)	4	1-O	1-O	1-O
FmHA 465-8 *	Release from Personal Liability [1]	2		1-C	1-C
FmHA 440-9 *	Supplementary Payment Agreement [1]	3	1-O	2-O and C	1-C
FmHA 1944-7 *	Interest Credit and Rental Assistance Agreement (RRH and RCH Loans)[1]	3	1-O	1(O to FO)	1-C
FmHA 1944-27 *	Rental Assistance Agreement	2	1-O	1-O	1-C
	Loan Agreement *	2	1-O	1-O	1-C

O—Original; C—Copy.
*—When applicable.
**—When applicant is an organization.
[1] The original Form will not be executed until date of closing the transfer.
[2] When requested, prepare an additional copy for delivery to transferor.
[3] Applicant must sign and date this form unless a similar certification is obtained on the application form. For ineligible transferees, delete the first sentence referring to other credit in item 34 of the form. The applicant must initial each deletion.

Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property, purchase contract or other instrument of ownership, assignment of HUD Section 8 Housing Assistance Payments contract, and information on prior or junior mortgage(s). When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making instruction. (Subsequent loans will not be made to pay equity.)

(12) If the transfer is within the State Director's loan approval authority, the docket will be forwarded to OGC for review and necessary closing instructions. If the transfer is not within the State Director's loan approval authority, or all planned development is not complete; the complete transfer docket, borrower case file, OGC comments, and complete comments and recommendations of both the District and State Director will be forwarded to the National Office for review and approval authorization.

(13) During the period that a transfer is pending in the District Office, payments received by the Finance Office will continue to be applied to the transferor's account. Those payments include any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. Any payment on the account not included in the latest transaction record will be deducted from the total amount of principal and interest calculated from the latest information available before the assumption agreement is completed and signed.

(i) *Identification.* For payments received on the date of transfer, Form FmHA 451-2, "Schedule of Remittances," or Form FmHA 1944-9, "Multiple Housing Certification and Payment Transmittal," as appropriate, will be prepared to show "Transfer in process for account owed by (borrower's name and case number) to be transferred to (name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the Form FmHA 460-5 or 460-9 showing the date of Form FmHA 451-2 or 1944-9, and the amount paid.

(ii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the transferee's name.

(g) *Closing transfer cases.* (1) Title clearance and legal services, including OGC closing instructions, will be obtained according to Part 1807 of this Chapter (FmHA Instruction 427.1) and this Subpart.

(2) The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer. A profit or limited profit organization transferee may use any designated attorney or title insurance company to close the transfer according to the applicable closing instructions. The attorney or the title insurance company and their principals or employees must not be members, officers, directors, trustees, stockholders or partners of the transferee or transferor entity. Nonprofit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and is earned.

(3) The transferee will obtain fire and extended coverage insurance, and flood insurance when required, according to the appropriate program requirements for the outstanding loan(s) involved, unless the State Director requires additional insurance as a condition of approval after evaluating the potential for loss due to special hazards associated with the project. When insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(4) The proper type of loan agreement or resolution for type of transferee involved must be in effect at the time of the transfer. If changes are needed in the existing loan agreement or resolution cited in the mortgage, the changes should be made by amending the existing loan agreement or resolution after obtaining the advice of OGC.

(5) The restrictive language contained in § 1944.176(c)(1) of Subpart D of Part 1944 of this chapter and § 1944.236(b)(1) of Subpart E of Part 1944 of this chapter must be inserted in the deed of conveyance or other instruments as required by OGC for RRH, RCH, and LH loans.

(6) At a time no later than the transfer closing, the transferee will be provided copies of the security instruments (promissory note, mortgage or deed of trust, rental assistance agreement, loan agreement or resolution, etc.) which were executed by the transferor or previous borrower to originally secure the loan being assumed.

(7) A supervisory visit as required by Subpart C of Part 1930 of this chapter should be scheduled within 90 days of closing to verify the transferee's compliance with program requirements.

(h) *Transfer not completed.* If for any reason a transfer will not be completed after approval, the District Director will immediately notify the State Director.

§§ 1965.66–1965.67 [Reserved]

§ 1965.68 Consolidation.

(a) *General.* RRH an LH loans and/or loan agreements/resolutions may be consolidated to reduce the administrative burden (recordkeeping, budgeting, etc.), improve the cost effectiveness and efficiencies of project operations, and/or to effectively utilize the physical facilities common to projects. State Directors may approve the consolidation of RRH and LH loans and/or loan agreements to improve the effectiveness of borrower operations with the advice of OGC and when the following conditions are met:

(1) *Consolidation of loans.* (i) The security for the loans must be on the same or contiguous property unless otherwise authorized by the National Office.

(ii) The loans are being transferred under § 1965.65(f)(6) of this subpart on *new terms* to the transferee.

(iii) The security offered must be adequate for the total indebtedness and FmHA's security position must not be lessened as a result of the consolidation.

(iv) The total indebtedness (principal plus accrued interest) of all loans being consolidated does not exceed the State Director's approval authority.

(v) The loans being consolidated are for the same purpose. For example, loans specifically made for senior citizen projects cannot be consolidated with loans for family projects.

(vi) The consolidation will not cause rents to exceed the repayment ability of eligible occupants.

(vii) For RRH loans, the transferee must agree to operate on a nonprofit or a limited profit basis and Interest Credit Plan I S 8 or II must be implemented.

(viii) Loans with rental assistance may only be consolidated when the term of the initial agreements are the same. Under no circumstances can loans with 5 year RA be consolidated with loans having 20 year RA.

(ix) The promissory notes *and* the loan agreements will be consolidated.

(x) After consolidation, the project will be a "project" as defined in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(2) *Consolidation of loan agreements.* (i) The security for the loans must be on the same or contiguous property unless otherwise authorized by the National Office.

(ii) The total indebtedness represented by all loan agreements being consolidated does not exceed the State Director's approval authority.

(iii) The loan agreements being consolidated are for loans made for the same purpose, to the same borrower entity and have the same plan of operation (non-profit, limited profit or full profit).

(iv) The requirements of Subpart C of Part 1930 of this chapter concerning monthly and annual reports, borrower bank accounts, and project managements will be fulfilled as though there is only one project, i.e., rather than one or more separate projects.

(v) The loan agreements being consolidated must represent current accounts. Delinquent loan accounts can only be consolidated with prior National Office authorization.

(vi) Rental assistance agreements will not be consolidated with the consolidation of loan agreements. If the RA is for other than the same term it must continue to be used only for the units in the project and accordingly reported on the project worksheet.

(b) *Processing.* All consolidations will be processed with the advice of OGC and assistance of the State Director.

(1) Loan consolidation with transfers on new terms will be processed as follows:

(i) Form FmHA 440–16, "Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office inquiry station to request the return of the original form so it is in the District Office before a new Form FmHA 440–16 is processed. A copy of the new Form FmHA 440–16 will be sent to the Finance Office according to the FMI. All promissory notes will be prepared on a monthly payment basis.

(ii) The original and District Office copies of all notes or assumption agreements that are consolidated, will be stamped "Consolidated," by the District Office. The original instruments being consolidated will be filed with the borrower's new consolidated note and a copy will be filed in the borrower's case file. When the consolidated or rescheduled note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of § 1951.15 of Subpart A of Part 1951.

(iii) A revised loan agreement or resolution will be prepared to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred.

(iv) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory *notes* be consolidated if the security position of FmHA will be adversely affected.

(v) New security instruments which describe the consolidated note will be filed to perfect the FmHA lien position. It the new lien position taken is junior only to the previous lien position securing the loan being consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(2) Consolidation of loan agreements or loan resolutions may be used as a security servicing tool to provide more effective management and supervision, as follows:

(i) All of the general requirements of paragraph (a)(2) of this section are met;

(ii) A revised loan agreement or loan resolution must be executed which accurately reflects the total indebtedness, reserve requirements, and return originally described in the individual agreements;

(iii) All of the loan agreements or loan resolutions being consolidated must be secured by a deed of trust or mortgage describing all of the loans for the project;

(iv) Neither the terms nor the due dates of the loan(s) involved are altered, and other security instruments remain unchanged.

(v) The advice and assistance of OGC will be obtained when processing consolidation of loan agreements or loan resolutions.

§ 1965.69 [Reserved]

§ 1965.70 Reamortization.

(a) *General.* State Directors may approve the reamortization of RRH, RCH, and LH loan accounts within their approval authority for the type of loan involved. RHS loans will not be reamortized and will be serviced according to program requirements. If an RHS loan becomes seriously delinquent and efforts to sell the lots are not successful, the account will be liquidated according to Subpart A of Part 1955 of this chapter.

(b) *Conditions for reamortization.* The conditions under which a reamortization will be considered are:

(1) The borrower has made extra payments and/or refunds totaling 10 percent or more of the original loan amounts being reamoritized (from sources other than the sale of units within the LH, RRH, or RCH project, and the State director determines that the borrower and the tenants cannot reasonably be expected to meet their obligations unless the account is reamortized to reduce subsantially the FmHA installments and rental rates, or,

(2) The borrower has a substantial delinquency which cannot be liquidated

within one year; which was caused by circumstances beyond the ultimate control of the borrower, however, the borrower has acted in good faith and has complied with all applicable FmHA procedures and policies governing the particular program under which the loan is made, and,

(3) All of the following conditions exist and are adequately documented in the official case file and on Form FmHA 451–33, "Reamortization Request," as appropriate:

(i) The reamortization will not operate to the financial detriment of the Government or impair the security rights of the Government.

(ii) The budget or plan of operations for the borrower provides reasonable assurance that the newly scheduled payments will be made according to the terms of the proposed reamortization, and that the charges for the use of the facility or service are within the payment ability of those it is intended to serve; are comparable to other units in the area; and, the rent increase procedures set forth in Exhibit C of Subpart C of Part 1930 of this chapter will be followed if any increase in rental rates is required.

(iii) The Board of Directors and membership will retain, or have definite plans for obtaining, membership and community support; and, will provide competent management for the continued operation of the borrower entity and the facility financed with the loan.

(iv) The State Director believes that reamortization will enable the borrower to operate successfully and carry out the purpose of the loan.

(v) The FmHA lien position remains unchanged.

(vi) The security must be adequate to protect the Government's interests. An appraisal as required by Subpart B of Part 1922 of this chapter must be made and must reflect that the security is adequate for the principal and interest being reamortized.

(vii) The borrower has corrected any management deficiencies which may have contributed to the borrower's previous inability to generate sufficient income to bring or keep the account current. Such actions may include revision of the management plan or employment of professional management services.

(c) *Submission to National Office.* When the unpaid indebtedness of the borrower's account(s) to be reamortized exceeds the State Director's approval authority and the State Director determines that the conditions of paragraph (b) of this section can be met, the request for reamortization, official case file and all other pertinent information, along with complete comments and recommendations by both the State and District Directors, will be sent to the National Office. The State Director shall submit all subsequent reamortization requests for the same project to the National Office for prior authorization.

(d) *Processing reamortizations.* To reamortize the account, the following actions will be taken:

(1) Form FmHA 452–2, "Reamortization and/or Deferral Agreement," will be completed according to the FMI. (Only Item A will be used, Payments on Multiple Family Housing Loans cannot be deferred).

(2) If the note or assumption agreement being reamortized is not held in the District Office, the District Director will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original of the note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: "A reamortization agreement dated ————, 19—, in the principal sum of $————, has been given to modify the payment schedule of the note."

(4) The end of the amortization period will be final the due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC, and it is permissible according to State and local statutes, and the FmHA lien position is not altered. (Any extension of the final due date will not exceed the lesser of the remaining useful life of the security property or the maximum term authorized by the respective loan program authorizations.)

(5) The interest rate for the account will be unchanged except when the final due date has been extended. If the final due date is extended the interest rate will be either the note rate or the current interest rate, whichever is greater.

(6) The reamortization will be processed with the guidance of OGC.

(7) If the borrower is to receive interest credit benefits following the reamortization of the account, the current interest credit agreement will be cancelled and a new Form FmHA 1944–7 will be prepared and attached to Form FmHA 452–2 for submission to the Finance Office.

(8) The prepayment provisions of Section 502(c) of Title V, Housing Act of 1949 as amended will be applied in any reamortization which extends the final due date regardless of when the loan was originally approved. The appropriate restrictive language set forth in § 1944.176(c)(2) of Subpart D of Part 1944 of this chapter for LH loans, or § 1944.236(b)(4) of Subpart E of Part 1944 of this chapter for RRH or RCH loans, will be inserted in the Form FmHA 452–2 and in the revised loan agreement or resolution to accurately reflect the revised terms.

§ 1965.71 [Reserved]

§ 1965.72 Deceased borrower.

Deceased borrower caes will be handled according to the policy outlined in § 1962.46 of Subpart A of Part 1962 of this chapter except that all references to the County Supervisor are not construed to mean the District Director. The advice of OGC will be obtained as necessary.

§ 1965.73 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled according to the policy outlined in § 1952.47 of Subpart A of Part 1962 of this chapter except that all references to the County Supervisior now mean District Director. The handling of bankruptcy cases varies from state to state. Therefore, the State Director may issue State Supplements providing more specific guidance to expedite the handling of these cases. The advice of OGC will be obtained as necessary.

§ 1965.74 Divorce actions.

When individual borrowers with loans are involved in a divorce action the District Director will review the case after the final divorce decree has been granted to determine future servicing of the account. The District Office file will be submitted to the State Director for advice if the District Director is uncertain of the servicing actions needed to protect the FmHA's interest or if continuation of the loan with the remaining borrower is not authorized. No subsequent loan will be made as a result of a divorce action.

§ 1965.75 Abandonment.

When the District Director believes that the borrower has abandoned a project, an immediate check with the appropriate sources (for example: tenants, management agents, assessor's office, etc.) will be made to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken.

(a) A property is considered abandoned when any or all of the following conditions exist:

(1) The borrower cannot be located after the District Director has made diligent efforts to contact the borrower. This condition also applies to those

instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or cannot be located.

(2) The project remains unoccupied for an extended period of time and the borrower makes no effort to maintain the security property, secure eligible occupants and/or comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance.

(b) If the property is not being maintained and the District Director determines that the borrower has abandoned the project, the District Director will attempt to contact any prior lienholders with a request that they take control of the property and make any emergency repaires necessry. If no prior lienholder is involved or the prior lienholder cannot immediately be contacted or refuses to make the emergency repairs, the District Director will immediately notify the State Director and request permission to take possession of the property pending liquidation, make emergency repairs to prevent further deterioration of the security, and to enter into a lease with the individual tenants, or a management or caretaker's agreement, on behalf of the borrower.

(c) A caretaker or management agent will normally be obtained when the borrower has abandoned the security property or has failed to maintain its operation and the State Director determines, with the advice of OGC, that the FmHA should take possession of the property to best protect the interest of the Government subject to the following:

(1) *Selection of a caretaker or management agent.* Persons or firms chosen as caretakers or management agents should have experience in operating and managing similar properties or have business background or experience which qualifies then to perform the needed services. They must be located near the property to provide day-to-day supervision or appoint a qualified local person to meet this requirement. Caretakers will normally be selected for unoccupied projects or those not suitable for occupancy. Management agents will only be selected for projects which are occupied or suitable for occupancy. Selection procedures will be in accordance with § 1955.63(a) of Subpart B of Part 1955 of this chapter, and will be appropriately documented.

(2) *Fees.* The amount of the management agent or caretaker fee should be no more than the typical rate for similar services in the area. The amount may be based on a percentage of the income from the property or a flat fee amount. The fees will be considered a recoverable cost and charged to the borrower's account. The fees will be paid by processing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," on a monthy basis in accordance with Subpart P of Part 2024 of this chapter.(Available in any FmHA Office.)

(3) *Rental rates for abandoned projects.* Rental rates will normally remain the same for eligible occupants as when the project was under the control of the borrower. Rental rates may be revised with the approval of the State Director under the following conditions:

(i) The lease agreement between the borrower and tenant will permit changing the rates.

(ii) A change of rates is needed to provide income sufficient to pay operational and maintenance expenses, including the caretaker's fee, and to repay the loan on schedule.

(iii) Any increase will not result in rental rates above the payment ability of eligible occupants, unless the State Director has given the authority to rent units to ineligible occupants.

(d) All these actions shall be fully documented in the official case file. Liquidation will immediately be instituted according to Subpart A of Part 1955 of this Chapter.

§ 1965.76 [Reserved]

§ 1965.77 Consent to sale or other disposition of security property.

(a) *General policies.* The State Director may approve requests for an consent to:

(1) Use of the proceeds from the sale of a portion of or an interest in the security,

(2) Exchange of all or a part of the undeveloped security for other real estate, or

(3) Granting or conveyance of rights-of-way subject to the condition and requirements of this section.

(b) *Processing request.* These requests will be made on Form FmHA 465–1. The District Director will forward a properly completed and executed Form FmHA 465–1, the proposed deed, easement, or other forms of title conveyance, and the case file to the State Director with a memorandum containing additional information, as needed, to justify the approval or disapproval of the proposed transaction.

(c) *Conditions of approval.* the State Director grant consent provided:

(1) The orderly payment of the FmHA indebtedness will not be impaired. Except that in condemnation cases, after the final judgment or award has been granted and is not appealed, the necessary adjustments in project operation will be approved to comply with the court order.

(2) The transaction will not interfere with the successful operation of the multiple housing project or prevent the borrower from carrying out the purpose for which the loan was made. This requirement will not apply in the case of a condemnation action in which a final judgment or award has been made and is not appealed.

(3) The sale of individual units or developed portions of an RRH RCH or LH project shall require the prior concurrence and authorization of the National Office.

(4) If property to be sold or exchanged is to be used for the same or similar purpose for which the FmHA loan or grant was made, the purchaser shall execute Form FmHA 400–4. The agreement will remain in effect as long as the property continues to be used for the same or similar purpose for which the FmHA loan or grant was made.

(5) The consideration is at least equal to the market value of the security property disposed of or the rights being granted. However, right-of-way easements may be granted or conveyed without consideration if the value of the security property will not be reduced; its suitability for the intended purpose will not be impared; and the easement is granted for the borrower to develop lots or units which will be integrated into the project or to a public body for enhancement of street or utilities for the benefit of the project. A FmHA official authorized to appraise multi-unit housing properties shall either make a new appraisal as required by Subpart B of Part 1922 of ths chapter, if the current appraisal is more than one year old, or supplement the present appraisal report by inserting in or attaching to the "Remarks" section, information as to the market value of the security disposed. However, if the proceeds are to be used for development or enlargement, a new appraisal reflecting the market value of the security property as improved or enlarged will be made in all cases. The State Director may request an appraisal for any transaction involving security property whenever necessary.

(6) The remaining property is adequate security for the unpaid balance of the FmHA loan, or the transaction will not adversely affect FmHA's security position or interfere

with the successful operation of the security property.

(7) The proceeds from the disposition of the security are used for one of more of the following purposes:

(i) To pay the customary incidental closing costs such as title and recording fees appropriate to the transaction, including additional real estate tax the borrower is required to pay for the year for which arrangements to pay cannot otherwise be made.

(ii) To pay debts owed to any prior lienholders.

(iii) To make extra payments on the FmHA loan.

(iv) To pay costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber where the necessary appraisal cannot be obtained without costs.

(v) To pay real estate brokers' commissions if a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained had the sale been made without the assistance of the real estate broker.

(vi) To develop or enlarge the borrower's facility for purposes for which a loan of the same type involved could be made, if the development or enlargement is necessary to improve the borrower's debt-paying ability, place the operation on a more sound basis, or otherwise further the objectives of the FmHA loan. Any proposed development will be planned and performed according to Subpart A of Part 1924 of this chapter and funds to be used for development or enlargement will be handled according to Subpart A or Part 1902 of this chapter.

(vii) To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the FmHA debt will be as well secured after the transaction as before. FmHA will obtain a lien on the acquired property, and will obtain title evidence according to Part 1807 of this chapter (FmHA Instruction 427.1).

(viii) To pay any additional income tax which the borrower must pay for the year because of the capital gain or royalty tax attributable to the transactions. Funds for back taxes must be estimated and held in a supervised bank account until actual payment of the tax.

(8) FmHA liens are not released until receipt of the appropriate sales proceeds for applications on the Government's claim.

(d) *Releasing security.* Security for FmHA loans addressed in this Subpart will be released according to applicable program regulations and as follows:

(1) Borrowers will be held strictly accountable to the FmHA for all proceeds derived from the sale of mortgaged property which the FmHA is entitled to receive under its lien.

(2) Consent to disposition of part of, or an interest in, security property as authorized in this subpart may be given by approving a completed Form FmHA 465–1 or other forms approved by OGC or prescribed in State Supplements. Upon request for consent, the District Director will forward Form FmHA 465–1, the borrower's case folder, and any other pertinent information to the State Director.

(i) Chattel security may be released from a chattel mortgage by use of Form FmHA 460–1, "Partial Release," or other approved form, and from a security interest under the Uniform Commercial Code by use of Form FmHA 462–12, "Statements of Continuation, Partial Release, Assignment, Etc." Satisfaction or termination of chattel security instruments will be accomplished following the guidance of Subpart A of Part 1962 of this Chapter.

(ii) Real estate security may be released by use of Form FmHA 460–1 or other form approved by OGC. Satisfaction or termination of real estate security instruments when the FmHA debt has been paid in full or satisfied by debt settlement action will be accomplished with the use of Form FmHA 460–4, "Satisfaction."

(iii) Any consent which would result in the FmHA loan account being paid in full will be subject to the prepayment provisions of § 1965.90 of this subpart as applied to RRH, RCH, and LH loans.

§ 1965.78 [Reserved]

§ 1965.79 Subordination.

(a) *General policies.* The State Director is authorized to approve requests for subordination of LH, RRH or RCH loans according to this section, if the total debt against the security after the transaction does not exceed the State Director's loan approval authority for the type of loan involved. Subordinations by the State Director will only be considered for individual LH borrowers on farm tracts, multiple housing loans on nonfarm tracts to obtain construction financing, and in those cases where FmHA loan funds are unavailable or the funds can be provided from the private sector at competitive or less costly rates than those offered by FmHA. All other subordination requests, and those exceeding the State Director's approval authority limit must be submitted to the National Office for prior authorization to approve. Each request for subordination will be made on Form FmHA 465–1. The District Director will forward a properly completed and executed copy of the form to the State Director with a memorandum containing any needed information to justify approval or disapproval of the request.

(b) *Conditions of approval.* Subordination of the FmHA lien will only be authorized when it will enable the present borrower to permit another creditor to refinance, extend, reamortize, or increase the amount of a prior lien, or place a lien ahead of the FmHA lien. When the prior lien is being increased by an amount which exceeds normal transaction costs or a new prior lien is being placed against the security, an FmHA official authorized to make appraisals for the type of project involved will supplement the present appraisal report by inserting in the "Remarks" section information as to the market value of the security after the transaction if the appraisal is less than one year old. If the appraisal is more than one year old, a new appraisal as required by Subpart B of Part 1922 of this chapter must be completed. The State Director may also request an appraisal at any time deemed appropriate. In all cases, the following conditions must be met:

(1) The FmHA multiple housing account must be current and the borrower must be capable of providing adequate management.

(2) The transaction must further the objectives for which the FmHA loan or loans were made and FmHA's debt must be adequately secured or will not be adversely affected.

(3) The proposed use of the funds will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the borrower's operation on a sound basis.

(4) The borrower is unable to refinance the FmHA loan on terms which can reasonably be expected to be met yet still meet the original intent of the program.

(5) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.

(6) The amount of the indebtedness against the security property, including the amount of the subordination, will not exceed its present market value.

(7) When an increase in the amount of the prior lien or a new prior lien is involved, subordination will be granted only when the funds will be used for the same purposes for which the loan of the same type is authorized; except all LH

loans on a farm tract may be subordinated for essential farm improvements and any other purpose for which an FmHA Farm Ownership loan can be made as described in § 1943.16 of Subpart A of Part 1943 of this chapter. LH loans will not be subordinated to provide operating capital or purchase chattels. If the LH loan is secured only by the LH units and the project site, the LH loan will only be subordinated for purposes for which an LH loan may be made.

(8) Any proposed development will be planned and performed according to Subpart A of Part 1924 of this chapter or in a manner directed by the other creditor which reasonably attains the objectives of Subpart A of Part 1924 of this chapter and is concurred with by the State Director.

(9) Funds to be used for development or enlargement of farm operations will be handled as prescribed for loan funds in Subpart A of Parft 1902 of this chapter except that, if the creditor will not permit the use of a supervised bank account, arrangements should be made to assure that funds will be spent for planned purposes and should be approved by the District Director before being released.

(10) In case of land purchase, FmHA will obtain the best lien obtainable on the land purchased.

(11) Subordinations need not cover the entire site. If a subordination is requested to permit an interim lender to advance construction funds, only the portion of the site scheduled for construction will be subordinated. If the entire farm tract has been taken as security for a LH loan, subordination of the lien on all property except the minimum adequate site, including necessary ingress and egress, on which the LH units are situated, may be authorized for any purpose consistent with the LH program regulators and paragraph (b)(5) of this section. For RHS loans, the prorated portion of the lien for the individual lots may be subordinated to permit construction of dwelling units utilizing conditional committments as authorized in the RHS program regulations.

(12) All subordination requests will be forwarded to OGC for review. The guidance of OGC should be obtained in the preparation of the documents necessary to effect the subordination.

(13) The subordination is for a specific amount.

(14) The proposed action will not so change the nature of the borrower's activities as to make it inelgible for appropriate loan program assistance.

(15) The subordination must not adversely impact the agency's ability to service the loan according to program regulations, and has been determined to be within the bounds of good judgement considering the intent, funding limitations, and respective program authorities.

(16) An agreement to provide notice of foreclosure must be obtained from any new prior lienholder as required in § 1807.2(f)(5) of Part 1807 of this chapter (FmHA Instruction 427.2 paragraph II F 5). As appropriate, any junior lienholders consent to the transaction and use of proceeds will be obtained prior to approval of the transaction.

§ 1965.80 [Reserved]

§ 1965.81 Severance agreements.

(a) *General policies.* Severance agreements or other instruments of similar effect under which a borrower may acquire through other credit, items such as laundry equipment, air conditioning untis, and basic houshold furnishings that will not become part of real estate security, may be approved by the State Director, provided:

(1) The transcation will not adversely affect the FmHA's security position and any additional obligations incurred will be within the borrower's repayment ability.

(2) The items covered by the severance agreement are needed in the successful operation of the security property.

(3) The financing arrangements are otherwise sound and proper.

(b) *Handling requests.* Requests will be made on Form FmHA 465–1. The District Director will forward to the State Director a properly completed and executed Form FmHA 465–1, any proposed severance agrrement, the case file, and specific recommendations regarding the request.

(c) *Consent and approval.* The State Director will indicate approval or disapproval on Form FmHA 465–1. The OGC will be requested to prepare or approve the form of severance agreement and issue any special instructions when necessary.

§ 1965.82 [Reserved]

§ 1965.83 Consent to junior liens.

(a) *General policies.* Borrowers will be strongly discouraged from giving junior liens to other creditors on the FmHA security property. Each request for consent to junior liens will be made on Form FmHA 465–1.

(b) *Conditions of approval.* The State Director may approve a junior lien if the request for the lien is authorized prior to the lien being placed against the property under the following conditions:

(1) The junior lien will enable the borrower to obtain additional credit to make needed improvements or repairs on the security property for purposes for which a loan of the same type involved could be made and funds in the reserve account have been depleted. Except, zero interest loans available from other Federal, State or local agencies, authorities, or commissions; and those from utility companies regulated by such governmental bodies, may be secured by a junior lien when the State Director determines it is in the best interest of the FmHA, borrower and tenants irrespective of the balance in the reserve account.

(2) The junior lien will improve the borrower's total financial condition or debt-paying ability as it relates to the multiple family housing project.

(3) The terms of the junior lien will not jeopardize the borrower's ability to repay the FmHA indebtedness and, in the case of RRH, RCH, and LH loans, will not result in increased rental rates for the project unless authorized according to Exhibit C to Subpart C of Part 1930 of this chapter.

(4) The junior creditor agrees in writing that foreclosure action under their lien will not be initiated before holding a discussion with the District Director and after giving a reasonable period of notice to FmHA, and any operating plans of the junior lien holder are consistent with FmHA requirements.

(5) Security for the junior lien must not include project income or revenue.

(6) No junior liens will be authorized in connection with a transfer of ownership.

(7) The total debt (including the outstanding FmHA loan balance) is within the State Director's approval authority.

(8) All other requests for consent to junior liens must be submitted to the National Office with complete comments and recommendations from both the District Director and State Director, and all of the borrower's case files. Such requests will be reviewed on a case-by-case basis and appropriate authorization given or withheld depending on the individual merits of the proposal and its compatability with the respective loan program requirement.

(9) When a junior lien is placed on any property without the prior consent of FmHA, the account will be serviced for liquidation with the guidance of OGC according to the security instruments. However, the State Director may request permission to post approve the junior lien by submitting a formal request to the National Office

provided he/she determines that all other conditions set forth in this section are met.

§ 1965.84 [Reserved]

§ 1965.85 Default and liquidation.

(a) *General.* Liquidation will be recommended only after all efforts by FmHA officials have failed to effect a satisfactory solution whereby the borrower will comply with its obligations under the note, mortgage, loan agreements or resolution, and all related security agreements and other instruments. Liquidation, whether by voluntary conveyance or foreclosure, will be handled in strict accordance with the provisions of Subpart A of Part 1955 of this Chapter. FmHA Form 465–11, "Accelerated Repayment agreement," *will not* be used in lieu of foreclosure for RRH, LH, or RCH loans unless specific prior written authorization is received from the National office.

(b) *Servicing delinquent accounts.* Delinquent muliple housing accounts will be serviced according to the respective program requirements and the following:

(1) The District Director will service delinquent accounts with guidance and assistance as necessary from the State Director. Every delinquent borrower will be serviced according to a routine established for the particular loan type by the State Director. The following sequential steps should be taken for each delinquent account:

(i) Each quarterly delinquency Report Code 616 and 621 or other official FmHA Report will be reviewed for accuracy by the State Director. The following delinquency classification system for multi-housing accounts may be used. The District Director will classify each account on the Report Code 621, as follows:

D1—Delinquent; a servicing plan or action has not been formulated
D2—Audit trail has been completed to verify amount delinquent
D3—Agreement has been made with borrower to become current within a set period
D4—Transfer or substitution of membership interests is in process to correct the delinquency
D5—Reamortization is in process
D6—Account has been accelerated
D7—Borrower is in bankruptcy
D8—Voluntary conveyance is planned
D9—A subsequent loan is planned to correct delinquency
D10—Other (litigation, abandonment before action taken, etc.)
C1—Current (D/O records show the account current)
C2—Audit trail completed that shows D/O or F/O error (double maturities, misapplication, etc.) and action taken has been taken to correct the error
C3—Account paid current since latest Report Code 616 or 621
C4—Other
X1—Property in inventory (from foreclosure, voluntary conveyance or bankruptcy)
X2—Credit Sale finalized
X3—Charge-off of account in process
X4—Transfer or reamortization closed; waiting for F/O to process
X5—Other

(ii) If the report is in error, the District Director will immediately contact the Finance Office and provide any information necessary to correct the report and/or remove the account from the delinquent status. These communications with the Finance Office should be directed to the Multiple-Family Housing unit. Before contacting the Finance Office, the District Director must complete a field audit of the account to be submitted with the inquiry.

(iii) If the report is accurate and a delinquency indeed exists, the District Director will immediately contact the borrower to determine the reason for the delinquency and will attempt to collect either in a lump sum or in additional monthly payments over a short period of time, usually not to exceed one year. This should include foregoing any cash return until the account is current.

(iv) Within 30 Days of receipt of the quarterly delinquency report, the District Director will submit to the State Director a detailed report with specific comments and recommendations for servicing each delinquent account. This report will classify the accounts and indicate which accounts are actually delinquent. Emphasis will be placed on performing delinquency servicing actions to reduce true delinquencies. The State Director will assist the District Director in developing a realistic servicing plan for each delinquent account. The State Director will prepare a statewide delinquency reduction plan annually and update it quarterly based on the delinquency reports and information provided by the District Directors. Appropriate consideration should be given to reamortizing, transferring, conveying or foreclosing accounts recognizing the willingness of the borrower to cooperate and comply with FmHA requirements and to meet the purposes for which the loan was made. Consideration should also be given to:

(A) Adequate budgeting of project income and expenses.

(B) Improving management and outreach.

(C) Implementing interest credit and/or rental assistance if the borrower and project qualify.

(D) Participating in the HUD Section 8 program for existing housing through the local Public Housing Agency (PHA).

(F) Obtaining an assignment of Project income.

(2) District Directors should be firm in dealing with the borrower or the borrower's representative. However, the management agent is not the party ultimately responsible for the loan, and it is therefore imperative that the borrower fully understand the consequences of the default. Courtesy, cooperation and sound judgment must be involved. If the delinquent account cannot be brought current within a reasonable period, steps should be taken according to Subpart A of Part 1955 of this chapter to protect the Government's interest.

(c) *Failure to maintain reserves.* A borrower's failure to maintain adequate reserves should be treated in a manner similar to delinquent accounts. The District Director should carefully monitor the required transfers to the reserve account. Borrowers who fail to make the required transfers or use reserve funds without prior FmHA authorizations should be carefully counseled. Demand should be made upon any deficiency, as appropriate, the District Director may request assistance from the State Director. As necessary to protect the Government's interests, assistance from OGC should be requested through the State Office.

(d) *Nonmonetary defaults.* Attempts to resolve nonmonetary defaults should be handled whenever possible at the District Office level with appropriate guidance and assistance from the State Office. The State Director should counsel with OGC, to determine the appropriate servicing actions in those cases where nonmonetary defaults cannot be resolved at the District Office level. These actions may include liquidation of the account.

(e) *Liquidation.* Liquidation of all multiple-family type loans will be handled according to the applicable protions of Subpart A of Part 1955 of this chapter. In cases of forced liquidation where the acceleration notice has been delivered and the borrower has willfully failed to make the required loan payments, any outstanding interest credit agreement will be cancelled after the appeal period prescribed in Subpart B of Part 1900 of this chapter has expired; eligible tenants are not occupying the units; and/or the borrower is not collecting the approved rents or transmitting the required payments to FmHA. However, the rental assistance agreement will not be cancelled until the foreclosure action

has been completed and the redemption period has expired according to paragraph XIV B 5 of Exhibit E of Subpart C of Part 1930 of this chapter. In no cases will RA be renewed during the redemption period. In all liquidation cases, the State Director will be responsible for the final decision to liquidate the account based upon an opinion from the OGC and the following information supplied by the District Director:

(1) The specific recommendations of the District Director on the method of carrying out the liquidation,

(2) The case file and any other pertinent information developed in support of the accusations,

(3) A summary of FmHA efforts to work out an acceptable solution short of liquidation,

(4) A current appraisal of the security property as required by Subpart B of Part 1922 of this chapter will be completed by an FmHA official authorized to make that particular type of appraisal and an estimate of the net amount that may be realized from the sale of the assets,

(5) The most recent balance sheet or financial statement from the borrower,

(6) A current statement of account from the Finance Office, and

(7) A problem case report using Form FmHA 465–7, "Report on Real Estate Problem Case," or Exhibit A to Subpart A of Part 1955 of this chapter as appropriate.

§ 1965.86 [Reserved]

§ 1965.87 Miscellaneous security.

(a) *Membership liability agreements.* As a loan approval requirement, some borrowers may have special agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or they may have instruments which are commonly referred to as individual liability agreements which are usually assigned to and held by the FmHA as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. These security and liability instruments will be serviced in a manner indicated by the agreements to adequately protect the interest of the FmHA. The State Director will develop servicing actions with the assistance of OGC

(b) *Other security.* Other security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest will be serviced according to acceptable practices in the respective states. The State Director should develop any special servicing actions with the assistance of OGC to protect the interest of FmHA. Evidence of the security will be filed in the loan docket in the District Office. A notation will be made on the Management System Card showing that the security has been retained. When this other security is taken, a plan for servicing it should be developed by the approval official and included as an approval condition at the out set.

§ 1965.88 [Reserved]

§ 1965.89 Obtaining additional security for inadequately secured loans.

(a) *General policies.* As a general policy, additional security for multiple housing loans should not be needed or taken to protect the interest of FmHA. However, the State Director may authorize taking additional security in the form of real estate or other security as described in § 1965.87(b) of this subpart when the additional security is needed to enhance the chances that the FmHA will not suffer a loss and any of the following conditions exist:

(1) The account is behind schedule.

(2) The property has not been properly managed or maintained.

(3) There is serious doubt that the borrower can carry out the objectives of the loan.

(b) *Conditions of approval.* In cases where the District Director determines that the conditions as stated in paragraph (a) of this section exist, the borrower's case file will be forwarded to the State Director with a memorandum providing the following information:

(1) The facts which justify the taking of additional security.

(2) A conservative estimate of the market value of any real estate to be mortgaged; however, it will not be necessary to make a formal appraisal of the property to be mortgaged unless determined necessary by the State Director.

(3) A brief description of any existing liens on the additional security including the repayment terms and the unpaid balance.

(4) The name of the title holder and how title to the property is held. Title evidence need not be required.

(5) A plan for servicing the additional security to be taken.

(6) A description of the other servicing alternatives available to assure that the objectives of the loan will be met and to protect the Government from loss.

(c) *Processing.* The guidance and assistance of OGC will be obtained whenever additional security is taken. The highest quality security available will be taken whenever additional security is considered.

§ 1965.90 Payment in full.

(a) *General.* Payment in full of a loan will be handled according to Part 1866 of this chapter (FmHA Instruction 451.4), subject to any applicable prepayment provisions in the respective program regulations, loan agreements, or mortgages. For RRH, RCH, and LH loan prepayments, the borrower must submit a written request to prepay the loan(s) to the District Director at least 60 days prior to actually making the offer to repay.

(b) *Prepayment of loans approved prior to December 21, 1979.* For any RRH, RCH, or LH loans approved prior to December 21, 1979, the District Director will accept prepayment or graduation when he/she can assure that the following conditions are met:

(1) The borrower has been advised that any valid existing leases must be honored until they expire or are terminated under the provisions of the lease.

(2) Upon acceptance of the offer to prepay, the borrower wil give written notice of the approval to each tenant. This notice should include a statement advising the tenants of their priority rights for occupancy in other FmHA financed projects if they are displaced or if the prepayment has caused them to experience rent overburden as defined in paragraph XIII A 4 of Exhibit B to Subpart C of Part 1930 of this chapter. The tenants should be advised in the notice that they have six (6) months from the date of prepayment to exercise their priority right by applying for a letter of priority entitlement from the District Director. This information should be posted within the building(s) upon notification of approval for at least 6 months. Exhibit A of this Subpart is provided as guide for the District Director's use.

(3) Upon receiving an application submitted within six (6) months of the prepayment by a tenant displaced as a result of prepayment, the District Director will provide to the affected tenant a letter of priority entitlement to all other FmHA RRH projects in the area. This area includes FmHA projects within a reasonable commuting distance of the affected project. The letter of priority entitlement should include a statement that the affected tenant has thirty (30) days to apply in writing with other FmHA RRH projects in the area. The letter of priority entitlement will enable those tenants to o e to the top of any waiting list in those projects. A list of FmHA RRH projects in the area will

be included as part of the letter of priority entitlement. Eligible tenants in LH projects will also be advised of other available LH projects in the area.

(4) Provide the State Director with a detailed report in the format set forth in paragraph (d) of this section. This report must be provided upon acceptance of the offer to prepay.

(c) *Prepayment of loans approved on or after December 21, 1979.* For any RRH, RCH, or LH loan approved on or after December 21, 1979, or which has subsequently been made subject to the prepayment restrictions of Section 502 of Title V of the Housing Act of 1949 as amended:

(1) The District Director may accept prepayment or graduation with the prior concurrence of the State Director provided all of the following conditions are met:

(i) The written notice requirement set forth in paragraph (b)(2) of this section is satisfied.

(ii) A report prepard according to paragraph (d) of this section is provided to the State Director with sufficient detailed information regarding occupancy and need so that the State Director can examine the offer, its likely consequences and determine that there is no longer a need for the housing.

(2) The offer may not be accepted by the District Director when the State Director determines:

(i) That due to a change in the use of the housing and related facilities, or to an increase in rental or other charges likely to occur as a result of prepayment, the low and moderate income and elderly or handicapped tenants occupying the assisted housing at the time of the offer or request cannot reasonably be expected to remain in occupancy for such period. However, in spite of this determination, the offer or request to prepay may be processed *only if* affordable, decent, safe, sanitary and nonassisted alternative housing, or vacant assisted units for which there is no waiting list, is available to the tenants who are likely to be displaced as a result of the change or increase, and

(ii) In the case of housing or related facilities containing more than 10 dwelling units, that the changes likely to occur as a result of the prepayment will have a substantial adverse effect on the supply of affordable, decent, safe, and sanitary housing available to low- and moderate-income and elderly or handicapped persons in the area in which the housing and related facilities are located.

(3) If the State Director does not accept the offer to prepay, the borrower must be notified of the reasons why the request is being denied. The State Director or designee should be available to meet with the borrower to discuss the alternative to prepayment, such as, transferring the project to an eligible transferee according to § 1965.65 of this subpart, providing new management for the property or changing entity membership according to § 1965.63 of this subpart. When prepayment is not authorized:

(i) The District Office may not accept the prepayment payment unless the State Director concurs.

(ii) The loan will be serviced according to § 1965.85 of this subpart in the event that the borrower is uncooperative and fails to comply with FmHA requirements.

(4) For transfers outside the program, if the State Director makes an affirmative determination under paragraph (c)(1) of this section then prepayment may be accepted only if the following clause is included in the deed or other document of conveyance.

The purchaser agrees that the housing located on this property will be used only as authorized under section 514 of the Housing Act of 1949, as amended, and FmHA regulations then extent until ——— (insert date, 15 years for unsubsidized or 20 years for subsidized loans from the date the last loan on the project was closed). A tenant may seek enforcement of this provision as well as the United States. No person occupying the housing shall be required to vacate during such period because of early repayment.

(5) If the borrower wishes to prepay and operate the property within the objectives of the program or transfer the loan to a transferee that will keep the housing within the program, a document containing the restrictive language that appears below must be executed. (In the case of transferees, the restrictive language will be inserted in the Form FmHA 460–5 or 9.) In the case of borrowers prepaying but not transferring the property, the following restrictive language will be inserted in the deed of release and filed for records.

The borrower or any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 514 or 515 of Title IV of the Housing Act of 1949, as amended, and FmHA regulations then extent during the —— (15 years for unsubsidized and 20 years for subsidized loans) year period beginning —— (the date the last loan on the project is closed). The borrower also agrees that no person occupying the housing shall be required to vacate prior to the close of such —— (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower will be released from these obligations only when the Government determines that there is no longer a need for the housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

(6) The District Director will provide the State Director with updated report in the format set forth in paragraph (d) of this section upon accepting the offer to prepay.

(d) *Prepayment report.* Immediately upon receiving information regarding the prepayment of any RRH, RCH, or LH loans the District Director will send a report on each prepayment case to the State Director for indefinite retention containing the following information:

(1) Date of initial loan approval.

(2) Type of borrower entity and plan of operation.

(3) The number of units in the project.

(4) The number of eligible tenants presently occupying the units.

(5) The estimated replacement cost per unit.

(6) The estimate of the number of households that will be displaced as a result of prepayment.

(7) The estimated relocation cost of the households being displaced.

(8) An indication of the displaced households' ability to pay relocation costs.

(9) The income range of the tenants presently in the project.

(10) The number of elderly tenants in the project.

(11) The present and projected rents.

(12) The number of Section 8 or RA units, and whether Section 8 will continue after prepayment.

(13) Any cause of displacement other than rent.

(14) The availability of other vacant units in the area.

(e) *Final payment and release.* Final payments and the release of security will be handled according to Subpart B of Part 1951 of this Chapter, Subpart A of Part 1962 of this chapter, and Part 1866 of this chapter (FmHA Instruction 451.4), and appropriate program requirements and regulations. In all cases, reference to County Supervisor shall be construed to mean District Director when applied to multiple family type borrowers. The District Director will notify the bonding company in writing that the government no longer has an interest in the fidelity bond and will release the FmHA's interest in insurance policies according to the applicable provisions of Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1). FmHA's interest in any other security will also be released in the manner prescribed by the State Director with the assistance of OGC as necessary.

§ 1965.91 Servicing loans in formerly eligible areas.

All servicing actions contained in this Subpart are authorized without regard to whether the area may no longer be defined as an eligible area.

§ 1965.92 Information to be provided to IRS on RRH transfers, voluntary conveyances, foreclosures, and 100% membership changes.

State Officers are to provide information to the National Office on RRH transfers, voluntary conveyances and foreclosures that were finalized (the deed recorded) subsequent to (the effective date of this regulation). In addition, information is to be provided on changes of membership interests that are covered under § 1965.63 of this subpart which result in a 100 percent change in the entity membership, such as, beneficial interests, partnership interests and stock transfers. Exhibit B to this subpart must be completed for each project affected with particular attention given to supplying the Employer Identification and/or the Social Security numbers of the parties involved. Field offices should not contact the borrowers or transferees for information that is not otherwise available from the casefiles, except in the case of missing Taxpayer Identification numbers. Exhibit B will be prepared when the servicing action is completed and sent to the National Office.

§ 1965.93 [Reserved]

§ 1965.94 State supplements.

State Supplements will be prepared with the advice of OGC as necessary to comply with State laws and to provide guidance to the District Director in the servicing actions required. All State Supplements, unless specifically authorized by particular subsections of this subpart must be submitted for prior National Office approval before implementation. Requests for approval must include complete justification, citations of State law, and appropriate legal opinions from the respective Regional Attorney.

§ 1965.95 [Reserved]

§ 1965.96 Nondiscrimination.

Each instrument of conveyance for any transfer or foreclosure sale of real property subject to Title VI of the Civil Rights Act of 1964 will contain the following convenant: "The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations as issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended or for so long as the purchaser owns it, whichever is later."

§ 1965.97 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirement of this Subpart not inconsistent with the authorizing statute if the Administrator finds that application of the requirement would adversely affect the interest of the Government or the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data which demonstrates the adverse impact, identifies the particular requirement involved, shows proper alternative courses of action, and identifies how the adverse impact will be eliminated.

§§ 1965.98–1965.100 [Reserved]

Exhibit A—Notice of Prepayment

To: Tenants of (Project Name).

On (Date), Farmers Home Administration (FmHA) accepted payment in full of the loan which financed your rental unit. As a condition of acceptance, you are hereby advised that the new owners will be bound by the terms of your existing lease until it expires or is terminated in accordance with the provisions of such lease.

You are further advised that you may have priority rights for occupancy in other FmHA financed projects within a reasonable commuting distance from your present location if you are displaced without cause because any subsequent increase in rents causes you to experience rent overburden. You have six (6) months from the above date to exercise this priority right. You may do this by applying to my office for a letter of priority.

If you have any questions you may contact my office at:

_____

_____

_____

(Signature) _____

Exhibit B—Information on 515 Rural Rental Housing Transfers, Voluntary Conveyances, Foreclosures, and 100% Membership Changes

I. *Type of Action:*
Transfer ——, Foreclosure ——, Voluntary Conveyance ——, 100% Membership Change ——.

II. *Project Information:*
Project Name: _____
Location: _____
FmHA Case Number: _____

III. *Borrower Information:*
Borrower (Transferor) Name: _____
Address: _____

_____
Taxpayer Identification No. _____
Type of Borrower Entity: Corporation ——, Limited Partnership ——, Individual ——, General Partnership ——, Trust ——, Other ——.
Principal Name: _____
Address: _____
Taxpayer Identification No. _____
Principal Name: _____
Address: _____
Taxpayer Identification No. _____

IV. *Loan Information:*
Loan amount(s) and Date(s) received:
$—— _____
$—— _____
Loan balance(s) at disposition and Date Title Change Recorded:
$—— _____
$—— _____

V. *Transferee Information:*
Transferee Name: _____
Address: _____

_____
Taxpayer Identification No. _____
Type of transferee entity: Individual ——, Corporation ——, Other ——, Limited Partnership ——, General Partnership ——, Trust ——.
Principal Name: _____
Address: _____
Taxpayer Identification No. _____
Principal Name: _____
Address: _____
Taxpayer Identification No. _____

VI. *Membership Changes:* (complete for 100% changes in membership only):
Identify the interest that has been changed or substituted:

_____
Principal Name: _____
Address: _____
Taxpayer Identification No. _____
Principal Name: _____
Address: _____
Taxpayer Identification No. _____

VII. *Transfer Information:*
Sales Price $——, Cash paid at sale $——.
Assumption Amount $——, To be paid on terms $——.
Equity $——, No. of years on note ——.

VIII. *Appraisal Information:*
FmHA Appraised Value $_____
Date of Appraisal _____

Instructions

I. Indicate the type of action by checking the appropriate box.

II. Insert the project name, location, and the FmHA case number.

III. Insert the names, addresses and the Taxpayer Identification numbers (Employer Identification or Social Security numbers) of the borrower entity and the principals (i.e., general partner(s), co-owners, major stockholders, etc.). Attach a list of additional principals, if necessary. Indicate the type of borrower entity by checking the appropriate item.

IV. Insert the loan amount(s) and the date(s) received. In cases where the project

was previously transferred, insert the assumption amount(s) and the dates approved. The loan amount(s) at disposition and the date the title change was recorded must be indicated. The title change date may not be the same as the transfer closing date or the date the deed of conveyance was accepted. In the case of a membership change, delete "Date Title Change Recorded" and add the effective date of the change.

V. For transfers only, insert the names, addresses and the Taxpayer Identification numbers (Employer Identification or Social Security numbers) of the transferee entity and the principals (i.e., general partners, co-owners, major stockholders, etc.). Attach a list of additional principals, if necessary. Indicate the type of transferee entity by checking the appropriate item.

VI. Identify the interest that has been changed or substituted within the borrower entity and the percent of the change. Insert the names, addresses and the Taxpayer Identification numbers for those who have been substituted into the entity through a stock transfer, substitution of partners, assignment of beneficial interest in a trust, etc.

VII. Indicate the sales price, the loan assumption amount and the equity payment to the transferor. When there is an equity payment, indicate whether it was in cash at closing, on terms secured by a note, or a combination of both.

VIII. Insert the market value of the project as indicated on the most recent FmHA appraisal. Indicate the date of the appraisal. This information should be included for transfer, foreclosures and voluntary conveyances.

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: January 9, 1984.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 84-6504 Filed 3-9-84; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant and Health Inspection Service

9 CFR Part 94

[Docket No. 84-102]

Change in Disease Status of the Dominican Republic Because of African Swine Fever and Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the importation into the United States of swine, pork, and pork products by removing the Dominican Republic from the list of countries regulated because of African swine fever and by adding the Dominican Republic to the list of countries in which hog cholera is not known to exist. It has been determined that neither African swine fever nor hog cholera exists in the Dominican Republic. The adoption of the proposal would allow the importation of swine from the Dominican Republic and relieve restrictions on the importation of pork and pork products from the Dominican Republic.

DATES: Written comments must be received on or before April 11, 1984.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

African Swine Fever

The regulations in 9 CFR Part 94 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including African swine fever (ASF) and hog cholera.

Section 94.8 of the regulations restricts the importation into the United States of pork and pork products from listed countries in which African swine fever exists or the Administrator of the Animal and Plant Health Inspection Service has reason to believe the disease exists because of the following factors:

1. When a country allows the importation of host animals, pork or pork products or vectors of the disease from a country affected with African swine fever under conditions less stringent than those prescribed for importing host animals, pork or pork products or vectors of the disease into the United States from a country affected with African swine fever; or

2. When a country allows the movement or use of African swine fever virus or cultures under conditions less stringent than those prescribed for similar movements or use into or within the United States; or

3. The proximity of a country to another country or countries with known outbreaks of African swine fever; or

4. A country's lack of a disease detection, control or reporting system capable of detecting or controlling the disease and reporting it to the United States in time to allow this country to take appropriate action to prevent the introduction of African swine fever into this country; or

5. Any other factor or circumstance found to exist which constitutes a risk of introduction of the disease into the United States.

The restrictions in § 94.8 on the importation of pork and pork products from listed countries are designed to ensure that the pork or pork products are cooked or heated sufficiently to destroy organisms capable of spreading ASF.

Because of the outbreak of ASF diagnosed on July 5, 1978, the Dominican Republic was added to the list of countries regulated because of ASF on July 11, 1978 (43 FR 30269). That same year the government of the Dominican Republic began a swine eradication program with technical and financial support from Veterinary Services, the Agency for International Development, the Food and Agriculture Organization of the United Nations, and others. The eradication program included total slaughter of the national swine population, and cleaning and disinfection of farm premises where the ASF virus was confirmed or suspected. The last case of ASF in the Dominican Republic was diagnosed in August 1980.

Based on information acquired by officials of the United States Department of Agriculture (USDA) participating in the eradication effort, data furnished to the Department by the Dominican Republic, and an evaluation of the five factors referred to above, it has been determined that there is no reason to believe that ASF exists in the Dominican Republic. Therefore, this document proposes to remove the Dominican Republic from the list of countries in which ASF exists or is reasonably believed to exist.

Hog Cholera

Section 94.9 of the regulations restricts the importation into the United States of pork or pork products from countries where hog cholera is known to exist. The restrictions are designed to ensure that the pork or pork products are cooked, heated, or cured and dried sufficiently to destroy organisms which could spread hog cholera. Section 94.10 of the regulations, with certain exceptions, prohibits the importation of swine which orginate in or are shipped from or transit any country except those countries listed in that section. These sections indicate that the disease is known to exist in all countries of the world except for certain listed countries. Prior to the effective date of this

document, the lists did not include the Dominican Republic.

Based on information acquired by officials of the USDA participating in the eradication effort and data furnished to the Department by the Dominican Republic, it has been determined that hog cholera no longer exists in that country. Hog cholera was eradicated in the Dominican Republic as a result of the eradication program targeted against ASF.

Therefore, it is proposed to add the Dominican Republic to the lists of countries in §§ 94.9 and 94.10 in which hog cholera is not known to exist.

Effect of Adoption of This Proposal

Accordingly, the effect of the adoption of this proposal would be to allow the importation of swine from the Dominican Republic and to relieve restrictions on the importation of pork and pork products from the Dominican Republic.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have an annual effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A review of the pork production and pork consumption data for the Dominican Republic for 1960–1980 does not indicate any international trade in swine, pork, or pork products. The pork and pork products produced in the Dominican Republic during that time were for local consumption. Further, the entire swine population of the Dominican Republic was eradicated during 1979 and 1980. Repopulation of swine began in 1980. By 1983 the swine population of the Dominican Republic had reached 26 percent of the population during the 1977–78 period. The repopulation effort will continue by natural additions to the herd. It will take several years for the swine population to reach the pre-eradication level. Even when the swine population reaches the pre-eradication level it is anticipated that if the proposal is adopted, any imports into the United States of swine, pork, or pork products from the Dominican Republic would be negligible.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291 and the Department of Agriculture has waived the requirements of Secretary's Memorandum 1512–1.

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

Alternatives

The only alternative to these amendments is not to amend the regulations to indicate that neither ASF nor hog cholera exists in the Dominican Republic. However, this alternative is not proposed because, as indicated above, it has been determined that neither ASF nor hog cholera exists in the Dominican Republic.

List of Subjects in 9 CFR Part 94

Aninal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, it is proposed to amend 9 CFR Part 94 as follows:

§ 94.8 [Amended]

1. In § 94.8, the introductory material would be amended by removing "Dominican Republic".

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) would be amended by inserting "Dominican Republic," between "Denmark," and "Finland" both times they appear.

§ 94.10 [Amended]

3. Section 94.10 would be amended by inserting "Dominican Republic," between "Denmark," and "Finland."

Authority: Sec. 2, 32 Stat. 792, as amended; sec. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 6th day of March 1984.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84-6505 Filed 3-11-84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R-0511]

Bank Holding Companies and Change in Bank Control; Expanded List of Permissible Nonbanking Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: On May 19, 1983, the Board proposed a revision of Regulation Y, its regulation implementing the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*), and the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). The **Federal Register** notice accompanying the proposed revision of Regulation Y requested suggestions for new nonbanking activities that should be added to the Regulation Y list of activities permissible generally for bank holding companies. In this notice the Board is seeking public comment on the addition of a number of these suggested new activities to the Regulation Y list. Addition of any of these activities to the list would facilitate the processing of applications by bank holding companies to engage in the activity.

DATE: All comments should be received by the Board by May 2, 1984.

ADDRESS: All comments, which should refer to Docket No. R–0511, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B–2223, 20th & Constitution Avenue, N.W., Washington D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Associate General Counsel, (202/452–3430), Bronwen Mason Chaiffetz, Senior Counsel, (202/452–3564), or Carl V. Howard, Senior Counsel, (202/452–3786), Legal Division; David Kulig, Senior Counsel, (202/452–2347), Regulatory Improvement Project; Don E. Kline, Associate Director, (202/452–3421), or Sidney M. Sussan, Assistant Director, (202/452–2638), Division of Banking Supervision and

Regulation; and Stephen A. Rhoades, Economist, (202/452-3906), or Paul R. Schweitzer, Economist, (202/452-2918), Division of Research and Statistics.

SUPPLEMENTARY INFORMATION: The Bank Holding Company Act of 1956, as amended ("BHC Act"), generally prohibits a bank holding company (*i.e.*, a company that controls one or more banks) from engaging in nonbanking activities or acquiring voting securities, of a company engaged in nonbanking activities. Section 4(c)(8) of the BHC Act provides an exception to this prohibition for a bank holding company to obtain the Board's prior approval to engage in activities, or to acquire shares of a company engaged in activities, that the Board determines, after notice and opportunity for hearing, to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

On May 19, 1983, the Board proposed for public comment a revision of Regulation Y, its regulation implementing the BHC Act. In response to the proposal, the Board received a number of suggestions for additional new nonbanking activities that should be added to the Regulation Y list of activities permissible for bank holding companies. In this notice, the Board seeks public comment on a number of the activities suggested.[1] The notice includes 1) activities that the Board previously has approved by order in individual cases or that are similar to such approved activities; and 2) activities that have not previously been considered by the Board and are not the subject of pending Congressional consideration. This notice also seeks comment on the scope of insurance activities that are permissible under the authority of Title VI of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320, 96 Stat. 1469, 1536-38) ("Garn-St Germain Act").

In determining whether an activity is permissible for bank holding companies under section 4(c)(8) of the BHC Act, the Board must find that (1) the activity is closely related to banking or managing or controlling banks, and (2) it is a proper incident thereto.

In considering whether an activity is closely related to banking, the Board has found it useful to refer to three criteria set forth in judicial opinions:[2] (a) Whether banks generally have provided the proposed service; (b) whether banks have generally provided services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed service; or (c) whether banks generally provide services that are so integrally related to the proposed service as to require the provision of the service in a specialized form. The Board also may consider other factors that an applicant may advance to demonstrate a reasonable or close connection or relationship of the activity to banking or managing and controlling banks.[3]

With respect to determining whether an activity is a proper incident to banking, section 4(c)(8) of the BHC Act provides that the Board must consider whether performance of the activity by bank holding companies can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.[4] The Act states that public benefits include greater convenience, increased competition, and gains in efficiency. Adverse effects include undue concentration of resources, decreased or unfair competition, conflicts of interests, and unsound banking practices.

The suggestions for new nonbanking activities often did not include a description of the activity proposed. Accordingly, in this notice the Board has provided a brief description of each activity. Commenters are specifically asked to comment on the accuracy and adequacy of the proposed description of each activity.

Comment is also requested on whether each activity is closely related to banking or incidental to the performance of such an activity under the judicially-formulated criteria or other relevant criteria. Comments on whether an activity is closely related to banking should include the specific facts, examples, and legal arguments on which the commenters base their opinions. In addition, comments should provide data and information pertinent to the activity, including the identity and size of industry participants, trends in profitability, merger and failure rates, and the sources for such information and data.

With respect to whether a proposed activity is a proper incident to banking, some of the issues raised by a particular activity have been identified in this notice. Commenters are specifically requested to comment on the issues identified by the Board, as well as any other issues that are relevant under the proper incident test of section 4(c)(8) of the BHC Act. For those activities for which potential adverse effects may exist, commenters are requested to propose methods of reducing or eliminating the potential for the occurrence of such adverse effects. Comments regarding the proper incident test also should include specific facts, examples, and legal arguments concerning the issues. Although the Board has not specifically proposed limits on any of the activities, to address issues raised by the activity, based on the comments and other facts of record, limitations may be incorporated by the Board when taking final action to add an activity to the Regulation Y list.

Proposed Nonbanking Activities

The Board is seeking public comment on whether the list of activities permissible for bank holding companies in § 225.25 or Regulation Y (49 FR 794 (1984)), should be amended to add the following activities:

1. *Commodity trading advisory services.* Commenters suggested that bank holding companies be permitted to provide commodity trading advisory services. As defined by the Commodities Futures Trading Commission, commodity trading advisory services involve the provision of advice, counsel, publications, written analyses and reports relating to the purchase and sale of commodities for future delivery on or subject to the rules of a contract market. The Board seeks comment on whether this activity should be limited to the provision of advice only with respect to such financial commodities for which the Board has authorized future commission merchant ("FCM") activities.

2. *Check guaranty services.* Authorizing acceptance by subscribing merchants of personal checks tendered by the merchant's customers in payment for goods and services, and purchasing a validly authorized check from the merchant in the event the check is not subsequently honored. The Board previously has determined that this activity is closely related to banking and a proper incident thereto in connection with a particular application, but the activity was not added to the Regulation

[1] In separate **Federal Register** notices the Board sought public comment on (i) increasing from $1,000 to $10,000 the maximum face amount of money orders permitted to be issued and sold by bank holding companies (48 FR 52977 (Nov. 23, 1983)); and (ii) deleting the requirement in connection with permissible credit insurance underwriting that a bank holding company reduce the insurance premiums charged (48 FR 53125 (Nov. 25, 1983)). These changes also were suggested by the commenters on the proposed revision of Regulation Y.

[2] *E.g., National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975).

[3] *Alabama Association of Insurance Agents* v. *Board of Governors*, 533 F.2d 224 (5th Cir. 1976), *cert. denied*, 435 U.S. 904 (1978).

[4] In its evaluation of an application by a specific bank holding company to engage in a listed activity, the Board also must determine whether the performance of the activity by that bank holding company meets the "proper incident" criteria. *Alabama Association of Insurance Agents, Supra.*

Y list at that time. (*Barnett Banks of Florida*, 65 Federal Reserve Bulletin 263 (1979).) One issue raised by this activity on which comment is requested is whether conditions should be imposed on the performance of the activity to limit the liability of the bank holding company resulting from the purchase of dishonored checks.

3. *Consumer financial counseling.* Providing advice to consumers on individual financial matters, including debt consolidation, applying for a mortgage, bankruptcy, budget management, tax planning, retirement and estate planning, insurance, and portfolio management and investment planning. This service is usually limited to counseling for a fee, including educational courses and seminars, and does not involve the sale of specific products or investments.

The Board previously has found consumer financial counseling services to be closely related to banking in connection with a particular application. (*Citicorp* (*Citicorp Person-to-Person Financial Centers*), 65 Federal Reserve Bulletin 265 (1979).) The Board notes that financial counseling is permissible for service corporations of Federal savings and loan associations ("S&Ls").

4. *Armored car services.* Providing fully-insured transportation of cash, securities, and valuables; primarily, collecting currency and checks from commercial customers and transporting and depositing these collections at financial institutions. Armored car services may also include bank transfers, coin wrapping, change delivery, mail delivery, payroll check cashing, servicing of automated teller machines, and leasing safes to commercial customers.

Armored car services were proposed by the Board in 1971 together with courier services (transporting checks, commercial paper, and similar documents, excluding cash and bearer negotiable instruments) for addition to the Regulation Y list. While the Board added courier services to the list in 1973, it did not take final action on the armored car services proposal. (38 FR 32126, and 59 Federal Reserve Bulletin 892 (1973).) One issue raised by this activity on which comment is requested is whether conditions should be imposed on performance of the activity to limit the liability of the bank holding company.

5. *Tax planning and tax preparation.* Tax planning services involve providing advice and strategies designed to minimize tax liabilities. At the corporate level, the service includes analyses of the tax implications of mergers and acquisitions, portfolio mix, specific investments, previous tax payments, and year-end tax planning (which involves projecting expected tax liabilities and balancing these with expected cash-flow). For the individual, the service includes analyses of the tax implications of retirement plans, estate planning, and family trusts. One issue raised by this activity on which comment is requested is whether corporate tax planning should be regarded as management consulting, an activity not permissible under the regulation.

Tax preparation services involve preparation of tax forms, and advice concerning how the client should file in order to minimize the tax liability based on records and receipts supplied by the client. The Board notes that service corporations of Federal S&Ls are permitted to prepare tax returns for individuals and non-profit organizations.

6. *Operating a collecting agency and credit bureau.* Collection agency activities include collecting overdue accounts receivable, either retail or commercial, generally for a contingent fee based on a specified percentage of the amount collected. Credit bureau activities include maintaining files on the past credit history of certain borrowers and providing that information for a fee to a credit grantor who is considering a borrower's application for credit.

In addition, the Board is seeking public comment on whether to amend certain activities specified in the Regulation Y list (§ 225.25 of Regulation Y, 49 FR 794 (1984)), to include the following activities:

1. *Insurance underwriting and agency activities (§ 225.25(b) (8) and (9)).* Title VI of the Garn-St Germain Act amended section 4(c)(8) of the BHC Act to specify the types of insurance activities in which bank holding companies may engage and to limit some of those that the Board had found to be permissible under Regulation Y. The recent revision of Regulation Y (49 FR 794, January 5, 1984) did not amend the insurance activities provision of the regulation, but the Board stated that it was reviewing the issues raised by the Garn-St Germain Act provisions and that it would amend Regulation Y to reflect the resolution of these issues. A number of commenters encouraged the Board to amend the regulation to reflect the new statutory provisions. Accordingly, the Board proposes to amend § 225.25(b) (8) and (9) of Regulation Y (as revised) to delete those provisions entirely and to substitute provisions permitting the following insurance activities:

A. Acting as principal, agent or broker for insurance directly related to an extension of credit by a bank holding company or any of its subsidiaries, where such insurance is limited to assuring the repayment of the outstanding balance due on a specific extension of credit by such bank holding company or subsidiary in the event of death, disability or involuntary unemployment of the debtor. Since the sale of insurance must be related to an extension of credit under this provision of the Garn-St Germain Act, the sale of insurance related to the provision of "other financial services" as provided in § 225.25(b)(8)(i)(b) of Regulation Y, is no longer permitted. An "extension of credit" would include loans which are purchased, but not those loans that are merely being serviced. Comment is requested whether an extension of credit would include a lease.

The Board believes that the enactment of this provision in the Garn-St Germain Act warrants reexamination of whether underwriting home mortgage life insurance is closely related to banking. Home mortgage life underwriting involves underwriting the repayment of the unpaid balance of a home mortgage loan in the event the insured borrower dies or is disabled before the mortgage is paid in full. Prior to the Garn-St Germain Act, the Board declined to publish notice of this activity on the basis that it is not closely related to banking, because this type of insurance is more similar to general life insurance that to credit life insurance. (*BankAmerica Corporation* (*BA Insurance Company*), 66 Federal Reserve Bulletin 660 (1980).) The Board believes that home mortgage life underwriting may be permissible under subparagraph (A) of section 601 of the Garn-St Germain Act, and requests comment on whether it should be included in the Regulation Y list.

B. Acting is principal, agent or broker for insurance directly related to an extension of credit by a finance company that is a subsidiary of a bank holding company, provided (1) such insurance is limited to assuring repayment of the outstanding balance on an extension of credit by such finance company of such bank holding company in the event of loss or damage to any property used as collateral for the extension of credit; and (2) the extension of credit is not more than $10,000, or $25,000 in the case of an extension of credit to finance the purchase of, and that is secured by, a residential manufactured home. These dollar limitations shall be increased each year after 1982 by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical

Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made.

The Board notes that this provision would authorize a bank holding company to underwrite property and casualty insurance that is allowed to be sold under this paragraph by a finance company subsidiary of the bank holding company. Comment is requested on the definition of finance company and whether it excludes any deposit-taking entity.

C. Any insurance agency activity (1) in a place that has a population not exceeding 5,000 (as shown in the preceding decennial census); or (2) in a town that the Board determines, after notice and opportunity for hearing, has inadequate insurance agency facilities. The Board notes that the Garn-St Germain Act does not impose the requirement, now found in § 225.25(b)(8) of Regulation Y, that the bank holding company have its principal place of banking business in the community with a population not exceeding 5,000. Comment is requested on whether the proposed regulatory provision should include this requirement.

D. Any insurance agency activity engaged in by a bank holding company or any of its subsidiaries on May 1, 1982 (or any insurance agency activity that the Board had approved for such company or its subsidiaries on or before May 1, 1982).[5] This paragraph would authorize a bank holding company or a subsidiary of that bank holding company to perform at any location any insurance agency activity, including the sale of credit-related property and casualty insurance, provided that that activity was approved for the bank holding company or any of its subsidiaries on May 1, 1982. This provision is based on subparagraph (D) of section 601 of the Garn-St Germain Act.

In addition to authorizing bank holding companies and their subsidiaries to engage in any insurance agency activities they were engaged in on May 1, 1982, subparagraph (D) of the Garn-St Germain Act provides that this authorization "includes" engaging in such activities at specified locations. The Board seeks comment on whether the specification of locations in subparagraph (D) imposes a limitation on where the insurance agency activities allowed under subparagraph (D) may be conducted.

Accordingly, the Board requests comment on whether under subparagraph (D) of section 601 of the Garn-St Germain Act a bank holding company or any of its subsidiaries that were engaged in insurance agency activities as of May 1, 1982 (particularly, the sale of credit-related property and casualty insurance), or any insurance agency activity that the Board approved for such company or its subsidiaries on or before May 1, 1982, may perform the activity under authority of this paragraph only at locations:

(i) In the state in which the principal place of business of the bank holding company (as defined in 12 U.S.C. 1842(d)) is located;

(ii) in any state or states immediately adjacent to such state; and

(iii) in any state or states in which such insurance agency activity was conducted (or was approved to be conducted) by such bank holding company or its subsidiary on May 1, 1982, or other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982.

The Board notes that these limitations as to geographic location would only apply if the bank holding company were seeking authority to expand the activity under subparagraph (D). These restrictions would not apply if the insurance activity were conducted under any of the other exemptions. For example, they would not apply to the sale of credit life, accident and health insurance under subparagraph (A) or to the sale of insurance by a bank holding company with assets of less than $50 million under subparagraph (F).

In subparagraph (iii) of this alternative, expansion of "grandfathered" insurance agency activities within a state is limited to the subsidiary of the bank holding company that was conducting (or approved to conduct) the activities in that state on May 1,1982. Thus, if a bank holding company has two consumer finance companies, but only one of them was selling property and casualty insurance in a particular state on May 1, 1982, only that subsidiary could expand its property and casualty insurance activities within the state. However, the Board has allowed the transfer of grandfather rights where the grandfathered subsidiary was merged with another subsidiary of the bank holding company for purposes of efficiency. In this regard, compare S. Rep. No. 976–36, 97th Cong., 2d Sess. 40 (1982) with H. Rep. No. 97–899, 97th Cong., 2d Sess. 91 (1982) (Conference Report).

Also, under subparagraph (iii) of this alternative, a bank holding company may sell insurance that was not sold prior to May 1, 1982, as long as those coverages sold insure against the "same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982." Comment is requested on whether since leasing may be the functional equivalent of an extension of credit, the sale of property and casualty insurance on leased items would be permissible.

E. Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (1) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and (2) group insurance that protects the employees of the bank holding company or its subsidiaries.

F. Any insurance agency activity by a bank holding company or its subsidiaries where the bank holding company has total consolidated assets of $50 million or less. Under the Garn-St Germain Act, this provision does not authorize a bank holding company to sell life insurance or annuities, other than as authorized under paragraphs (A), (B) and (C) of that statute. Also, to qualify for this exemption, the holding company system and not merely one subsidiary must have less than $50 million in assets.

G. Any insurance agency activity performed directly or indirectly by a bank holding company that was engaged in insurance agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971. This provision may authorize any qualifying company to sell insurance of any type from any location without reference to its pre-1971 activities.

While the Garn-St Germain Act specified the insurance activities that the Board may permit under section 4(c)(8), it made no findings as to public benefits and it did not relieve bank holding companies of the requirement for evaluation of an application to engage in or expand nonbanking

[5] For purposes of this paragraph, the bank holding company activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

activities. Accordingly, applications under section 4(c)(8) of the BHC Act, in accordance with §§ 225.21 and 225.23 of Regulation Y (49 FR 794 (1984)), would be required by a bank holding company to engage in, or expand through acquisition, any of the insurance activities proposed here, including those in paragraph (G) for insurance agency activities engaged in by bank holding companies prior to January 1, 1971. The proposed regulatory provision imposes no requirement to meet any specified public benefit standard, such as reduced rates or improved policy terms.

2. *Property appraisals* (*§ 225.25(b)(12)*). Appraisal of real property is currently on the Regulation Y list of activities permissible for bank holding companies. Several commenters suggested that this activity be expanded to include appraisals of personal property.

The activity involves estimating or determining the value of property other than real property. In the broadest sense, the activity requires expertise in markets of all types of personal and business property; however, most appraisers narrows their activity to specialized areas of personal property. The commenters suggesting this activity maintained that it is closely related to banking because banks engage in personal property appraising through their trust departments.

3. *Futures commission merchant* (*§ 225.25(18)*). Future commission merchant ("FCM") activities with respect to certain financial commodities are on the Regulation Y list of permissible activities, subject to certain conditions. The Board has approved the provision of portfolio advice on a non-fee basis as an activity incidental to permissible FCM activities in connection with particular applications. (*Citicorp* (Citicorp Future Corporation), 68 Federal Reserve Bulletin 776 (1982); and *First Interstate Bancorporation* (F.I. Futures Corporation), 69 Federal Reserve Bulletin 729 (1983).) In the proposed regulation, the Board seeks comment on whether to include advice offered in connection with FCM activities as a permissible closely-related activity.

Regulatory Flexibility Act Analysis

The Board certifies that adoption of these proposals would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601). These proposals would not place additional burdens on any bank holding company. They would liberalize the rules for all bank holding companies, and would facilitate the process by which bank holding companies may receive permission to engage in nonbanking activities.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting requirements, Securities.

PART 225—[AMENDED]

Pursuant to the Board's authority under sections 4(c)(8) and 5(b) of the Bank Holding Company Act, as amended (12 U.S.C. 1843(c)(8) and 1844(b)), the Board proposes to amend 12 CFR 225.25 (as revised, 49 FR 794 (1984))) by revising paragraphs (b)(8), (9), (13) and (18) introductory text and by adding paragraphs (b)(19), (20), (21), (22) and (23) as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(8) *Insurance sales and underwriting.*

(i) Acting as principal, agent or broker for insurance directly related to an extension of credit by a bank holding company or any of its subsidiaries, provided such insurance is limited to assuring the repayment of the outstanding balance due on a specific extension of credit by such bank holding company or subsidiary in the vent of death, disability or involuntary unemployment of the debtor.

(ii) Acting as principal, agent or broker for insurance directly related to an extension of credit by a finance company that is a subsidiary of a bank holding company, provided (A) such insurance is limited to assuring repayment of the outstanding balance on an extension of credit by such finance company of such bank holding company in the event of loss or damage to any property used as collateral for the extension of credit; and (B) the extension of credit is not more than $10,000, or $25,000 in the case of an extension of credit to finance the purchase of, and that is secured by, a residential manufactured home. These limitations shall be increased each year after 1982 by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made.

(iii) Any insurance agency activity (A) in a place that has a population not exceeding 5,000 (as shown in the preceding decennial census); or (B) in a town that the Board determines, after notice and opportunity for hearing, has inadequate insurance agency facilities.

(iv) Any insurance agency activity engaged in by a bank holding company or any of its subsidiaries on May 1, 1982 (or any insurance agency activity that the Board had approved for such company or its subsidiaries on or before May 1, 1982).[7]

(v) Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (A) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and (B) group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) Any insurance agency activity by a bank holding company or its subsidiaries where the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (i), (ii), and (iii) of § 225.25(b) of this regulation.

(vii) Any insurance agency activity performed directly or indirectly by a bank holding company that was engaged in insurance agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(9) *Check guaranty services.* Authorizing acceptance by subscribing merchants of personal checks tendered by the merchant's customers in payment for goods and services, and purchasing a validly authorized check from the merchant in the event the check is not subsequently honored.

* * * * *

(13) *Property appraising.* Performing appraisals of real estate and other property.

* * * * *

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures

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[7] For purposes of this subparagraph, the bank holding company activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, including the provision of advice to a customer with respect to a transaction executed by the futures commission merchant, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that:

* * * * *

(19) *Commodity trading advisory services.* Providing commodity trading advisory services, including the provision of advice, counsel, publications, written analyses and reports relating to the purchase and sale of financial commodities for future delivery on or subject to the rules of a contract market of the type for which a bank holding company may act as a futures commission merchant.

(20) *Consumer financial counseling.* Providing advice to consumers on individual financial matters, including debt consolidation, applying for a mortgage, bankruptcy, budget management, real estate tax shelters, tax planning, retirement and estate planning, insurance, and portfolio management and investment planning.

(21) *Armored car services.* Providing fully-insured transportation of cash, securities, and valuables; primarily, collecting currency and checks from commercial customers and transporting and depositing these collections at financial institutions. Armored car services also include bank transfers, coin wrapping, change delivery, mail delivery, payroll check cashing, servicing of automated teller machines, and leasing safes to commercial customers.

(22) *Tax preparation and planning.* Preparing tax forms and providing advice and strategies designed to minimize tax liabilities, including, for corporate customers, analyses of the tax implications of mergers and acquisitions, portfolio mix, specific investments, previous tax payments, and year-end tax planning (which involves projecting expected tax liabilities and balancing these with expected cash-flow); and, for individual customers, analyses of the tax implications of retirement plans, estate planning, and family trusts.

(23) *Operating a collection agency and credit bureau.* Collecting overdue accounts receivable, either retail or commercial accounts, for a contingent fee based on a specified percentage of the amount collected; and maintaining files on the past credit history of certain borrowers and providing that information for a fee to a credit grantor who is considering a borrowers' application for credit.

Board of Governors of the Federal Reserve System, March 2, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6202 Filed 3-9-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9155]

Great Lakes Chemical Corp. and Northwest Industries, Inc., et al.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

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 the leading producer of elemental bromine and brominated flame retardants in the U.S., to grant PPG Industries, Inc. (PPG), according to a prescribed non-exclusive licensing agreement, all the latest technology and know-how on brominated flame retardants acquired from Velsicol Chemical Corp. The Order would also require Great Lakes to enter into other agreements that would govern the operation and ownership rights of Arkansas Chemicals, Inc. (ACI), a joint bromine production venture between Great Lakes and PPG. The agreement would, among other things, eliminate certain restrictions on PPG's use of bromine purchased from ACI; permit PPG to sell elemental bromine in the merchant market; allow PPG to use ACI bromine in the production of all brominated compounds, including flame retardants; and require Great Lakes to purchase a specified amount of bromine from ACI annually. In addition to specific record-keeping and reporting requirements, the order would prohibit Great Lakes from acquiring any concern engaged in the produciton of elemental bromine or brominated flame retardants without prior Commission approval for a period of 10 years.

The Commission, under separate order, dismissed the proceedings against Northwest Industries, Inc. and Velsicol Chemical Corp.

DATE: Comments must be accepted on or before May 11, 1984.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-2, John V. Lacci, Washington, D.C. 20580. (202) 254-8644.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements 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, have 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 Section 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

Flame retardants, Trade Practices.

Note—Portions of the agreements relating to the consent order have been redacted because they are commercially sensitive. The bracketed words have been inserted by the Commission in some instance to describe the redacted information.

AGREEMENT CONTAINING CONSENT ORDER

In the matter of Great Lakes Chemical Corporation, a corporation, Northwest Industries, Inc., a corporation, and Velsicol Chemical Corporation, a corporation; Docket No. 9155.

The agreement herein, by and between Great Lakes Chemical Corporation, a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondent, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Great Lakes Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Highway 52 Northwest, in the City of West Lafayette, State of Indiana.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C.

45), and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. 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;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. 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 related materials pursuant to Rule 3.25(f), 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 respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purpose only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following 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 decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might 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 the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For Purposes of This Order

(a) "PPG" means PPG Industries, Inc., a corporation organized, existing and doing business under and by virtue of the laws of State of Pennsylvania with its offices and principal place of business located at One Gateway Center, in the City of Pittsburgh, State of Pennsylvania;

(b) "ACI" means Arkansas Chemicals, Inc., a 50–50 percent joint venture between Great Lakes Chemical Corporation and PPG, and a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located in the State of Arkansas;

(c) "bromine" means elemental bromine, atomic number 35, the nonmetallic halogen found in natural brines, salt lakes, seas and oceans;

(d) "brominated flame retardants" means flame retardants containing the element bromine;

(e) "brominated compounds" means chemical compounds, including flame retardants, containing the element bromine;

(f) "concern" means any company or corporation, its directors, officers, employees, and agents; its domestic and foreign predecessors, successors, divisions, subsidiaries, affiliates, and joint ventures (if the company owns or controls 10% or more of the joint venture); and the directors, officers, employees, and agents of the company's predecessors, successors, divisions, subsidiaries, affiliates, and joint venture partners as described above. The words "Subsidiary" and "affiliate" refer to any partial as well as total ownership between corporations.

I

It is ordered that Great Lakes Chemical Corporation, its successors and assigns, and its officers, directors, agents, representatives and employees (hereinafter "Great Lakes") shall, upon written application, grant to PPG a non-exclusive license to produce and sell certain brominated compounds in the form of the non-exclusive license agreement set forth in Attachment A. Great Lakes shall remain in compliance with the agreement set forth in Attachment A, and, without prior approval of the Federal Trade Commission, shall not permit any modification, directly or indirectly, of any of the terms of the license agreement referred to in this paragraph.

II

It is further ordered that Great Lakes shall notify the Commission in writing of each PPG written request for technology pursuant to the license agreement set forth in Attachment A.

III

It is further ordered that Great Lakes shall enter into the agreements set forth in Attachment B, and Appendices 1 and 2 thereto, relating to the operation and ownership rights of ACI, its successors and assigns. Great Lakes shall remain in compliance with the agreements set forth in Attachment B, and the Appendices thereto, and, without prior approval of the Federal Trade Commission, shall not permit any modification, directly or indirectly, of any of the terms of the agreements referred to in this paragraph. In addition, prior to entering into dissolution as provided for in Section 3(b) of Appendix 1 to Attachment B, Great Lakes shall use its best efforts to cause ACI to be sold as an ongoing entity.

IV

It is further ordered that, for a period of ten years from the date that this Order becomes final or the date at which all of its obligations under Attachment A cease, whichever is later, Great Lakes shall provide to the Commission copies of all proposed amendments or modifications which have been communicated by Great Lakes or PPG to the other party with respect to any of the terms contained in the agreement set forth in Attachment A. In addition, for a period of ten years from the date that this Order becomes final, Great Lakes shall provide to the Commission copies of all proposed amendments or modifications which have been communicated by Great Lakes or PPG to the other party with respect to any of the terms contained in the agreements set forth in Attachment B, or to any other agreement referenced therein.

V

It is further ordered that Great Lakes shall provide to the Federal Trade Commission copies of all communications between Great Lakes and PPG regarding changes or alleged breaches of the agreements contained in Attachments A and B.

VI

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Great Lakes, its subsidiaries, affiliates, divisions, successors and assigns shall not, without the prior approval of the Federal Trade Commission, directly or indirectly, acquire any stock, share capital, or equity interest in any concern engaged in, or the assets of any concern used in, the manufacture of elemental bromine or brominated flame retardants; provided, however, nothing in this Order shall prohibit Great Lakes from (1) engaging in any acquisition of a foreign concern that, in the calendar year of the proposed acquisition or in any of the five full calendar years immediately preceding the acquisition, has not manufactured or sold elemental bromine or brominated flame retardants in, or exported these products to, the United States, if, and only if, that foreign concern's total worldwide production of elemental bromine did not exceed ten million pounds in any of the three full calendar years immediately preceding the acquisition and its total worldwide production of brominated flame retardants did not exceed four million pounds in any of the three full calendar years immediately preceding the acquisition; (2) becoming a licensee of any patents or technology from such concerns; or (3) making purchases or sales in the ordinary course of business. The application of this paragraph shall be construed to include the acquisition by Great Lakes of any stock or assets of ACI, its successors, and assigns, except for adjustments of ownership in ACI as provided for in Paragraph 5 of Attachment B to this Order.

VII

It is further ordered that, commencing on the effective date of this Order, respondent Great Lakes shall 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, or any other proposed change in the corporation which may affect compliance obligations arising out of this Order.

Attachment A—Agreement

This Agreement is made this September 16, 1983, between Great Lakes Chemical Corporation, a Delaware corporation whose principal office address is P.O. Box 2200, West Lafayette, Indiana 47906, referred to herein as "Great Lakes"; and PPG Industries, Inc., a Pennsylvania corporation having its principal office at One Gateway Center, Pittsburgh, Pennsylvania 15222, referred to herein as "PPG"; and the same

Witnesseth

A. PPG has for many years engaged in the manufacture and sale of ethylene dibromide. It has also engaged in the manufacture and sale of flame retardant chemicals which are not bromine based and has undertaken to develop bromine containing products including flame retardants.

B. PPG intends to enter into the manufacture and sale of bromine based flame retardant chemicals, and to that end it desires to obtain a non-exclusive license to use certain technology owned by Great Lakes which is useful in the production of certain bromine based flame retardant chemicals.

C. Great Lakes is willing to grant to PPG a non-exclusive license to said technology, upon the terms and subject to the conditions and limitations set out in this Agreement.

Terms

In consideration of the covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

I.—General Provisions

1.01 *Scope of Agreement.* This Agreement looks to the grant by Great Lakes to PPG of a non-exclusive license to use certain technology owned by Great Lakes which is useful in the manufacture of certain bromine based flame retardant chemicals.

1.02 *Definitions.* As used herein, the following words and phrases have the following meanings:

a. Product(s) means any one (1) or more of Group A Products and Group B Products.

b. Group A Product means [any one or more of four brominated flame retardants based upon technology acquired from Velsicol Chemical Corporation without substantial modification by Great Lakes.]

c. Group B Product means [any one or more of six brominated flame retardants based upon technology acquired from Velsicol Chemical Corporation with technological modifications made by Great Lakes.]

d. Product Technology means, for each Product, all patent applications and registrations and all of the information relating to such Product disclosed by Great Lakes to PPG pursuant to its obligations under Articles II and III, but shall expressly exclude non-confidential information.

e. Product Technology Conditional License Term, for each Product, means the period ending on the fifth (5th) anniversary of the date on which PPG first sells commercial quantities of such Product manufactured using Product Technology; provided, sales made for the primary purpose of starting the Term and not as the result of good faith best efforts to prosecute commercial production and marketing shall not be deemed the selling of commercial quantities for the purposes of this definition.

f. Net Sales sold by PPG means the gross invoice price of Products less (i) freight charges and demurrages (if any), (ii) sales and use taxes or other governmental charges, taxes, or imposts on the sale or shipment of Products, and (iii) returns. Product used, consumed, or incorporated into another substance, by PPG (or an entity in which it is a participant) shall be deemed sold at the time of such use, consumption, or incorporation at a gross invoice price equal to the gross invoice price then being charged by PPG for the Product sold to others as such, unless the sales of the Product to others are to insubstantial that they do not truly reflect market forces, in which case the Product shall be deemed sold at the gross invoice price then being charged by Great Lakes on the sale of the same Product to third parties, and the Net Sales so generated shall be calculated accordingly. If there are no qualifying sales by either PPG or Great Lakes, the parties shall negotiate in good faith a constructive Net Sales for the Product so used, consumed, or incorporated, allowing for normal commercial margins and profits.

g. Request Date, for each Group A Product, means the earlier of the date on which PPG makes the request for preliminary production data for such Product, as contemplated by Section 2.02, or the date on which PPG makes the request for Product Technology for such Product, as contemplated by Section 2.03. Request Date, for each Group B Product, means the earliest of the date on which PPG makes the request for preliminary production data for such Product, as contemplated by Section 3.02, the date on which PPG

makes the request for acquired Product Technology for such Product, as contemplated by Section 3.03, or the date on which PPG makes its request for Product Technology for such Product, as contemplated by Section 3.04.

II.—Group A Product Technology

2.01 *Non-Confidential Information.* Within 45 days after receipt of PPG's written request for the nonconfidential information relating to a Group A Product, Great Lakes shall furnish to PPG, [upon payment or a negotiated amount,] all non-confidential and non-proprietary documentary information in its possession relating to each such Group A Product, such as publications, technical bulletins, technical service bulletins, and data sheets generally available to customers, and a list of all patent registrations then owned by Great Lakes and relating to such Group A Product. Upon request of PPG, Great Lakes shall provide PPG with Great Lakes' best estimate of the investment required to construct a plant for the manufacture of each Group A Product.

2.02 *Preliminary Production Data.* Within ninety (90) days after the receipt of PPG's request therefor, together with a payment of [a negotiated amount] per Product, Great Lakes will, as to each Group A Product, except [one of the Group A Products,] for which it receives such request and payment, furnish to PPG written documentation for such Group A Product consisting of:

a. a list of major equipment necessary for the manufacture of such Group A Product, in sufficient detail for PPG to make accurate estimates of productivity and costs of procuring, assembling, and erecting the same in a condition suitable for the commercial production of such Group A Product;

b. a list of raw materials necessary for the manufacture of such Group A Product;

c. manpower and utility requirements;

d. a table of expected yields for such Group A Product;

e. a list of those items a. through p. in subsection 2.03(a) which will not be available; and

f. a statement of the significant differences (if any) between the foregoing items a. through d. as practiced on the date of this Agreement and as practiced on the date of the request, in sufficient detail to allow PPG to evalute a fair fee if one is to be negotiated pursuant to subsection 2.03(b).

As to each Group A Product, except [one of the Group A Products,] for which PPG does not make either a request and payment under this Section 2.02 or a request and payment under Section 2.03 on or before the fourth anniversary of the date of this Agreement, this Article II shall become void and of no further effect.

2.03 *Product Technology.* (a) Within ninety (90) days after the receipt of PPG's written request therefor, together with an additional payment of [a negotiated amount] per Group A product, Great Lakes will, as to each Group A Product, except [one of the Group A Products,] for which it receives such request and payment, furnish to PPG the Product Technology owned or possessed by Great Lakes for such Group A Product, except [one of the Group A Products,] as such technology is practiced by Great Lakes on the date of this Agreement, including, without limitation, written documentation adequate for PPG to design, construct, and operate a plant for the manufacture on a commercial sale of such Product. Such Product Technology shall include such of the following items as are available with respect to such Product:

a. process description;

b. material balance;

c. process and instrument flow diagram;

d. equipment list and specifications;

e. quality control methods;

f. equipment layouts;

g. raw material specifications;

h. waste stream analysis and toxicity data;

i. operations manuals;

j. motor lists;

k. instrument lists;

l. raw material requirements;

m. utility requirements;

n. manpower requirements;

o. maintenance equipment;

p. product application techniques.

With respect to [one of the Group A Products,] within ninety (90) days of receiving such a request and payment, Great Lakes will furnish to PPG the entire production technology of [one of the Group A Products] as acquired from Velsicol Chemical Corporation by Great Lakes on July 15, 1981. As to each Group A Product for which PPG does not make such written request and payment on or before the fifth anniversary of the date of this Agreement, Article II shall become void and of no further affect. If a request and payment is made under this Section 2.03 without a prior request as to that Group A Product under Section 2.02, Great Lakes, shall not be obligated to make the disclosures required of it under Section 2.02 (except to the extent that they are embodied in the disclosures required of it by this Section 2.03) and PPG shall not be obligated to make the payment referred to in Section 2.02.

(b) Except with respect to [one of the Group A Products,] if the request given under subsection 2.03(a) above states that PPG desires the Product Technology to be as such technology is practiced by Great Lakes on the date the request is made, the parties shall promptly meet and negotiate in good faith the amount of the fee which PPG shall pay for such additional technology.

III.—Group B Product Technology

3.01 *Non-Confidential Information.* Within 45 days after receipt of PPG's written request for the non-confidential information relating to a Group B Product, Great Lakes shall furnish to PPG, [upon payment of a negotiated amount,] all non-confidential and non-proprietary documentary information in its possession relating to such Group B Product, such as publications, technical bulletins, technical service bulletins, and data sheets generally available to customers, and a list of all patent registrations then owned by Great Lakes and relating to such Group B Product. Upon request of PPG, Great Lakes shall also provide PPG with Great Lakes' best estimate of the investment required to construct a plant for the manufacture of each Group B Product.

3.02 *Preliminary Production Data.* Within one hundred fifty (150) days after the receipt of PPG's request therefor, together with a payment of [a negotiated amount] per Product, Great Lakes will, as to each Group B Product for which it receives such request and payment, furnish to PPG (a) written documentation for each such Group B Product, based on the Product Technology for such Product as it existed on July 15, 1981, and (b) written documentation for each such Group B Product, based on the Product Technology for such Product as it existed on the date of this Agreement. In both cases, such written documentation shall consist of:

a. A list of major equipment necessary for the manufacture of such Group B Product, in sufficient detail for PPG to make accurate estimates of productivity and costs of procuring, assembling and erecting the same in a condition suitable for the commercial production of such Group B Product;

b. A list of raw materials necessary for the manufacture of such Group B Products;

c. Manpower and utility requirements;

d. A table of expected yields for such Group B Product;

e. A list of those items a. through p. referred to in subsection 2.03(a) which will not be available; and

f. A statement of the significant differences (if any) between the foregoing items a. through d. as practiced on the date of this Agreement and as practiced on the date of the request, in sufficient detail to allow PPG to evaluate a fair fee if one is to be negotiated pursuant to subsection 3.05.

As to each Group B Product for which PPG does not make either a request and payment under this Section 3.02 or a request and payment under Section 3.03 or 3.04 on or before the fourth anniversary of the date of this Agreement, this Article III shall become void and of no further effect.

3.03 *Product Technology Acquired by Great Lakes.* Within one hundred and fifty (150) days after receipt of PPG's written request therefor, together with an additional payment of [a negotiated amount] per Group B Product, Great Lakes will, as to each Group B Product for which it receives such request and payment, furnish to PPG the entire Product Technology for such Group B Product acquired by Great Lakes from Velsicol Chemical Corporation, as such technology existed on July 15, 1981 (the date of such acquisition), including, without limitation, written documentation used for or intended for use in the manufacture of such Product and the design, construction and operation of a plant for the commercial manufacture, where applicable, of such Product. Such Product Technology shall include the items listed as items a. through p. of subsection 2.03(a) which are available with respect to such Product.

As to each Group B Product for which PPG does not make such written request and payment on or before the fifth anniversary of the date of this Agreement, Article III shall become void and of no further effect. If a request and payment is made under this Section 3.03 without a prior request as to that Group B Product under Section 3.02, Great Lakes shall not be obligated to make the disclosures required of it under Section 3.02 (except to the extent that they are embodied in the disclosures required of it by this Section 3.03) and PPG shall not be obligated to make the payment referred to in Section 3.02.

3.04 *Product Technology Developed by Great Lakes.* Within one hundred and eighty (180) days after receipt of PPG's written request therefor, together with the additional payment set out below, Great Lakes will, as to each Group B Product for which it receives such request and payment, furnish to PPG the entire Product Technology for such Group B Product, as such technology is practiced on the date of the Agreement, including, without limitation, written documentation used for or intended for use in the manufacture or such Product and the design, construction and operation of a plant for the commercial manufacture, where applicable, of such Group B Product. Such Product Technology shall include those of the items listed as items a. through p. of Section 2.03 which are available with respect to such Product.

The amount of the payment to be made is as follows:

[For each Group B Product, a negotiated amount.]

As to each Group B Product for which PPG does not make such written request and payment on or before the fifth anniversary of the date of this Agreement, Article III shall become void and of no further effect. If a request and payment is made under this Section 3.04 without a prior request as to that Group B Product under Section 3.02, Great Lakes shall not be obligated to make the disclosures required of it under Section 3.02 (except to the extent that they are embodied in the disclosures required of it by this Section 3.04) and PPG shall not be obligated to make the payment referred to in Sections 3.02.

3.05 *Later Development.* If the request given under subsection 3.04 states that PPG desires the Product Technology to be as such Technology is practiced by Great Lakes on the date the request is made, the parties shall promptly meet and negotiate in good faith the amount of the fee which PPG shall pay for such additional technology.

IV.—Licenses

4.01 *Group A Product Technology.* Upon the condition that (and only so long as) PPG makes timely payment of the royalty with respect to that Group A Product, as provided in Section 5.01, Great Lakes hereby grants to PPG the non-exclusive irrevocable right and license to use and practice, anywhere in the world, all Product Technology relating to such Group A Product furnished to PPG by Great Lakes pursuant to Article II.

4.02 *Group B Product Technology.* Upon the condition that (and only so long as) PPG makes timely payment of the royalty with respect to that Group B Product, as provided in Section 5.02, Great Lakes hereby grants to PPG the non-exclusive irrevocable right and license to use and practice, anywhere in the world, all Product Technology relating to such Group B Product furnished to PPG by Great Lakes pursuant to Article III.

4.03 *Provisions Common to Licenses.* (a) Prior to the expiration of the Product Technology Conditional License Term for each Product for which Product Technology has been furnished pursuant to Articles II and III, the rights and licenses granted under sections 4.01 and 4.02 may not be assigned or sublicensed, in whole or in part, to any other legal entity except as and to the extent as may be expressly set out in this instrument. However, provided that such other legal entity first executes an instrument in form and content binding such other entity to all obligations of confidentiality agreed to by PPG in Section 8.01, PPG may, with respect to each Product, subject to the conditions hereafter set out, contract with no more than two entities for those entities to toll convert or custom manufacture for PPG each Product using Product Technology licensed to PPG hereunder; and PPG is hereby authorized to grant such a sublicense as may be strictly necessary for this purpose. The conditions of the preceding sentence are:

First—that for the purpose of selecting toll converters or custom manufacturers, PPG may disclose Product Technology under confidentiality obligations consistent with Section 8.01 to no more than four such potential toll converters or custom manufacturers.

Second—that PPG retain title to the entirety of the Product so manufactured or toll-converted or that the entirety of the Product so manufactured or toll-converted be sold by the manufacturer directly to PPG or to one of its wholly-owned subsidiaries.

Third—that PPG (or its wholly owned subsidiary) shall not resell, directly or indirectly, more than ten percent (10%) of the Product so manufactured or toll-converted to the entity which manufactured or toll-converted it or to any entity which has any material equity in such custom manufacture or toll converter.

Fourth—that any sub-license granted by PPG pursuant to this Section 4.03 shall be exercisable by the grantee thereof only and solely for the purpose of toll converting or custom manufacturing the Product for PPG.

(b) In connection with the sale of a Product produced under a license granted under Sections 4.01 or 4.02, PPG may grant to its customers of that Product the non-exclusive, irrevocable label license to use and sell that Product under any patent owned by Great Lakes covering the use of that Product.

V.—Royalties

5.01 *Royalties on Group A Products.* In consideration for the right and license granted by Great Lakes to PPG pursuant to Section 4.01, PPG shall pay to Great Lakes, at the address designated by

Great Lakes, a royalty calculated as [a negotiated percentage royalty] of the Net Sales of each Group A Product manufactured using Product Technology and sold during the Product Technology Conditional License Term for such Product.

5.02 *Royalties on Group B Products.* In consideration of the right and license granted by Great Lakes to PPG pursuant to Section 4.02, PPG shall pay to Great Lakes, at the address designated by Great Lakes, a royalty calculated as [a negotiated percentage royalty] of the Net Sales of each Group B Product manufactured using Product Technology, but not more than [a negotiated amount] for any one Group B Product.

5.03 *Time of Payment.* For purposes of Sections 5.01 and 5.02, a Product shall be deemed "sold" by PPG as of the date it is used, consumed, incorporated, shipped or invoiced, whichever is earlier. The royalties payable pursuant to Sections 5.01 and 5.02 shall be computed and paid quarterly. On or before the last day of each April, July, October, and January, PPG shall pay to Great Lakes the royalty contemplated by Sections 5.01 and 5.02 due and payable with respect to the immediately preceding calendar quarter.

5.04 *Medium of Payment.* All royalties due hereunder shall be paid in United States dollars. If sales are effected in a currency other than in United States dollars, then for the purpose of calculating the royalties payable hereunder, the rate of exchange between the United States dollars and the currency of sale shall be the average of the closing dollar buy and sell rates for such currency quoted by Chemical Bank, New York, New York, on the last New York City business day of the calendar quarter in which the sale occurs.

5.05 *Unconditional License.* Upon the expiration of the Product Technology Conditional License Term for each Product (so long as all royalties payable during said Term have been paid in full) PPG shall have an irrevocable non-exclusive transferable right and license in perpetuity to use, practice, license, assign, and sell the Product Technology as to each such Product anywhere in the world, and the provisions of Section 4.03 shall not apply.

5.06 *Failure to Pay.* In the event that PPG defaults by failing to pay, promptly when due, any installment of the royalties to be paid by it under this Article V with respect to any Product, or by failing to observe or perform any other obligation or condition to be observed or performed by it hereunder, Great Lakes may, at its option, give PPG written notice specifying the thing or matter in default. If the default is a delinquent payment it shall bear interest at the prime rate charged by the Chemical Bank in New York, plus two percent (2%). Unless such default is cured within two (2) months following receipt of such notice, or if such default cannot be cured within that time and PPG fails to diligently make efforts to cure the default, Great Lakes may give further written notice terminating this Agreement and all rights and licenses granted by it hereunder; provided, that Great Lakes gives the Federal Trade Commission two (2) months advance written notice that Great Lakes may terminate this Agreement pursuant to this provision. Said notice to the Federal Trade Commission may be given at the same time that Great Lakes Give PPG notice of the default. In the event it is impossible to cure the default, the parties shall (unless Great Lakes waives the default) enter into good faith and neogitiations to afford Great Lakes reasonable recourse, other than termination, for the default. Termination of this Agreement pursuant to this Section 5.06 shall not release PPG from its obligations to pay the royalties which have become payable to and including the date of termination. This remedy shall not be exclusive, but shall be in addition to any and all other remedies available to Great Lakes in the event of a default by PPG hereunder.

VI.—Technical Assistance

6.01 *On-Site Demonstration.* Within ninety (90) days after it has furnished to PPG the Product Technology for a Group A Product, except [one of the Group A Product,] as provided in Section 2.03, or the Product Technology for a Group B Product, as provided in Section 3.04, Great Lakes shall invite PPG to send representatives to attend on-site demonstrations and to observe such actual operations and be adequately advised by Great Lakes with respect thereto as may be necessary or appropriate to facilitate exploitation by PPG of the Product Technology for such Product. The demonstrations and operations will be conducted at the office, laboratory, and manufacturing facility designated by Great Lakes. The demonstrations and operations contemplated by this Section will be completed within one hundred twenty (120) days after the date of Great Lakes' invitation to PPG.

6.02 *Start-Up Advice.* Except with respect to [one of the Group A Products] upon request of PPG, Great Lakes shall send to the manufacturing location designated by PPG one (1) or more experienced and qualified engineers to assist in the start-up of not more than one (1) of PPG's plants for the manufacture of each Product, so long as such start-up occurs within four (4) years after the Request Date; provided, that Great Lakes shall not be required by this Section 6.02 to provide assistance at more than an aggregate of three (3) plant sites. Said engineer(s) shall not be obligated to spend more than ten (10) man-days in assisting the start-up of any one such plant.

6.03 *Expenses.* PPG shall bear the entire cost it incurs in the sending of its representatives to attend demonstrations and observe operations pursuant to Section 6.01, including transportation, lodging, and meals. PPG will reimburse Great lakes for the actual costs incurred by it in the sending of its personnel to assist in the start-up of a PPG manufacturing plant pursuant to Section 6.02. For purposes of this Section 6.03, "actual costs" means the reasonable amounts actually expended by Great Lakes for transporting, lodging, and feeding its engineers, together with a liquidated charge on account of salaries, of $250 per man per day, escalated by the fraction CPR. CPO, where CPO is the All Urban Consumer Index (to the base year 1967=100) most recently published prior to the date hereof, and CPR is the value of the same index most recently published prior to the time the services are rendered.

6.04 *Further Assistance.* For a period of not more than one hundred eighty (180) days after start-up of any plant referred to in Section 6.02, provided such start-up shall have occurred within four (4) years after the Request Date, Great Lakes shall, at no charge to PPG, furnish PPG with such additional information as may reasonably be requested by PPG in order to give full effect of the intentions of the parties and the purposes of this Agreement: provided, however, that Great Lakes shall not be obligated to disclose (i) any information relating to a Group A Product, if such information is not included in that Product Technology which Great Lakes is obligated to furnish PPG pursuant to Section 2.03 for such Product practiced on the date of this Agreement, or (ii) any information relating to a Group B Product for which Great Lakes has furnished Product Technology pursuant to Section 3.03, if such information is not included in the Product Technology for such Product as it existed on July 15, 1981, or (iii) any information relating to a Group B Product for which Great Lakes has furnished Product Technology pursuant to Section 3.04, if such information is not included in the Product Technology for such Product practiced on July 15, 1983, or (iv) any information relating to [one

of the Group A Products] which was not acquired from Velsicol Chemical Corporation by Great Lakes on July 15, 1981.

VII.—Technology

7.01 *Infringement.* If PPG should become aware of any infringement by a third person of any claim of any patent application or registration licensed or agreed to be licensed by Great Lakes hereunder, it shall notify Great Lakes and Great Lakes shall have the right, at its expense, to prosecute such infringement. If, within thirty (30) days after the date of such notice, Great Lakes has failed to commence prosecution of any such infringement, PPG shall be entitled by itself, at its own expense, to institute and prosecute, in the name (and with the approval) of Great Lakes, such proceedings as PPG may reasonably deem appropriate.

7.02 *Warranties.* Great Lakes hereby warrants and represents that:

a. The technology as used by Great Lakes on the date of this Agreement enables Great Lakes to manufacture such Product in accordance with the specifications set out in Schedule A annexed hereto;

b. All Product Technology, except that respecting [one of the Group A Products,] disclosed to PPG pursuant to Section 2.03 will be the entire technology practiced by Great Lakes on the date of this Agreement or on the date of the request, as the case may be;

c. All Product Techonology disclosed to PPG under Section 3.03 will be the entire technology as it existed on July 15, 1981;

d. All Product Technology disclosed to PPG under Section 3.04 will be the entire technology as actually practiced by Great Lakes on the date of this Agreement or the date of the request, as the case may be; provided, that the technology for [one of the Group B Products] shall be that acquired from Velsicol Chemical Corporation on July 15, 1981, as subsequently improved by Great Lakes, and practiced by it on the date of this Agreement or the date of the request, as the case may be.

VIII.—Confidentiality

8.01 *Reciprocal Obligation.* Each of the parties hereby agrees with the other that it will keep confidential all Product Technology expressly stated to be confidential which is disclosed to it by the other hereunder or observed by it in the performance of the provisions of Article VI, except to the extent that Product Technology (i) is disclosed by PPG to one of its employees (so long as such) disclosure is necessary for the preformance of employment duties and so long as such employee is obligated to treat Product Technology so disclosed in the same manner as confidential and proprietary information of PPG), a bona fide architectural or engineering consultant or building contractor performing services for PPG (so long as such disclosure is necessary for the performance of such consulting or contracting duties and then only so long as such consultant or contractor first executes a written agreement corresponding to that made by PPG under this Section 8.01), or a subsidiary of PPG which is permitted to use and practice the Product Technolgoy under the terms of the proviso to Section 4.03, (ii) is or becomes publicly known, (iii) is received by the party from a third person entitled to disclose the same, (iv) is known to the party prior to disclosure, or (v) is required to be disclosed by law or order of a court or other competent government agency. As so limited, the obligations of the parties under this Section 8.01 shall terminate January 1, 1994.

IX.—Other Velsicol Products

9.01 *Disclosure.* Upon request of PPG at any time within two (2) years following the date of this Agreement, and upon payment by PPG to Great Lakes of a fee of Ten Thousand Dollars ($10,000.00), Great Lakes will conduct a one or two day seminar for not more than ten (10) employees and representatives of PPG, at which knowledgable Great Lakes employees will give a verbal explanation of the technology of all borminated products which it acquired from Velsicol Chemical Corporation in 1981 other than Group A and Group B Products. The seminar will be held in West Lafayette, Indiana. The travel expenses incurred by PPG's employees and representatives will be borne by PPG. Each of PPG's employees and representatives will be required to execute a confidentiality agreement relating to the technology to be disclosed at said seminar.

9.02 *Negotiation for License.* Upon request of PPG at any time within one (1) year following the date of the seminar referred to in Section 9.01, Great Lakes will enter into negotiation of a non-exclusive license to use any part of the technology discussed at said seminar in which PPG has an interest, and will bargain in good faith to arrive at a mutually acceptable license agreement.

X.—General Provisions

10.01 *Maintenance of Records.* PPG shall, and shall cause those assignees and sublicensees permitted hereunder, to maintain accurate and complete records relating to the manufacture and sale of Products using Product Technology. Such records shall be adequate to permit royalties to be readily computed in accordance with Article V. PPG agrees, at the request of Great Lakes, to permit an independent certified public accountant selected by Great Lakes, except one to whom PPG has some reasonable objection, to have access during ordinary business hours to such records as may be necessary (a) to determine in respect to any calendar quarter year, ending not more than two (2) calendar years prior to the date of such request, the correctness of any report or payment made under this Agreement, or (b) to obtain information as to the royalties payable for any such period in case of failure of PPG to report or pay pursuant to the terms of this Agreement. Such accountant shall not disclose to Great Lakes any information relating to the business of PPG, except that which should properly have been contained in any report hereunder.

10.02 *Governing Law.* This Agreement is made in the State of Indiana, and all questions relating to its validity, construction, and enforcement shall be governed by the law of that State.

10.03 *Amendment.* No amendment of, or addition to, this Agreement will be binding upon either party hereto unless it has been reduced to writing and duly executed by both parties.

10.04 *Prohibition Against Assignment.* Prior to the expiration of the Product Technology Conditional License Term for each Product for which Product Technology has been furnished pursuant to Articles II and III, the rights to the Product Technology for each such Product created under this Agreement may not be assigned by PPG except to a single business entity which is one of the following: (a) a domestic U.S. entity in which PPG possesses more than fifty percent (50%) of both the equity and the voting control; or (b) a corporation growing out of or surviving a consolidation or acquisition by or merger with PPG; or (c) a non-U.S. entity in which PPG possesses of both the equity and the voting control the lesser of forty percent (40%) or the maximum permitted by the laws of the foreign jurisdiction; or (d) a successor or purchaser of the entire brominated flame retardant chemicals business of PPG. After the expiration of the Product Technology Conditional License Term for each Product for which Product Technology has been furnished pursuant to Articles II and III, the rights to the Product Technology for each such Product created under this Agreement

may be assigned to any entity that accepts the remaining obligations, if any, to maintain records and pay royalties pursuant to section 10.01 and Article V, respectively.

10.05 *More Favorable Grant.* In the event Great Lakes shall grant another rights and licenses respecting any Product for which PPG has elected under Section 2.03, 3.02, 3.03, or 3.04 to obtain Product Technology under financial terms (including payments and royalties) less than those imposed upon PPG under this Agreement, Great Lakes shall forthwith offer PPG such financial terms with respect to each and every such Product.

10.06 *Waiver.* The waiver, express or implied, by either party of any right hereunder or of any breach by the other party will not be deemed a waiver of any other right or breach, either of a similar or dissimilar nature.

10.07 *Complete Agreement.* This Agreement supersedes all other communications between the parties regarding, and constitutes their sole and exclusive agreement with respect to, the subject matter of this Agreement.

10.08 *Effective Date.* References herein to "the date of this Agreement" and similar references shall be construed for all purposes as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

Made on the date first above written.

Great Lakes Chemical Corporation.

By: _____

PPG Industries, Inc.

By: _____

Schedule A—Product Specifications

All percentages by weight unless otherwise stated.

PH-73

Assay—99.5% min.
HBr—0.3% max.
H_2O—0.5% max.
Melting Point—92° C.
APHA: Sol. Color (MeOH)—200 max.
Sol. Color (MeCl)—200 max.
Sol. Color (NaOH)—300 max.
Appearance—Light cream to tan flake.
Dibromophenol—0.5% max.

FF-680

Appearance—Off-white to light tan.
Odor—Characteristic.
Br—68.5% min.
NaBr—0.5% max.
H_2O—0.15% max.
Color Gardner "L"—88 min.
Loss on Drying—0.3% max.
Melting Point—223° C min.

PHT4

Appearance—Free flowing light tan powder.
APHA color—100 max.
Neutral equiv.—228 min.
Sulphate—0.3% max.
Melting Point—270° C min.
Moisture—0.4% max.

FM-100

Melting Point—185°-195° C.
Br—72% min.
Volatiles—1.0% max.
APHA Color—60 max.
Solubility in styrene—5%.
Sieve through #60—80% min.
Sieve through #100—45% min.

PHT4-Diol

Acid No.—0.25 max.
APHA Color—Visual pass/fail.
H_2O—.20% max.
Hydroxyl No.—200-235.
Br—43.2% min.
Viscosity—80-100 Cps (target).
Diethylene glycol—8.5% max. (target).

PO-64P

Volatiles—1.0% max.
Br—63%-65.5%.
NaBr—.15% max.
Melting Range—210°-240° C.
Tribromophenol—.15% max.
Alkalinity—.01 m. eq.

Attachment B—PPG—Great Lakes

Third Supplemental Agreement

Made the 16th day of September, 1983, between PPG Industries, Inc., a Pennsylvania corporation ("PPG"); and Great Lakes Chemical Corporation, a Delaware corporation ("Great Lakes").

Whereas, PPG is the successor by merger to Houston Chemical Corporation, a Texas corporation ("Houston"); and Great Lakes is the successor by merger to Great Lakes Chemical Corporation, a Michigan corporation ("Great Lakes—Michigan"); and as such successors PPG and Great Lakes are seized, possessed, and entitled to all the rights, titles, benefits, and interests, and are bound by and limited to the obligations, limitations, and convenants, of Houston and Great Lakes—Michigan, respectively, in the following listed written contracts, viz:

A. Uncaptioned, dated July 19, 1960, between Houston and Great lakes—Michigan;

B. Houston—Great Lakes Supplemental Agreement, dated July 28, 1964, between Houston and Great Lakes—Michigan;

C. Houston—Great Lakes Second Supplemental Agreement, dated March 21, 1968, between Houston and Great Lakes—Michigan;

D. Arkansas—Great Lakes Bromine Sales Agreement, dated July 31, 1964, between Arkansas Chemicals, Inc. (hereinafter "ACI") and Great Lakes—Michigan;

E. Arkansas—Houston Bromine Sales Agreement, dated July 31, 1964, between ACI and Houston;

F. Amendment and Extension of Arkansas—Great Lakes Bromine Sales agreement, dated March 21, 1968, between ACI and Great Lakes—Michigan; and

G. Amendment and Extension of Arkansas—Houston Bromine Sales Agreement, dated March 21, 1968, between ACI and Houston; and

Whereas, PPG and Great Lakes wish to further amend and change the said contracts between themselves and with ACI in certain particulars;

Now, therefore, in consideration of the premises and of the covenants set forth below the parties do covenant and agree as follows:

1. Effective as of the date of this Third Supplemental Agreement, the parties hereby amend the prior agreements between them as follows:

a. From the first sentence of Section 2 of the uncaptioned agreement of July 19, 1960 (item A above) the last fifteen (15) words are deleted.

b. The words "and the identity of the proposed purchaser" shall be inserted immediately following the words "including the number of shares involved" in the first sentence of paragraph (c) of section 8 of the said agreement of July 19, 1960 (item A above).

c. The words "and with the proposed purchaser" shall be inserted immediately after the word "shares" and before the word "set" in the second sentence of paragraph (c) of section 8 of the said agreement of July 19, 1960 (item A above).

d. Section 2 of the Supplemental Agreement of July 28, 1964 (item B above) is deleted in its entirety.

e. Section 2 of the Second Supplemental Agreement of March 21, 1968 (item C above) is deleted in its entirety.

2. Great Lakes will sign and deliver to ACI, and the parties will cause ACI to sign and deliver to Great Lakes, an agreement in the words and form attached hereto as Appendix 1.

3. PPG will sign and deliver to ACI, and the parties will cause ACI to sign and deliver to PPG, an agreement in the words and form attached hereto as Appendix 2.

4. To the extent that from facilities in place at ACI's plant on the date of this Third Supplemental Agreement, in the

condition in which they then are or may be put without capital expenditures, and from facilities installed or improved by capital expenditures funded by contributions from the parties hereto, proportionate to the then relative equity interest in ACI of each of the parties hereto, up to an actual bromine production capacity of [the approximate nameplate capacity in pounds] per annum of mutually funded capacity, the bromine produced by ACI shall be allocated to Great Lakes and PPG pursuant to the provisions of the Bromine Sales Agreements between ACI and Great Lakes, and ACI and PPG, in the forms attached hereto, respectively, as Appendices 1 and 2. With respect to all mutually funded expansion of ACI's actual bromine production capacity above [the approximate nameplate capacity in pounds] of mutually funded capacity, each party shall in each calendar year have a call upon and right to the said excess (above [the approximate nameplate capacity in pounds]) proportioned to its relative equity interest in ACI; provided, however, the foregoing shall not include or cover any actual bromine production capacity resulting from facilities installed or improved by capital expenditures funded after the execution of this Third Supplemental Agreement by contributions from only one of the parties hereto under Section 5 hereof. All of the additional bromine resulting from a unilaterally funded expansion in ACI's actual bromine production capacity will be made available to and for the sole contributing party, unless otherwise mutually agreed to in writing by such contributing party and ACI, notwithstanding any provision herewith contained in the aforementioned ACI agreements with Great Lakes and PPG. The parties will cause the said agreements to be administered (and if necessary, amended when appropriate) to give full effect to the intentions of the parties in this Section 4.

5. (a) If, in order to maintain or increase the actual bromine production ability of ACI, a party wishes ACI to make a capital expenditure for the improvement of existing facilities or for the construction or other acquisition of additional facilities; but the other party (upon written request from the first) does not in writing agree within 20 business days with respect to a total funding of $125,000 or less, or within 30 business days with respect to a total of $500,000 or less, or within 50 business days with respect to all other fundings to contribute a share, proportionate to its then relative equity interest, of the capital contributions necessary to fund such improvements, construction, or acquisition; then the instigating party may make the necessary or appropriate capital contribution to ACI, and the declining party shall as a shareholder cooperate with the instigating party in taking such actions and in causing ACI directors to take such action as may be appropriate to have the improvements, constructions, or acquisitions so funded to be made and done. Upon the making of such capital contributions, the equity interest of the contributing party shall be increased by the issuance to the contributing party of additional shares of the contributing party's class of stock of ACI reflective of the amount of contribution, the amount of such additional stock to be issued ("Later Shares") being equal to $C \times TS \div SE$, wherein C means the amount of the contribution, SE means the aggregate shareholder equity (the difference between total assets and total liabilities) in ACI as of the date of contribution excluding consideration of the subject contribution, and TS means the total shares of ACI authorized and issued as of the date of contribution. The following hypothesis will illustrate the intended application of this section:

(b) If any assest purchased by a capital contribution for which Later Shares were issued is destroyed or otherwise damaged so as to be rendered useless and such asset is not subsequently replaced or repaired, any insurance proceeds obtained therefor as well as any salvage value of such asset shall be applied by ACI to the repurchase by ACI of Later Shares which were issued for such asset. The number of Later Shares to be so repurchased shall be determined based upon the value which had been originally computed pursuant to subsection 5(a) above for each Later Share pertaining to such asset. The parties hereto as shareholders of ACI shall take such actions to cause ACI directors to take such actions as may be required and appropriate to repurchase such Later Shares.

6. (a) If at any time prior to the ninth (9th) anniversary of the date hereof, a notice is given by PPG to Great Lakes pursuant to Section 8(c) of the uncaptioned agreement of July 19, 1960 between Houston Chemical Corporation, a Texas corporation, and Great Lakes Chemical Corporation, a Michigan corporation, Great Lakes may elect either to exercise its rights of first refusal as stated in said section 8(c) or to purchase the shares referred to in such notice at a price computed in accordance with subsection 6(b) below; provided, that Great Lakes right and PPG's obligation to consumate such a purchase because of such an election shall be subject to and conditioned upon Great Lakes obtaining within the time specified in Section 6(c) below Federal Trade Commission approval for the acquisition.

(b)(i) It shall conclusively be deemed that the first five thousand shares of ACI capital stock transferred by PPG, whether to Great Lakes or a third party, are those five thousand shares owned by PPG at the time of the execution of this Agreement. These shares are hereinafter referred to as "Original Shares". All shares transferred by PPG after it has transferred five thousand shares shall be conclusively deemed not to be Original Shares; and they are hereinafter referred to as "Later Shares". The total purchase price paid by Great Lakes for shares transferred to it shall be the sum of two increments, the first increment being the total incremental price for all transferred Original Shares (if any) and the second increment being the total incremental price for all transferred Later Shares (if any).

(ii) The incremental price for each Original Share shall be equal to [a value based upon a negotiated formula.]

(iii) The incremental price of each Later Share shall be equal to [a value based upon a negotiated formula.]

(c) The parties understand that, pursuant to the 10 year ban provision contained in the Consent Order in FTC Docket 9155, any purchase of PPG's interest in ACI by Great Lakes within ten years of the final Commission order must first be approved by the Federal Trade Commission, and that the Federal Trade Commission has not, by incorporating this Agreement in its Consent Order, either expressly or implicitly approved or indicated that it would approve any such transaction. The parties therefore agree that the closing of any proposed sale of PPG's interest in ACI to Great Lakes shall be deferred as long as required (but not more than 135 days) to obtain such Federal Trade Commission or any other necessary governmental approval. If the Federal Trade Commission disapproves the proposed sale of PPG's interest in ACI to Great Lakes or if the Federal Trade Commission or other necessary approval cannot be obtained within 135 days, then for a period of one (1) year from the date of the Federal Trade Commission disapproval or the expiration of the 135 day period, whichever is earlier, it shall be conclusively deemed that Great Lakes has waived all rights under said Section

8(c) and this Section 6 and that PPG shall be free to sell its interest in ACI to any party. Despite the expiration of a one year waiver with respect to any proposed sale, the provisions of this Section 6 shall remain in effect with respect to a possible future sale of PPG's interest in ACI.

(d) All rights and obligations of PPG as a shareholder in ACI, including but not limited to all obligations assumed on behalf of ACI as a guarantor, shall terminate upon the closing if as a result of the closing PPG owns no more ACI stock. If necessary to give effect to the termination of such obligations, Great Lakes shall assume any obligation undertaken with the prior knowledge and approval of Great Lakes.

7. The uncaptioned agreement of July 19, 1960, the Supplemental Agreement, the Second Supplemental Agreement (the foregoing being items A, B, and C above) and this Third Supplemental Agreement shall hereafter be construed and enforced according to the laws of the State of Arkansas.

8. References herein to "the date of this Agreement" and similar references shall be construed as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

PPG Industries, Inc.

By _____

Great Lakes Chemical Corporation.

By _____

Appendix 1 to Attachment B—Bromine Sales Agreement Between Great Lakes Chemical Corporation and Arkansas Chemicals, Inc.

Made the 16th day of September 1983, by and between Arkansas Chemicals, Inc., a Delaware corporation, herein called Seller; and Great Lakes Chemical Corporation, a Delaware corporation, herein called Buyer.

1. That certain contract dated July 31, 1964, between Arkansas Chemicals, Inc. and Great Lakes Chemical Corporation (a Michigan corporation) captioned *Arkansas—Great Lakes Bromine Sales Agreement* and that certain contract dated March 21, 1968, between the same parties, captioned *Amendment and Extension of Arkansas—Great Lakes Bromine Sales Agreement* are hereby terminated, and shall have no force, effect, or application to sales of bromine not delivered prior to the date of this agreement.

2. This Agreement shall continue until December 31, 1993, and continue thereafter unless and until terminated by either party by not less than 24 full calendar months prior written notice of termination given by either party to the other, provided, however, such notice of termination may not be given prior to December 31, 1991.

3. (a) Except as it may be limited by its ability to produce bromine and by its commitment to sell bromine to PPG Industries, Inc. ("PPG"), Seller will sell and deliver to Buyer all bromine ordered from it by Buyer. Buyer will purchase, accept, and pay for not less than [an economical amount] of bromine in each calendar year (or, in the first and last partial calendar years of this Agreement, the proportionate fraction of such quantity) for the price and upon the terms and conditions herein set forth; provided, that Buyer's obligation to purchase in any one year shall be reduced to the extent that in the same year Seller sells bromine to another customer other than PPG.

(b) For the limited purchase of application of the rights set forth in this subsection 3(b) and not for the purposes of pricing bromine to be sold under this Agreement, Seller shall during each December and June during the term hereof calculate a *pro forma* price per pound of bromine (i) based on a projected maximum operating capacity of Seller for the next twelve (12) months, and (ii) which would yield for such twelve (12) months a pretax return [at a negotiated rate sufficient to provide bromine at an economical cost.] The parties agree that for the first twelve (12) months of this Agreement Seller's maximum operating capacity shall be conclusively presumed to be not less than [an economical amount] annually. If the *pro forma* price per pound so calculated by Seller is greater than Buyer's volume weighted average price for bromide sold in bulk by Buyer F.O.B. El Dorado, Arkansas during the preceding two (2) calendar months, Buyer shall have the right exerciseable by written notice to Seller within the thirty (30) days after the calculated *pro forma* price has been communicated to Buyer to terminate its purchase obligations under this Agreement effective the date of Buyer's notice. In calculating Buyer's volume weighted average price, sales by Buyer to any of its subsidiaries and sales by Buyer to any other party for which part of the consideration is a return of a by-product generated by the use of the bromine so sold shall be disregarded. Buyer agrees that in its capacity as manager of Seller it will not commit an act or omission designed or calculated to lower the operating capacity of Seller for the purpose of bringing into effect the provisions of this subsection 3(b). In the event Buyer elects to terminate its purchase obligations under this Agreement pursuant to its rights under this subsection 3(b), Buyer will promptly initiate and take such action and cause its directors on Seller's Board to take such action to accomplish the liquidation and dissolution of Seller as soon as possible after the termination of Buyer's purchase obligation under this Agreement. It is understood and agreed by Buyer that if it can, but does not, exercise its right to terminate its purchase obligations under this Agreement as provided for in this subsection 3(b), Buyer shall remain obligated thereafter to purchase the quantities required under this Agreement, unless and until it may exercise a subsequent right of termination under this subsection 3(b).

(c) If PPG properly files a valid petition with the Court of Chancery of Delaware pursuant to section 273 of the Delaware Corporation Law, and if at the time of filing Buyer is in breach of its obligation under subsection 3(a) above, or if Buyer has failed in any period of six (6) consecutive months to purchase on half of its annual obligation under section 3(a) pertinent to those months and has not cured that default within sixty (60) days after PPG by written notice calls upon Buyer to cure the default, then Buyer shall and does hereby waive the periods of three (3) months and one year referred to in subsection (b) of said section 273, and shall and does hereby consent that proceedings of dissolution may go forward as if such periods had expired.

4. Seller shall ship the bromine in liquid form by tank truck or tank car as specified by Buyer from time to time; and Seller shall deliver the bromine to Buyer's continental U.S. plants or to Buyer's customers at places in the continental U.S. designated by Buyer from time to time. Freight will be charged to Buyer's account. Buyer will aid and facilitate unloading of the bromine promptly upon its arrival at the plant of Buyer or its designated customer. If in any month during the term hereof Seller's tank car and tank truck fleet is not sufficient to deliver the combined quantities of bromine ordered by Buyer and PPG for delivery in that month, and Seller is unable to lease sufficient additional equipment, Seller shall allocate the fleet capacity in such a way as to endeavor to make deliveries of the quantities ordered by Buyer and PPG, respectively, in a ratio which is the greater of: ONE—the ratio of delivered to them in the next preceding 12 calendar months; or TWO—[a negotiated ratio.]

5. For each ale of bromine hereunder Seller shall invoice a preliminary net

price pound F.O.B. Seller's plant equal to Seller's best estimate for the then current calendar year of the price necessary to yield for that year a pretax return [at a negotiated rate sufficient to provide bromine at an economical cost] during such year. As soon as practicable after the end of the calendar year Seller shall calculate the net price per pound it should have charged for all bromine sold to Buyer and PPG in that year in order to achieve the said pretax return; and will either refund the excess charges to Buyer if the calculated price is less than the actual charges, or invoice Buyer for the appropriate additional amount, if the calculated price is greater then the actual charges. Buyer will pay all invoices within 30 days of the date thereof.

6. Not later than October of each year Buyer shall give Seller in writing Buyer's best estimate of the total quantity of bromine Buyer will require in the ensuing calendar year. Not later than the 15th day of every calendar month, Buyer shall give Seller in writing Buyer's best estimate of its requirements in each of the ensuing three calendar months. While it will attempt to accept and fill all Buyer's orders, in no calendar month shall Seller be obligated to sell and deliver a quantity greater than the lesser of (i) 110 percent of the latest estimate for that month, or (ii) [a specified amount of bromine.]

7. If in any month during the term hereof the quantity of bromine which Seller has available out of production at Seller's plant for delivery to customers is less than the combined quantities that Buyer and PPG require to be delivered to them during such month pursuant to this contract and a contract of even date herewith between Seller and PPG, Seller shall pro rate deliveries of the quantity so available between Buyer and PPG in a ratio which is the greater of: ONE—the ratio of delivered to them in the preceding 12 calendar months; or TWO—[a negotiated ratio.] To the extent that the bromine delivered by Seller in any one month to Buyer or for its account is less than Buyer's orders for that month, Buyer's purchase obligations under section 3 shall be reduced by the same amount.

8. The bromine sold and delivered by Seller to Buyer hereunder shall conform to the following specifications and standards of quality:

[Product Specification]

9. This Agreement may not be assigned except to (i) a business entity in which Buyer possesses more than fifty percent (50%) of both the equity and of the voting control, or (ii) to a corporation growing our of or surviving a consolidation or acquisition by or merger with Buyer, or (iii) to the purchaser of all Buyer's shares of the capital stock of Seller.

10. Seller shall warrant only that the bromine delivered to Buyer hereunder shall comply with specifications expressed in this contract. SELLER MAKES NO OTHER WARRANTIES; AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR THE INTENDED PURPOSE. Any claim relating to quantity, quality, weight, condition, loss or damage, of or to the bromine shipped hereunder, shall be conclusively deemed waived unless made within fifteen (15) business days after the arrival of the shipment at its intended destination. If Buyer rejects all or a part of a shipment hereunder, Seller shall have the right to cure any claimed defects by delivering conforming bromine within a reasonable time.

11. Nothing herein contained shall obligate Seller not increase its bromine production capacity nor to make any capital expenditures to maintain existing production capacity; and so long as Seller complies with the allocation provisions of section 7 hereof, a failure of Seller to deliver bromine which it would otherwise be obligated to deliver hereunder shall not be deemed a violation of this Agreement provided such failure results at least in part from limitations in Seller's ability to produce bromine. Seller's failure or inability to make, or Buyer's a failure or inability to take, any delivery or deliveries when due, or the failure or inability of either party to effect timely performance of any other obligation required of it hereunder, if caused by force majeure as hereinafter defined, shall not constitute a default hereunder or subject the party affected by force majeure to any liability to the other; provided, however, the party so affected shall promptly notify the other of the existence thereof and of its expected duration and the estimated effect thereof upon its ability to perform its obligations hereunder. Such party shall promptly notify the other party when such force majeure circumstance has ceased to affect its ability to perform its obligations hereunder. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes, unless both parties agree that the total quantity to be delivered hereunder shall remain unchanged. During the time that Seller is unable to make deliveries or otherwise perform, it shall not be obligated to procure, or to use its best efforts to procure, any quantity of product sold hereunder from any alternate producer or supplier. As used herein, the term "force majeure" shall mean and include any act of God, nature, or the public enemy, accident, explosion, operation malfunction or interruption, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), Federal, State, or Municipal legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of or inability to obtain raw materials, supplies, equipment, fuel, power, labor, or other operational necessity, interruption or curtailment of power supply, or any other circumstance of a similar or different nature beyond the reasonable control of the party affected thereby including the loss, lack, failure, or damage to any of Buyer's plant, equipment or facilities. In this connection a party shall not be required to resolve labor disputes or disputes with suppliers of raw materials, supplies, equipment, fuel, or power, except in accordance with such party's business judgment as to its best interest.

12. Except in respect of Section 3(c) hereof, as used in this Agreement references to "PPG" shall mean the "Buyer" under Seller's Bromine Sales Agreement of even date with PPG Industries, Inc. This Agreement shall be construed and enforced in accordance with the law of Arkansas.

13. References herein to "the date of this Agreement" and similar references shall be construed as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

Arkansas Chemicals, Inc.
By _____
Great Lakes Chemical Corporation.
By _____

Appendix 2 to Attachment B—Bromine Sales Agreement Between PPG Industries, Inc. and Arkansas Chemicals, Inc.

Made the 16th day of September 1983, by and between Arkansas Chemicals, Inc., a Delaware corporation, herein called Seller; and PPG Industries, Inc., a Pennsylvania corporation, herein called Buyer.

1. That certain contract dated July 31, 1964, between Arkansas Chemicals, Inc., and Houston Chemical Corporation (a Texas corporation) captioned *Arkansas—Houston Bromine Sales Agreement* and that certain contract

dated March 21, 1968, between the same parties, captioned *Amendment and Extension of Arkansas—Houston Bromine Sales Agreement* are hereby terminated, and shall have no force, effect, or application to sales of bromine not delivered prior to the date of this Agreement.

2. This Agreement shall continue until December 31, 1993, and continue thereafter unless and until terminated by either party by not less than 24 full calendar months prior written notice of termination given by either party to the other, provided, however, such notice of termination may not be given prior to December 31, 1991; provided, further, that Buyer's purchase obligations hereunder shall terminate forthwith upon termination of the purchase obligations of Great Lakes Chemical Corporation under its Bromine Sales Agreement with Seller of even date pursuant to subsection 3(b) of that Agreement. Buyer agrees to take action and cause its directors on Seller's Board to take action to cooperate with and join in the liquidation and dissolution of Seller referred to in said subsection 3(b) of said Bromine Sales Agreement between Seller and Great Lakes Chemical Corporation.

3. Seller will sell and deliver and Buyer will purchase, accept, and pay for all Buyer's requirements of bromine up to but not in excess of [a specified amount] of bromine in each calendar year (or, in the first and last partial calendar years of this Agreement, the proportionate fraction of such quantity) for the price and upon the terms and conditions herein set forth.

4. Seller shall ship the bromine in liquid form by tank truck or tank car as specified by Buyer from time to time; and Seller shall deliver the bromine to Buyer's continental U.S. plants or to Buyer's customers at places in the continental U.S. designated by Buyer from time to time. Freight will be charged to Buyer's account. Buyer will aid and facilitate unloading of the bromine promptly upon its arrival at the plant of Buyer or its designated customer. If in any month during the term hereof Seller's tank car and tank truck fleet is not sufficient to deliver the combined quantities of bromine ordered by Great Lakes Chemical Corporation ("Great Lakes") and Buyer for delivery in that month, and Seller is unable to lease sufficient additional equipment, Seller shall allocate the fleet capacity in such a way as to endeavor to make deliveries of the quantities ordered by Great Lakes and Buyer, respectively, in a ratio which is the greater of: ONE—the ratio of deliveries to them in the next preceding 12 calendar months; or TWO—[a negotiated ratio.]

5. For each sale of bromine hereunder Seller shall invoice a preliminary net price per pound F.O.B. Seller's plant equal to Seller's best estimate for the then current calendar year of the price necessary to yield for that year a pretax return [at a negotiated rate sufficient to provide bromine at an economical cost] during such year. As soon as practicable after the end of the calendar year Seller shall calculate the net price per pound it should have charged for all bromine sold to Buyer and Great Lakes in that year in order to achieve the said pretax return; and will either refund the excess charges to Buyer if the calculated price is less than the actual charges, or invoice Buyer for the appropriate additional amount, if the calculated price is greater than the actual charges. Buyer will pay all invoices within 30 days of the date thereof.

6. Not later than October of each year, Buyer shall give Seller in writing Buyer's best estimate of the total quantity of bromine Buyer will require in the ensuing calendar year. Not later than the 15th day of every calendar month, Buyer shall give Seller in writing Buyer's best estimate of its requirements in each of the ensuing three calendar months. While it will attempt to accept and fill all Buyer's orders, in no calendar month shall Seller be obligated to sell and deliver a quantity greater than the lesser or (a) 100% of the latest estimate for that month or (b) [a specified amount of bromine.]

7. If in any month during the term hereof the quantity of bromine which Seller has available out of production at Seller's plant for delivery to customers is less than the combined quantities that Great Lakes and Buyer require to be delivered to them during such month pursuant to this contract and a contract of even date herewith between Seller and Great Lakes, Seller shall prorate deliveries of the quantity so available between Great Lakes and Buyer in a ratio which is the greater of: ONE—the ratio of deliveries to them in the next preceding 12 calendar months; or TWO—[a negotiated ratio.]

8. The bromine sold and delivered by Seller to Buyer hereunder shall conform to the following specifications and standards of quality:

[Product Specification]

9. This Agreement may not be assigned except to (i) a business entity in which Buyer possesses more than fifty percent (50%) of both the equity and of the voting control, or (ii) to a corporation growing out of or surviving a consolidation or acquisition by or merger with Buyer, or (iii) to the purchaser of all Buyer's shares of the capital stock of Seller.

10. Seller shall warrant only that the bromine delivered to Buyer hereunder shall comply with specifications expressed in this contract. SELLER MAKES NO OTHER WARRANTIES; AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR THE INTENDED PURPOSE. Any claim relating to quantity, quality, weight, condition, loss, or damage, of or to the bromine shipped hereunder, shall be conclusively deemed waived unless made within fifteen (15) business days after the arrival of the shipment at its intended destination. If Buyer rejects all or a part of a shipment hereunder, Seller shall have the right to cure any claimed defects by delivering conforming bromine within a reasonable time.

11. Nothing herein contained shall obligate Seller to increase its bromine production capacity nor to make any capital expenditures to maintain existing production capacity; and so long as Seller complies with the allocation provisions of Section 7 hereof, a failure of Seller to deliver bromine which it would otherwise be obligated to deliver hereunder shall not be deemed a violation of this Agreement provided such failure results at least in part from limitations in Seller's ability to produce bromine. Seller's failure or inability to make, or Buyer's failure or inability to take, any delivery or deliveries when due, or the failure or inability of either party to effect timely performance of any other obligation required of it hereunder, if caused by "force majeure" as hereinafter defined, shall not constitute a default hereunder or subject the party affected by force majeure to any liability to the other; provided, however, the party so affected shall promptly notify the other of the existence thereof and of its expected duration and the estimated effect thereof upon its ability to perform its obligations hereunder. Such party shall promptly notify the other party when such force majeure circumstance has ceased to affect its ability to perform its obligations hereunder. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes, unless both parties agree that the total quantity to be delivered hereunder shall remain unchanged. During the time that Seller is unable to make deliveries or otherwise perform, it shall not be obligated to procure, or to use its best efforts to

procure, any quantity of product sold hereunder from any alternate producer or supplier. As used herein, the term "force majeure" shall mean and include any act of God, nature or the public enemy, accident, explosion, operation malfunction or interruption, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), Federal, State or Municipal legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain raw materials, supplies, equipment, fuel, power, labor, or other operational necessity, interruption or curtailment of power supply, or any other circumstance of a similar or different nature beyond the reasonable control of the party affected thereby including the loss, lack, failure, or damage of any of Buyer's plant, equipment or facilities. In this connection a party shall not be required to resolve labor disputes or disputes with suppliers of raw materials, supplies, equipment, fuel, or power, except in accordance with such party's business judgment as to its best interest.

12. As used in this Agreement references to "Great Lakes" shall mean the "Buyer" under Seller's Bromine Sales Agreement of even date with Great Lakes Chemical Corporation. This Agreement shall be construed and enforced in accordance with the law of Arkansas.

13. References herein to "the date of this Agreement" and similar references shall be construed as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

Arkansas Chemicals, Inc.
By _____
PPG Industries, Inc.
By _____

Amended Memorandum Agreement

Amended Memorandum Agreement made this February 1, 1984, between Great Lakes Chemical Corporation and PPG Industries, Inc.

Recitals

A. Great Lakes Chemical Corporation ("Great Lakes") is one of the respondents in an Administrative Complaint being prosecuted by the Federal Trade Commission staff before an Administrative Law Judge employed by the Commission. In that proceeding, the Commission Staff is contesting the legality of Great Lakes' acquisition of certain assets from Velsicol Chemical Corporation on July 15, 1981.

B. Great Lakes and the Commission staff have had, and will in all likelihood continue to have, discussions looking to a voluntary settlement of the Administrative Complaint.

C. Great Lakes and PPG Industries, Inc. ("PPG") have entered into the following agreements, each of which is legally binding on the parties on the date on which they are signed by Great Lakes and PPG and each of which is dated the date hereof. They are collectively referred to herein as the "Agreements":

i. A production technology disclosure and licensing Agreement (Attachment A to the proposed Consent Order in the above referenced proceeding);

ii. A Third Supplemental Agreement between Great Lakes and PPG with respect to the operation of Arkansas Chemicals, Inc., being Attachment B to said proposed Consent Order (which includes a Bromine Sales Agreement between Great Lakes and Arkansas Chemicals, Inc. as Appendix 1 and a Bromine Sales Agreement between PPG and Arkansas Chemicals, Inc., as Appendix 2).

D. The Agreements, and the transactions contemplated thereby, constitute an element in the settlement which Great Lakes will propose to the Commission staff.

E. The parties hereto entered into a Memorandum Agreement on September 16, 1983, which they desire to amend by this Amended Memorandum Agreement, said amendments relating only to the term of this Amended Memorandum Agreement.

It is therefore agreed:

1. In the event that, on or before [a specified date] the Federal Trade Commission shall have issued final approval under Section 3.25(f) of the Commission's Rules of Practice to the proposed settlement of the Administrative Complaint presently pending against Great Lakes before the Commission, without requiring a hearing or trial thereof, of which proposed settlement the Agreements are a part, the said Agreements shall become effective as of the date of such approval, and ther parties shall proceed to perform their respective obligations thereunder.

2. In the event that the Federal Trade Commission shall not have issued said final approval on or before [a specified date] each of the Agreements shall be null and void *ab initio*.

3. Great Lakes shall forthwith notify PPG in writing of Commission's acceptance or rejection of the proposed settlement.

4. Until the earlier of a [specified date] or the approval or rejection by the Federal Trade Commission of the proposed settlement, neither Great Lakes nor PPG shall take any action which would substantially interfere with or render impossible its ability to perform the obligations to be performed by it under the Agreements.

Great Lakes Chemical Corporation.
By _____
PPG Industries, Inc.
By _____

Agreement Containing Consent Order

In the matter of Great Lakes Chemical Corporation, a corporation, Northwest Industries, Inc., a corporation, and Velsicol Chemical Corporation, a corporation; Docket No. 9155.

The agreement herein, by and between Northwest Industries, Inc., a corporation, by its duly authorized officer, Velsicol Chemical Corporation, a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Northwest Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6300 Sears Tower, in the City of Chicago, State of Illinois.

Respondent Velsicol Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 341 East Ohio Street, in the City of Chicago, State of Illinois.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. 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 related materials pursuant to Rule 3.25(f), 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 respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purpose only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following 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 decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might 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 the agreement may be used to vary or to contradict the terms of the order.

Order

It is ordered that all proceedings in Docket No. 9155 against Northwest Industries, Inc. and Velsicol Chemical Corporation shall be dismissed.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Great Lakes Chemical Corporation ("Great Lakes"), and a separate agreement to a proposed consent order from Northwest Industies, Inc. ("Northwest") and its subsidiary, Velsicol Chemical Corporation ("Velsicol").

The Orders have 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 agreements and the comments received and will decide whether it should withdraw from the agreements or make final the proposed Orders.

On June 23, 1981, the Commission issued a complaint against Great Lakes, Northwest, and Velsicol which alleged that Great Lakes' proposed acquisition of Velsicol's El Dorado facility and bromine related assets would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. Specifically, the complaint alleged tht the acquisition would substantially lessen competition in the markets for elemental bromine and brominated flame retardants by eliminating Velsicol as a competitor in these markets and by increasing the already high concentration levels in each market. After the Commission's request for a preliminary injunction in the United States District Court for the Northern district of Illinois was denied, the acquisition was consummated on or around August 15, 1981.

The Order covering Great Lakes attempts to restore competition in each market by quickly establishing a significant new competitor to replace the competition formerly provided by Velsicol. In the brominated flame retardants market, the Order requires that Great Lakes license the technology for the major flame retardants acquired from Velsicol, including the improvements made by-Great Lakes to these products since the acquisition, to PPG Industries, Inc. ("PPG"), a company that had approached Great Lakes requesting a license for the Velsicol technology. In the elemental bromine market, the Order requires that Great Lakes enter into certain agreements with respect to the structure and operation of Arkansas Chemicals, Inc. ("ACI"), a 50–50 percent joint bromine production venture between Great Lakes and PPG. The restructuring of ACI when combined with PPG's access to the Velsicol technology through the licensing agreement will establish PPG as a significant competitive force in the elemental bromine market and the markets for brominated compounds, including flame retardants.

Paragraph I of the Order requires that Great Lakes enter into, and carry out the provisions of, the brominated flame retardant licensing agreement with PPG set forth in Attachment A. This licensing agreement requires that Great Lakes provide PPG with up-to-date technology on Velsicol's brominated flame retardants, including all Great Lakes improvements to that technology since the acquisition. The provision of up-to-date techology is required to establish PPG as a significant intrant into the brominated flame retardant market. Great Lakes is also required to provide on-site technical assistance to PPG with respect to the manufacture of each product. Great Lakes is not required to license any brominated flame retardant technology that it owned prior to the acquisition.

For purposes of the licensing agreement, the Velsicol products have been divided into Group A and Group B products. The licensing agreement provides that, with respect to each Group A product, PPG will pay a specified fee per product for preliminary production data and an additional sum for product technology as it exists on the effective date of the agreement (Attachment A, Sections 2.01–2.03). For a reasonable fee to be negotiated at a later date, PPG may obtain additional technology (*i.e.*, current as of the date of PPG's request for the technology) for all but one of the Group A products. Great Lakes will receive a royalty on all Group A product sales by PPG for five years from the date of PPG's first commercial sales of each product (Attachment A, Section 5.01). The agreement provides that PPG will pay a specified fee for each Group B product for preliminary production data and an additional sum per product for Product Technology (Attachment A, Sections 3.01–3.03). For an additional fee per Group B product, PPG may purchase Great Lakes' technological improvements on each Group B Velsciol product as of the effective date of the agreement (Attachment A, Section 3.04). PPG may thereafter obtain additional up-to-date technology for a reasonable fee to be negotiated at a later date (Attachment

A, Section 3.05). Great Lakes will receive a royalty on all Group B product sales by PPG, with the total royalty payments for all Group B products limited to a maximum sum (Attachment A, Section 5.02).

All licensed products are subject to certain common restrictions during the first five years PPG sells commercial quantities of each licensed product (Attachment A, Section 4.03). The restrictions do not in any way restrict PPG's use of the licensing technology in the development of its own brominated flame retardant business and facilities. Rather, the restrictions prohibit sublicensing during the five year royalty term and limit the number of toll converters or custom manufacturers that PPG may use to produce each licensed product. After five years of commercial sales of each product, all restrictions on the use, licensing, assignment, or sale of technology by PPG of each product are removed (Attachment A, Section 5.05).

Paragraph II of the Order requires that Great Lakes notify the Commission of each PPG request for technology under the licensing agreement. This provision will allow the Commission to monitor the effectiveness of licensing as a remedy in this case as well as to review Great Lakes' compliance with the Order and the provisions of Attachment A.

Paragraph III of the Order requires that Great Lakes enter into, and carry out the provisions of, the Third Supplemental Agreement between PPG and Great Lakes relating to the operation of ACI as set forth in Attachment B and Appendices 1 and 2 thereto. Attachment B eliminates certain restrictions on PPG's use of the bromine it purchases from ACI and allows PPG the right to sell elemental bromine in the merchant market and to use ACI bromine in the production of all brominated compounds, including flame retardants. The agreement also requires that Great Lakes' purchase a specified quantity of bromine from ACI annually (Appendix 1 to Attachment B, Section 3(a)). Great Lakes minimum purchase requirement from ACI will assure that ACI is operated as a cost efficient bromine facility and that PPG's bromine supply from ACI will be cost competitive with the bromine produced by other integrated producers of brominated compounds. Under the terms of Attachment B, either Great Lakes or PPG may unilaterally expand ACI's capacity even if its partner refuses to jointly fund the investment. The partner making the unilateral investment is entitled to all of the bromine produced as a result of the investment (Attachment B, Section 4). This provision gives PPG the flexibility to unilaterally expand its participation in ACI as its demands for elemental bromine and brominated compounds increase, a right it does not presently have under the existing ACI agreements. Attachment B also modifies Great Lakes' right of first refusal with respect to the possible sale of PPG's interest in ACI. This right is expressly made subject to the requirement contained in Paragraph VI of the Order that, for a ten year period, the Commission must give prior approval to any Great Lakes acquisition in the elemental bromine or brominated flame retardant markets. If the Commission does not approve a sale of PPG's interest in ACI to Great Lakes within 135 days, PPG is free to sell its share in ACI to any party for a period of a year without having to offer its interest to Great Lakes (Attachment B, Section 6(c)). This provision eliminates a substantial restriction that presently exists with respect to the alienability of PPG's interest in ACI and establishes PPG's share of ACI as a valuable, saleable asset.

Paragraphs IV and V of the Order are compliance provisions requiring that Great Lakes send the Commission copies of all proposed amendments and modifications of the agreements between PPG and Great Lakes, as well as communications between the parties with respect to alleged breaches of the attached agreements.

Paragraph VI of the Order requires that, for a ten year period, Great Lakes must obtain prior approval of any acquisition of an elemental bromine or brominated flame retardant producer, including acquisitions of significant foreign concerns not presently selling these products in the United States.

Paragraph VII of the Order requires that Great Lakes notify the Commission of any changes in its corporate structure which may affect its obligations under the Order.

A separate Order covering Northwest and Velsicol dismisses the complaint with respect to those parties.

The purpose of this analysis is to facilitate public comment on the Orders and it is not intended to constitute an official interpretation of the agreements and Orders or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 84-6586 Filed 3-9-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM79-76-136 (Utah-5) and RM79-76-137 (Utah-6)]

High-Cost Gas Produced From Tight Formations; Utah; Public Hearing

March 6, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Hearing on proposed rules.

SUMMARY: On November 30, 1983, the Director of the Office of Pipeline and Producer Regulation of the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking in each of the above-captioned dockets.[1] The notices propose to adopt the recommendation of the State of Utah Board of Oil, Gas and Mining (Utah) that the Dakota and Morrison Formations be designated as tight formations under § 271.703 of the Commission's regulations.[2]

In response to these Notices of Proposed Rulemaking Southwest Gas Corporation requested a public hearing concerning Utah's recommendations.[3] The Commission agrees that a public hearing should be held in these two dockets. Since the issues raised and the surface area covered in the above-captioned proposed rulemakings are similar, they will be consolidated for purposes of this hearing. Persons interested in these dockets are invited to present their views. Persons desiring to participate in the hearing are requested to follow these procedures.

DATES: The public hearing will be held on March 29, 1984, at 10:00 a.m., in the Federal Energy Regulatory Commission Building. The Secretary of the Commission should receive any requests to participate and the amounts of time requested for oral presentation before March 15, 1984. Requests and any

[1] 25 FERC ¶ 62.280 (1983) and 25 FERC ¶ 62,279 (1983), respectively, 48 FR 54648 and 54649 (December 6, 1983).

[2] 18 CFR 271.703 (1983).

[3] Southwest Gas Corporation, Tenneco Oil Company, the Public Service Commission of Nevada, Beartooth Oil & Gas Company, and Northwest Pipeline Corporation filed timely comments with the Commission on the proposed rules.

questions should be directed to the Office of Secretary at the address provided below.

ADDRESS: Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATON CONTACT: Jane M. Oliver, (202) 357–8511.

SUPPLEMENTARY INFORMATION: The comments filed in response to the Notices of Proposed Rulemaking in the above-captioned dockets have raised several issues on which the Commission feels a public hearing is needed. First, one comment disputes the depth of the Dakota and Morrison Formations supplied by Utah and the maximum allowable production rate for each formation, as required in § 271.703(c)(2)(i)(B) of the Commission's regulations. Second, several comments dispute the validity of the data submitted to determine the permeability of each formation as required in § 271.703(c)(2)(i)(A). Last, several commentors question the sufficiency of data submitted to determine the permeability of each formation. Any other issues relevant to the proposed designations of these formations as tight formations may also be raised at the hearing.

The public hearing will not be of a judicial or evidentiary type. There will be no cross-examination of persons presenting statements. However, the panel may question such persons. Any interested persons may submit to the presiding officer questions to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether there is enough time to permit its presentation. Any other procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public files under Docket Nos. RM79–76–136 (Utah 5) and RM79–76–137 (Utah–6) in the Commission's Office of Public Information. Transcripts may be ordered from that office. A list of the participants will also be available in the Office of Public Information and at the hearing. Persons participating at the hearing should bring 50 copies of their testimony to the hearing.

Dated: March 5, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–6586 Filed 3–9–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–409]

Crane or Derrick Suspended Personnel Platforms

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; correction.

SUMMARY: On February 17, 1984, OSHA proposed to revise § 1926.550, Cranes and Derricks, of OSHA's construction industry standards, by adding a new paragraph (g) (49 FR 6280). The docket number for this rulemaking is Docket No. S–409. However, on page 6289 column one, line 20 of the **Federal Register** document, the docket number was incorrectly listed as Docket S–370. The public is hereby reminded that all comments pertaining to crane or derrick suspended personnel platforms should be submitted to Docket S–409. Comments on the proposal which were submitted to Docket S–370 will be redirected to Docket S–409 and need not be resubmitted.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone: (202) 523–8151.

Signed at Washington, D.C. this 7th day of March, 1984.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); Sec. 107, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 9–83 (48 FR 35736); 29 CFR Part 1911)

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 84–6506 Filed 3–9–84; 8:45 am]

BILLING CODE 4510–26–M

VETERANS ADMINISTRATION

38 CFR Part 17

Nondiscrimination in Admission of Alcohol and Drug Abusers to VA Health Care Facilities

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration is proposing to amend a medical regulation by adding a paragraph to provide that eligible veterans who are alcohol or drug abusers and who are suffering from medical disabilities shall not be discriminated against in admission or treatment, solely because of their alcohol or drug abuse or dependence, by any Veterans Administration health care facility. This amendment is based on Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976.

DATE: Comments must be received before April 9, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office, Veterans Services Unit, room 132, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 23, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, (202) 389–2851.

SUPPLEMENTARY INFORMATION: This regulation implements section 4133, title 38, United States Code, as added by Pub. L. 94–581. It provides that there will be no discrimination by the VA in the admission or treatment of veterans eligible for VA medical care simply because they are alcohol or drug abusers.

The Administrator considers this amendment nonmajor under the criteria of Executive Order 12291, Federal Regulations. It will not have an annual effect of $100 million or more on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse economic effects.

The Administrator certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the RFA (Regulatory Flexibility Act), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This rule governs the conduct of VA employees, not that of the private sector. It will only be applicable in the case of certain veterans applying for medical care at VA health care facilities.

(The catalog of Federal Domestic Assistance numbers are 64.007, 64.008, 64.009, 64.010 and 64.011)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: February 24, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 38—[AMENDED]

38 CFR Part 17, Medical, is amended by adding a new paragraph (h) to § 17.48 to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(h) Eligible veterans who are alcohol or drug abusers and who are suffering from medical disabilities shall not be discriminated against in admission or treatment. (38 U.S.C. 4133)

[FR Doc 84-6519 Filed 3-9-84; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Act (NEPA); Amendment of Categorical Exclusions

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend certain categorical exclusions* in the Postal Service's NEPA regulations, which were adopted in November 1979 and amended in February 1982. During the almost two-year period since the rule was amended, the Postal Service has found that two of the categorical exclusions need to be expanded to conform them to actual conditions. The categorical exclusions that need expansion deal specifically with certain limited-size new construction and limited expansion or improvement of an existing facility. In each of the above exclusionary areas, it was found that there was no significant environmental impact even in actions much more extensive than those excluded. Accordingly, it appears that the exclusions should be expanded.

* Certain kinds of actions normally do not have a significant impact on the environment. Accordingly, they are "categorically excluded" from the class of actions which require an environmental assessment or an environmental impact statement.

DATE: Comments must be received on or before March 11, 1984.

ADDRESS: Written comments should be sent to the Manager, Program Planning Branch, Real Estate and Buildings Department, U.S. Postal Service, Washington, D.C. 20260-6424. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 4141, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Royal Rasmussen, (202) 245-4354.

SUPPLEMENTARY INFORMATION: Since the categorical exclusions were amended in February 1982, the Postal Service has analyzed, both at Headquarters and in the field, information about the preparation of environmental assessments. We believe the evidence shows that two of the categorical exclusions are too limited. For example, the categorical exclusion of new construction, including lease-construction, of 20,000, or less, net square feet, seems inappropriate in light of the fact that 95 percent of the new construction projects with 50 percent greater net square footage than those categorically excluded did not encounter a need for an environmental assessment. As to the 5 percent that required an environmental assessment, the impact on the environment was determined to be minor.

The second category studied excludes expansions or improvements of existing facilities where the gross square footage is not increased more than 40 percent and the site size is not increased substantially. We analyzed projects in this category where the gross square footage after expansion did not exceed 5,000 square feet. We found that none of these projects required an environmental assessment.

The Postal Service envisions the following benefits from expanding the categorical exclusions: (1) Elimination of unwarranted environmental work, which would save many employee man-hours for work on other projects; (2) reduction of contractor costs for environmental studies and reports; and (3) possible completion of projects more quickly and consequent realization of operating savings due to the earlier use of new facilities. While these categorical exclusions are proposed to be expanded, we retain the command in the rules that "* * * the responsible (postal) officials must be alert to unusual conditions that would require an environmental assessment or an environmental impact statement." 39 CFR 775.4(b). See also 39 CFR 775.6(a)(1).

Under 39 U.S.C. 410(a), the Postal Service is exempt, with specified exceptions not including NEPA, from Federal laws dealing with public property, works, employees, or funds, including provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 533 (b), (c)). Nevertheless, the Postal Service invites comments on the following propsed revisions of Title 39, Code of Federal Regulations:

List of Subjects in 39 CFR 775

Environmental impact statements, Postal Service.

PART 775—ENVIRONMENTAL PROCEDURES

In § 775.4, paragraphs (b) (1) and (2) are revised to read as follows:

§ 775.4 Typical Classes of Action.

* * * * *

(b) * * *

(1) New construction, including lease-construction, of 30,000, or less, net square feet.

(2) Expansion or improvement of an existing building where the gross square footage after expansion does not exceed 5,000 square feet and the site size is not increased substantially, or for larger expansion projects, where the gross square footage is not increased by more than 40 percent and the site size is not increased substantially.

(39 U.S.C. 401; 42 U.S.C. 4331 *et seq.*; 40 CFR 1500.4(p))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-6584 Filed 3-9-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 66

[FRL 2522-6]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On July 28, 1980 the Environmental Protection Agency published rules for the assessment and collection of noncompliance penalties pursuant to section 120 of the Clean Air Act, 42 U.S.C. 7420. The penalty is designed to calculate the economic

benefit enjoyed by a source that delays compliance with applicable legal requirements.

This proposed rule would modify the section 120 regulations in three respects. The modernizations are proposed in response to the decision and order of the D.C. Circuit in *Duquesne Light Co.* v. *EPA*, 698 F.2d 457 (1983).

First, the proposed rule implements the statutory exemption for violations that result from a source's inability to comply for reasons entirely beyond its control by allowing a source to petition for exemption without prejudging what kinds of circumstances qualified for exemption.

Second, the proposed rule provides for adjudicatory hearings in all cases addressed by section 120 without administrative denial of hearings for immaterial contentions.

Third, the rule clarifies that in cases of subsequently-approved SIP revisions the statutory "period of covered noncompliance" terminates at the end of four months after submission of the SIP revision.

EPA proposes to make the proposed amendments, if promulgated, effective immediately upon promulgation.

Interested persons are reminded that section 307(d)(7)(B) of the Clean Air Act provides that objections to proposed rules must be raised with reasonable specificity by public comments for those objections to be cognizable during judicial review.

DATES: Written comments must be received on or before May 11, 1984.

ADDRESS: Comments should be addressed to: U.S. Environmental Protection Agency, Central Docket Section Docket No. EN–79–1, Gallery One, West Tower Lobby, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christopher C. Herman, Office of General Counsel, (202) 382–7630.

SUPPLEMENTARY INFORMATION: On July 28, 1980, EPA published rules for the assessment and collection of administrative noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420 (48 FR 50086, 40 CFR Parts 66 and 67).

In a decision dated January 7, 1983, the D.C. Circuit upheld the EPA rules in all major substantive and procedural respects, *Duquesne Light Co.* v. *EPA*, 689 F.2d 457, but remanded three secondary aspects of the rule to EPA for further consideration. This proposed rule responds to the order in *Duquesne*.

The *Duquesne* court remanded for further consideration issues related to (1) implementation of the statutory exemption for sources whose noncompliance results from an inability to comply which is beyond the source's control; (2) implementation of the statutory provision for hearings upon receipt of a source's petition challenging a source's liability for a penalty or disputing EPA's recomputation (under 40 CFR 66.51(2)); and (3) the effect on the amount of a source's penalty of late EPA approval of a revision of the relevant SIP provision.

1. Implementation of the "Inability To Comply" Exemption

Section 120 exempts violations from penalty which (i) have been recognized [1] as resulting from the "inability" of the source to comply with applicable regulations, if (ii) the inability arose entirely "for reasons beyond" the control of the source. In the rule which the Court remanded for further consideration, EPA had listed seven categories which it considered constituted grounds for exemption.[2] The Court held that EPA could not limit the possible categories. It remanded for consideration of a rule that would allow a source to qualify for exemption whenever its inability to comply resulted from factors beyond its control.[3]

The proposed rule would allow a source to assert a claim for an "inability to comply" exemption without regard to whether the cause fits any preconceived category.[4]

2. Administrative Denial of Hearing

Section 120 requires EPA to "provide a hearing on the record" of any petition challenging EPA's issuance of a notice of noncompliance or claiming an exemption, section 120(b)(4)(5). It also authorizes EPA to recompute penalty amounts after "notice and opportunity for a hearing on the record", section 120(b)(8). Because of the administrative burdens in providing an adjudicatory hearing for all petitions whether meritorious or not, EPA regulations provided for administrative denial of hearings if the petition presented no information "which, if true" would tend to disprove the existence of a violation, show entitlement to an exemption, or alter the amount of a penalty assessment,[5] 40 CFR 66.41(a)(2), 40 CFR 66.53(b).

The Court however found that the statute required hearings in all such cases.

Consistent with the Court's ruling, the proposed regulations require EPA to provide a hearing upon receipt of petitions challenging a notice of noncompliance, claiming entitlement to an exemption or challenging EPA's recomputation of a source's penalty assessment. The issue whether the petition presented any material factual issue would therefore be determined in the first instance on motion before an administrative law judge.

3. Subsequently-Approved Revisions to SIP Requirements

Section 120 imposes a penalty for violation of "applicable" SIP requirements, section 120(a)(2)(A). The pendency of proposed revisions to applicable SIP requirements does not, therefore, affect a source's liability for violations of existing SIP requirements. Upon EPA approval of the SIP revision, however, the prior SIP would no longer provide a basis for penalty assessment as of the date of EPA approval of the revision.

Section 110 requires EPA to take action on proposed nonvoluntary SIP revisions within four months of submission to EPA, section 110(a)(2). The Court stated that a similar four-month limit applies to voluntarily-submitted SIP revisions, 698 F.2d 471.

Were EPA to delay more than four months to act on a SIP revision which it eventually approved, EPA delay could result in a penalty amount larger than the penalty a source would owe had EPA acted within the four-month limit.

Apparently assuming that EPA claimed the right to collect a section 120 penalty in such cases, i.e., for the period of EPA's delay past four months in cases of eventual EPA approval of SIP revisions, the Court remanded for reconsideration of the regulation in this respect, 698 F.2d 472.

One method to carry out the Court's ruling would be to abate the penalty for the period after four months of

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[1] To be eligible for an inability to comply exemption a source must have received a section 113(d) order or EPA-approved judicial order authorizing delayed compliance. Section 120(a)(2)(B)(iv), 40 CFR 66.31(c), 698 F.2d 478.

[2] To establish whether the inability resulted from factors beyond a source's control, EPA required that the inability result from Act of God, fire, embargo, strike, capital shortage, unforeseeable equipment failure or failure of supply, 40 CFR 66.31(c).

[3] The Court specifically held, however, that "technological impossibility" did not constitute a basis for exemption, 698 F.2d 477.

[4] An alternative approach discussed by the Court would be to retain the seven categories but to allow sources to seek rule amendments (with retroactive effect) to establish new bases of qualification as needed, 698 F.2d 477. This approach, however, seems unnecessarily time consuming and cumbersome.

[5] Under the statute a source must compute a penalty upon receipt of a notice of noncompliance, section 120(b)(4). EPA may accept or reject the source's computation, section 120(b)(8). The regulations track these statutory requirements, 40 CFR 66.13(a)(1), 66.51(2).

submission until EPA approval of the SIP revision. This approach, however, assumes that penalty payments are attributable to specific monthly periods rather than to a prorated portion of the entire period of noncompliance. Such an approach also involves unnecessary complexities: it cannot be known in advance whether a SIP revision will be submitted or whether EPA action will be delayed. This means that *any* section 120 payments would have to be abated four months after the filing of a SIP revision if EPA had not acted by that time.

The proposed revision does not adopt the "abatement" approach but instead expressly recognizes that EPA approval of a SIP revision terminates the "period of covered noncompliance" which forms the basis for the penalty calculation.[6] It states that the final penalty adjustment will assume that the period of covered noncompliance in such cases ends on the date four months from submission of a subsequent-approved SIP revision. As in all other cases, any overpayment would be refundable with appropriate interest, see 698 F.2d 484.

Public Comment on the Proposal

Public comment is invited and will be received until May 11, 1984. A hearing will be scheduled should members of the public request one.

The documents upon which this proposal is based are contained in Docket No. EN–79–1. All comments received during the comment period will be promptly added to the docket and all documents upon which the final rule is based will be included in the docket.

The docket is open for public inspection between 8 a.m. and 4 p.m. Monday thru Friday at U.S. Environmental Protection Agency, Central Docket Section, Docket No. EN–79–1, Gallery One, West Tower Lobby, 401 M Street SW., Washington, D.C. 20460.

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore to be accompanied by a regulatory impact analysis. Executive Order 12291 requires such an analysis if the regulation would result in (1) An annual effect on the economy of $100 million or more, (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because we expect that it will have little if any economic effect.

The regulation has been submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and EPA response to those comments will be included in the docket.

This regulation is not expected, for similar reasons, to have significant effect on a substantial number of small entities as specified under section 605 of the Regulatory Flexibility Act (section 120 of the Clean Air Act, 42 U.S.C. 7420).

William D. Ruckelshaus,

Administrator.

February 1, 1984.

List of Subjects in 40 CFR Part 66

Administrative practices and procedures, Air pollution control, Penalties.

Authority: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

For the reasons set out in the preamble, 40 CFR Part 66 is proposed to be amended as follows:

1. In § 66.31, paragraph (c) is revised to read as follows:

§ 66.31 Exemptions based on an order, extension or suspension.

* * * * *

(c) In any exemption claim based on subparagraph (a)(4) above, the source owner or operator must demonstrate:

(1) that the source owner or operator or an affiliated entity in no manner sought caused, encouraged or contributed to the inability; and

(2) that the source owner or operator in no way unduly delayed negotiation for needed equipment or fuel supply or made unusual demands not typical in its industry, or placed unusual restrictions on the supplier, or delayed in any other manner the delivery of goods or the completion of the necessary construction.

* * * * *

2. In § 66.41 paragraph (a)(2) is removed, paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(2) and (a)(3) respectively, and the last sentence of the redesignated paragraph (a)(3) is revised to read as follows:

§ 66.41 Decision on petitions.

(a) * * *

(3) * * * Any supplemental materials provided pursuant to the Administrator's request shall be evaluated as provided in paragraphs (a)(1)–(2) of this section.

* * * * *

3. In § 66.41 paragraph (b) is removed and reserved.

4. In § 66.42 paragraph (a) is revised to read as follows:

§ 66.42 Procedure for hearings.

(a) Except as provided in §§ 66.32 and 66.33 hearings granted under § 66.41(a)(2) shall be held as provided in Subpart J.

* * * * *

5. Section 66.53 is amended by revising paragraph (b) and by removing paragraph (c).

§ 66.53 Decisions on petitions.

* * * * *

(b) Grant a hearing to the extent he does not conclude that the petition is correct.

6. Section 66.71 is amended by adding a new paragraph (d) to read as follows:

§ 66.71 Determination of compliance.

* * * * *

(d) In the event that the applicable legal requirement (as defined in § 66.3(c)) the violation of which forms the basis for the penalty is superseded by another applicable legal requirement (as defined in § 66.3(c)) the owner or operator of a source liable for a noncompliance penalty under this Part shall notify the Administrator in writing that the owner or operator believes that the applicable legal requirement is superseded and that the period of noncompliance covered by the notice of noncompliance is ended. The notice shall be accompanied by the legal arguments which the source owner or operator believes support such a claim. Within 30 days of receipt of a source owner or operator's notice, the Administrator shall determine whether the period of covered noncompliance is ended and shall notify the source owner or operator of this determination in writing. In cases where the superseding EPA-approved requirement was not approved by EPA within the time period required by statute, the period of covered noncompliance shall be deemed to have ended on the date when EPA under the statute should have acted.

7. Section 66.72 is amended by adding a new paragraph (d) to read as follows:

[6] EPA's approval of the revision of the SIP terminates the "period of covered non-compliance" whether or not the source is in compliance with the new SIP. If the source is violating the new SIP, a new "period of covered noncompliance" would begin and would form the basis of a different penalty computation.

§ 66.72 Additional payment or reimbursement.

* * * * *

(d) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(d) that the period of covered noncompliance ended on the date the applicable legal requirement was superseded (or, in event of EPA delay past an applicable statutory deadline, on the date the applicable legal requirement would have been superseded if there had been no delay past the statutory deadline), the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and Manual together with data necessary for verification. The revised calculation shall include interest on any underpayment. Subparagraphs (b) and (c) shall apply to calculations submitted under this paragraph.

8. In § 66.81 paragraph (a)(5) is revised to read as follows:

§ 66.81 Final action.

(a) * * *

(5) A notice of denial of a petition for reconsideration under § 66.71 or 66.73.

* * * * *

[FR Doc. 84-6524 Filed 3-9-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42044A; FRL 2543-2]

Hexafluoropropylene Oxide; Proposed Test Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on hexafluoropropylene oxide (HFPO) published in the **Federal Register** of December 30, 1983. The extension is to allow a full 60-day comment period after the supporting documentation was made available in the public record.

DATES: Written comments on the proposed rule should be submitted on or before March 30, 1984. If persons request time for oral comment by March 15, 1984, EPA will hold a public meeting on April 16, 1984. For information on arranging to speak at a public meeting, please refer to Unit VI. of the preamble to the December 30, 1983 notice (48 FR 57686).

ADDRESS: Address written comments identified by the document control number [OPTS-42044] in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E-108, Washington, D.C. 20460

A public version of the administrative record supporting this action, with confidential business information deleted, is available for inspection at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack McCarthy, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the **Federal Register** of December 30, 1983 (48 FR 51686) to consider requiring health effects testing of HFPO under section 4(a) of the Toxic Substances Control Act (TSCA). Placement of final versions of certain supporting documentation in the public record was unavoidably delayed. Since interested persons will not have had access to this supporting documentation for the full duration of the announced comment period, EPA is extending the comment period by an additional thirty days. This will provide a full sixty days in which the public will have access to supporting documentation for this notice of proposed rulemaking.

(Sec. 4, Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: March 2, 1984.

Joseph Merenda,

Acting Director, Office of Toxic Substances.

[FR Doc. 84-6518 Filed 3-9-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 150

Public Safety Awards to Public Safety Officers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule updates an existing rule on awards to public safety officers to reflect organizational changes resulting from the establishment of the Federal Emergency Management Agency and recent changes to the Federal Fire Prevention and Control Act. The rule describes the nomination criteria and the selection process for public safety awards made by the President and by the Director of the Federal Emergency Management Agency and the Attorney General.

DATE: Comments on this proposed rule are due on or before April 11, 1984.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, S.W., Washington D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Richard S. Buck (202) 287-0385, Office of General Counsel, Federal Emergency Management Agency.

SUPPLEMENTARY INFORMATION: Section 15 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2214) establishes two classes of honorary awards for the recognition of outstanding and distinguished service by public safety officers. Public Safety Officers are firefighters, law enforcement officers and civil defense officers. These include awards presented by the President for Outstanding Public Safety Service and Awards presented either by the Director, FEMA, or the Attorney General for Distinguished Public Safety Service.

Since adoption of the Act, there have been a number of organizational changes primarily resulting from the establishment of the Federal Emergency Management Agency (FEMA) to whom functions under the Federal Fire Prevention and Control Act and the Federal Civil Defense Act have been transferred or delegated. Further, legislation is now pending final adoption which will eliminate the Secretary of Defense from having responsibilities under section 15 of the Act commensurate with Reorganization Plan No. 3 of 1978 and E.O. 12148. This requires the revision of a regulation previously issued by the Secretary of Commerce (who was responsible for firefighting awards) with the concurrence of the Secretary of Defense and the Attorney General (who were responsible for civil defense and law enforcement awards). Now the firefighting and civil defense functions are vested in or delegated to the Director, FEMA, and for the purposes of this regulation, Section 15 of the statute authorizes the issuance of joint regulations. The Attorney General has concurred in the issuance by the Director of these regulations. This regulation change is basically procedural and organizational, being

caused by organizational realignments which do not actually affect the nomination process. Hence, the public comment period has been set at thirty days. This regulation is procedural and is not subject to requirements for environmental assessments contained in 44 CFR Part 10. It is not a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact analysis have been made. This rule is not a major rule within the meaning of the term in Section 1(b), Executive Order 12291, nor, since it involves awards to a limited number of individuals, it is a rule which has a significant economic impact on a substantial number of small entities. Hence, no regulatory analysis have been prepared. The information collected requests in Sec. 150.3 have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Comments on this request should be submitted to the Office of Management and Budget, Attention: FEMA Desk Officer, Room 3201, New Executive Office Building, Washington, D.C. 20503.

List of Subjects in 44 CFR Part 150

Civil defense, Decorations, Medals and awards, Firefighters, Law enforcement officers.

Accordingly, it is proposed that Part 150 of Title 44, Code of Federal Regulations, be revised to read as follows:

PART 150—PUBLIC SAFETY AWARDS TO PUBLIC SAFETY OFFICERS

Sec.

Authority: Federal Fire Prevention and Control Act of 1974, Sec. 15, 15 U.S.C. 2214; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Compilation p. 329 and E.O. 12127, dated March 31, 1979 3 CFR 1979 Compilation p. 376.

§ 150.1 Background and purpose.

The regulations in this part are issued under the authority of the Federal Fire Prevention and Control Act of 1974 (the Act) 15 U.S.C. 2201 *et seq.* The Act establishes two classes of honorary awards for public safety officers and directs the issuance of the necessary joint regulations by the Director of FEMA and the Attorney General. The functions of the Secretary of Commerce were transferred by Reorganization Plan No. 3 of 1978 to the Director, Federal Emergency Management Agency. Since initial passage of the Act, civil defense functions which then were delegated to the Secretary of Defense have been delegated to the Director, Federal Emergency Management Agency (FEMA). Section 15 of the Act is about to be amended to eliminate reference to the Secretary of Defense. The Director, FEMA, has obtained the approval of the Attorney General to issue this regulation to implement the statutory provisions on behalf of FEMA and Department of Justice.

§ 150.2 Definitions.

"Civil defense officer" (or member of a recognized civil defense or emergency preparedness organization) means any individual who is assigned to and is performing the assigned tasks of the unit or organization which has been given a mission under the direction or operational control of a Civil Defense or Emergency Preparedness Director/Coordinator in accordance with a Federal, State or local emergency plan and sanctioned by the government concerned. This also includes emergency management officers. This includes volunteers and paid employees for any Governmental entity.

FEMA means the Federal Emergency Management Agency.

"Firefighter" means a member, regardless of rank or duties, of any organization (including such Federal organizations) in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire. This term includes volunteers or paid employees. The location of any such organization may include, but is not limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, rural fire district or other special district.

"Joint Board" means the Joint Public Safety Awards Board established by the Director of the Federal Emergency Management Agency and the Attorney General to carry out the purposes of the Federal Fire Prevention and Control Act of 1974.

"Law enforcement officer" means a person involved in the control or reduction of crime and juvenile delinquency or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and court officers, and Federal civil officers in such capacities.

"Nominating official" means the head of a Federal government department or agency, or his delegate(s), the governor or other head of State, or the chief executive or executives of any general governmental unit within any State.

"President's Award" means the President's Award for Outstanding Public Safety Service, presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contributions to public safety.

"Public safety officer" means a person serving a public agency with or without compensation, as a firefighter, a civil defense officer (or member of a recognized civil defense or emergency preparedness organization), or a law enforcement officer, including a corrections or court officer.

"Distinguished Public Safety Service Award" means the award presented by either the Attorney General or the Director of FEMA to public safety officers for distinguished service in the field of public safety.

"State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

§ 150.3 Nomination process.

(a) The Nominating Officials shall submit their nominations for the Outstanding or Distinguished Public Safety Award to the executive secretary, Joint Public Safety Awards Board, National Emergency Training Center, Emmitsburg, MD 21727. Copies of all nominations shall also be forwarded as follows:

(1) Firefighter: FEMA, Attention: Superintendent, National Fire Academy, Emmitsburg, MD 21727.

(2) Civil defense officer (or member of a recognized civil defense or emergency preparedness organization): FEMA, ATTENTION: Superintendent, Emergency Management Institute, Emmitsburg, MD 21727.

(3) Law enforcement, corrections or court officer: Assistant Attorney General for Administration, U.S. Department of Justice, Washington, D.C. 20530.

(b) All nominations shall be submitted in writing in accordance with the requirements prescribed in this section and Sec. 150.4 at the earliest practicable date after the performance of the act or acts for which the nomination is made. Nominations for each year shall be made before November 15; any received thereafter will be considered as having been made for the following year.

However, for the year 1983, nominations may be made by April 15, 1984.

(d) Nominations for the President's Award or the Distinguished Public Safety Service Award should include the name of the candidate, his/her position, title and address, the public agency served, the locale where the candidate performs his/her duties, the name, address and telephone number of the nominating official, a summary describing the outstanding contribution, distinguished service or extraordinary valor, and the dates relating thereto. The description should be sufficiently concise and specific to justify the request for recognition of the public safety officer through the presentation of either of the awards. Copies of any published factual accounts of the nominee's accomplishment should also be attached when available.

(e) An annual invitation shall be issued by the Joint Board for nominations for the President's Award for Outstanding Public Safety Service and, on behalf of the Attorney General and the Director of FEMA, for the Distinguished Public Safety Service. The invitation shall be issued by letter or by notice in appropriate publications of interest to the public safety community. However, nominating officials need not wait for such invitation but may nominate at the most appropriate time in accordance with the other provisions of this part.

§ 150.4 Nomination and selection criteria.

(a) Nominations for the President's Award or the Distinguished Public Safety Service Award to be made by the President shall be made on the basis of, and in conformity with, the following uniform criteria.

(1) President's Award. Documentation accompanying the nomination for this Award must indicate not only that the nominee unquestionably meets the standards established for the Distinguished Public Safety Service Award (see paragraph (a)(2) of this section), but also deserves greater public recognition because he/she has demonstrated unique qualities of courage, imagination or ability, which have resulted in outstanding contributions to the public safety.

(2) Nomination for the distinguished Public Safety Service Awards shall clearly show that the public safety officer's qualifying service or act is marked by courage, imagination or ability or has resulted in a significant contribution to the public safety accomplished through an originality of effort which far exceeds the expected quality of performance of the normal duties assigned to the nominee.

(b) A nomination shall specify whether it is being submitted for the President's Award or Distinguished Public Safety Service Award.

§ 150.5 Joint Public Safety Awards Board.

(a) A Joint Public Safety Awards Board (Joint Board) is hereby established to fulfill the responsibilities of the Director of FEMA and the Attorney General by administering the process of nomination for the President's Outstanding Public Safety Service Award and by participating in the selection process with the Executive Officer of the President. The Joint Board shall consist of nine representatives who are Federal employees and are of appropriate rank (at or equivalent to grades GM–14 or above). Six persons shall be named by and represent the Director of FEMA, and three persons shall be named by and represent the Attorney General. The representatives serving on the Joint Board shall select one of their number to act as the chairperson.

(b) Representatives on the Joint Board shall serve in addition to their regular duties and without additional compensation. Consistent with the requirements of this part, the members of the Joint Board shall establish the procedures by which the selections for the President's Outstanding Public Safety Service Award shall be made to assure the timely presentation of these awards.

(c) A National Emergency Training Center employee shall act as Executive Secretary of the Joint Board. The Executive Secretary shall perform such functions as are appropriate to the Board's responsibilities, including the receipt of all nominations, and the communication of nomination information, for the purpose of receiving comments thereon, from members of the public safety community pursuant to § 150.5(e). The Executive Secretary shall be appointed by the Associate Director, Training and Fire Programs of FEMA.

(d) The Joint Board shall review the nominations for the President's Award and shall recommend to the Director, FEMA, and the Attorney General by February 1 of each year, those nominees determined by it to merit consideration for the President's Award together with reasons therefor. The Director and the Attorney General shall then recommend to the President those noninees determined by them to merit the President's Award, together with reasons therefor. Recommendations for 1983 shall be submitted on or before May 15, 1984.

(e) The Joint Board may request that persons representing a cross-section of the national public safety community comment upon nomiations made to the Board for the President's Outstanding Public Safety Award. Both the request for comments and the comments themselves shall be made in writing.

§ 150.6 Design and procurement of awards.

(a) The Joint Board shall consult with the Department of the Treasury and the Executive Office of the President in regard to the design and procurement of the appropriate citations and medal for the President's Award in accordance with applicable laws and regulations.

(b) Insofar as practical, the designs for Distinguished Public Safety Service Awards of FEMA and the Department of Justice shall be coordinated so as to avoid distinctly different recognition of the various public safety officers.

§ 150.7 Selection process.

(a) President's Outstanding Public Safety Service Award. Nominations for the President's Award shall be reviewed, and winners selected by the President (or his designee) in accordance with the requirements of § 150.3, the criteria in § 150.4(a)(1), and the procedures of § 150.5.

(b) Distinguished Public Safety Service Award. Upon receipt of nominations for this Award, the Director of FEMA or the Attorney General shall cause an evaluation and selection of the nominees to be made in accordance with the requirements of § 150.3 and the criteria prescribed in Sec. 150.4(a)(2). In reviewing nominations, the Attorney General or the Director of FEMA may request that persons representing the relevant segment of the national public safety community comment upon the nomination and accompanying documentation. Both the request for comments and the comments themselves shall be made in writing.

(c) Individuals nominated for the President's Award who are considered not to meet the criteria for the Award by the Joint Board or who are not recommended to or selected by the President shall be automatically considered by the appropriate authority for nomination for the Distinguished Public Safety Service Award.

(d) Individuals nominated for a Distinguished Award may be considered by the Joint Board for the President's Outstanding Public Safety Service Award if the Director of FEMA or Attorney General determines that consideration for the President's Award is merited.

§ 150.8 Presentation of awards.

(a) Presentation of the President's Award shall be made at such time, place and circumstances as the Executive Office of the President directs. There shall not be more than twelve President's Awards given out during any calendar year.

(b) Presentation of the Distinguished Service Award shall be made by the Attorney General or the Director of FEMA or a designee at such time, place and circumstance as the Director of FEMA or Attorney General determines. There is no limit on the number of these awards made during any calendar year.

§ 150.9 Funding.

(a) *President's Outstanding Public Safety Awards.* The costs involved in designing and striking the cast for the medal to be presented in conjunction with the President's Award shall be prorated among the agencies concerned. The cost of producing the medal and printing the certificate shall be borne by FEMA if the recipeint is a firefighter or a civil defense officer. If the award recipient is a law enforcement officer, then such cost shall be borne by the Department of Justice.

(b) *Distinguished Award.* All expenses in connection with this Award shall be borne by the appropriate Agency.

§ 150.10 Date of submission of nominations.

Nominations may only be submitted for acts, service, or contributions occurring within two years preceding the November 15 cutoff date described in § 150.3(c), above. However, for nominations submitted in 1984 prior to the cutoff date, nominations may be made for acts, services or contributions occurring on or after October 29, 1972 (two years before the effective date of the Federal Fire Prevention and Control Act).

Dated: March 5, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-6508 Filed 3-9-84; 8:45 am]

BILLING CODE 6718-01-M

Notices

Federal Register
Vol. 49, No. 49
Monday, March 12, 1984

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 Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 10:00 a.m., Friday, March 23, 1984, at the offices of the Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, D.C.

The agenda will include (1) consideration of revised report and recommendation on administration of the Government in the Sunshine Act; (2) further consideration of Professor Rosenblum's report on standards and controls for administrative law judge performance.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days prior to the meeting. The committee chairman, if she deems if 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 concerning this meeting, contact Richard K. Berg, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202–254–7020.) Minutes of the meeting will be available on request.

Dated: March 6, 1984.
Richard K. Berg,
General Counsel.
[FR Doc. 84–6554 Filed 3–9–84; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Upper Sand Creek Watershed, Idaho; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Sand Creek Watershed, Bonneville County, Idaho.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for land treatment to protect the quality of the land resource, reduce severe erosion on non-irrigated cropland and reduce sediment damage. The planned works of improvement include conservation practices such as conservation tillage systems, permanent vegetation and terraces.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: February 27, 1984.
Stanley N. Hobson,
State Conservationist.
[FR Doc. 84–6530 Filed 3–9–84; 8:45 am]
BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket 42028]

Alfonso Airways & Export, Inc., Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated: Washington, D.C., March 6, 1984.
Elias C. Rodriguez,
Chief Administrative Law Judge.
[FR Doc. 84–6592 Filed 3–9–84; 8:45 am]
BILLING CODE 6320–01–M

[Order 84–3–13; Docket 42028]

Order Instituting the Alfonso Airways & Export, Fitness Investigation and To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Board is instituting an investigation to determine the fitness of Alfonso Airways & Export, Inc. to engage in scheduled interstate, overseas, and foreign (United States-Costa Rica/Dominican Republic) air transportation of persons, property, and mail. The order also directs interested persons to show cause why Alfonso Airways' request for Tampa-Cancun

scheduled authority should not be granted. If the carrier meets the citizenship requirement of section 101(16) of the Act, is otherwise found fit, and the Board makes final its tentative findings, it will receive certificates of public convenience and necessity authorizing such air transportation.

DATES: Applications, motions to consolidate, petitions for leave to intervene, and all other pleadings, including requests for additional evidence, shall be filed with the Board in Docket 42028 by March 21, 1984.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42028, *Alfonso Airways & Export, Inc. Fitness Investigation.*

In addition copies of such filings should be served on: Alfonso Airways & Export, Inc., all certificated U.S. carriers, the Mayors and Airport Managers of Miami and Tampa, Florida, the United States Departments of State and Transportation, and the Ambassadors of Mexico, Costa Rica, and the Dominican Republic in Washington, D.C.

Service will also be required on any other persons filing petitions.

FOR FURTHER INFORMATION CONTACT: Ronald A. Brown, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5203.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-3-13 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-3-13 to that address.

By the Civil Aeronautics Board: March 1, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-6590 Filed 3-9-84; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended March 2, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Feb 27, 1984	42017	Conner Air Lines, Inc., c/o Harry A. Bowen, Bowen and Atkin, Suite 350, 2020 K Street, N.W., Washington, D.C. 20006. Application of Conner Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment to its certificate authorizing scheduled services over Route 212-F so that for Colombia instead of reading the terminal point Barranquillo, it will describe the Colombia authorization as the co-terminals Barranquilla, Cali, Cortegueua, and Meddeilin. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 26, 1984.
Feb. 29, 1984	42023	Nippon Cargo Airlines Co., Ltd., c/o James L. Devall, Zuckert, Scoutt, Rasenberger & Johnson, 888 17th Street, N.W., Suite 600, Washington, D.C. 20006. Application of Nippon Cargo Airlines Co., Ltd. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to engage in foreign air transportation of property and mail on the following routes: Between a point or points in Japan and the coterminal points San Francisco, California, and New York, New York. Between a point or points in Japan, the intermediate point Anchorage, Alaska, and the terminal point New York, New York. NCA also requests authority to engage in charter foreign air transportation of property and mail, subject to the rules and conditions of the Board's Economic Regulations. Anwers may be filed by March 26, 1984.
Do.	42024	Alaska Airlines, Inc., c/o Marshall S. Sinick, Fisher & Sinick, Suite 440, 2020 K Street, N.W., Washington, D.C. 20006. Application of Alaska Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations request the Board to issue it a certificate of pubic convenience and necessity authorizing service between Las Vegas, Nevada, on the one hand, and Calgary, Alberta and Edmonton, Alberta, on the other, including permissive authority to serve Salt Lake City, Utah as an intermediate point. Answers may be filed by March 12, 1984.
Mar. 1, 1984	42025	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests the Board to issue it a certificate authorizing it to engage in foreign air transportation of persons, property and mail between a point or points in Puerto Rico and a point or points in Venezuela.
Feb. 29, 1984	41951, 41952	Flight International Airlines, Inc., c/o James M. Burger, Shaw, Pittman, Potts & Trowbridge, 1800 M Street N.W., Washington, D.C. 20036. Supplement to the Applications of Flight International Airlines, Inc. Answers may be filed by March 28, 1984.
Mar. 1, 1984	41736	Eastern Air Lines, Inc., 1030-15th Street, N.W., Washington, D.C. 20005. Amendment No. 1 to the Application of Eastern Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations for amendment of its certificate of public convenience and necessity for Route 59 so as to authorize service between a point or points in Puerto Rico and a point or points in Venezuela.

Phyllis T. Kayor,

Secretary.

[FR Doc. 84-6588 Filed 3-9-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-3-29]

Application of Caribbean Air Services, Inc. for Unused Authority Under Section 401(d)(5)(D); Order To Show Cause Order

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Board is proposing to find Caribbean Air Services, Inc. fit, willing and able to operate all-cargo service in the San Juan, Puerto Rico-St. Croix, Virgin Islands and San Juan-St. Thomas, Virgin Islands markets.

DATES: Objections: All interested persons having objections to the Board's tentative findings and conclusion shall file, and serve upon all persons listed below no later than March 27, 1984, a statement of objections, together with a summary of testimony, statistical data,

and other material expected to be relied upon to support the objections.

ADDRESSES: Responses shall be filed in Docket 41281 and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon Caribbean Air Services, Inc. the mayors and airport managers of San Juan, Puerto Rico, St. Croix and St. Thomas, U.S. Virgin Islands, the Federal Aviation Act, and the U.S. Postal Service.

FOR FURTHER INFORMATION CONTACT: Phyllis Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–29 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washingon, D.C. 20428. Person's outside the metropolitian area may send a postcard request for Order 84–3–29 to that address.

By the Civil Aeronautics Board: March 6, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–6589 Filed 3–9–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 41989]

United States-Dublin Route Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above titled matter is assigned to be held on April 18, 1984, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference. Parties including the Bureau of International Aviation, are instructed to submit one copy to each party and four copies to the Judge of: (1) Proposed statements of issues; (2) proposed stipulations; (3) proposed requests for additional information and evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau's material shall be submitted on or before March 27, 1984, and that of the other parties on or before April 10, 1984

Dated at Washington, D.C., March 5, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84–6591 Filed 3–9–84; 8:45 am]

BILLING CODE 6320–01–M

COMMISSION ON CIVIL RIGHTS

Wisconsin Advisory Committee; Agenda and Notice of 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 Wisconsin Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on March 28, 1984, at the Wisconsin Memorial Union, 800 Langdon, Madison, Wisconsin 53706. The purpose of the meeting is to review the status of current projects and discuss plans for future studies.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Herbert Hill, at (608) 263–2330 or the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 7, 1984.

John I. Binkley,

Advisory Committee Management Office.

[FR Doc. 84–6575 Filed 3–9–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the Committee on International Trade and Marketing, a subcommittee of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

TIME AND PLACE: Monday, April 2, 1984, 11:00 am—5:00 pm, O'Hare Hilton, Room 2049, O'Hare International Airport, Chicago, Illinois.

Public Participation: The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, N.W., Washington, DC 20503, telephone: 202–395–4527 on substantive issues or Marilyn McLennan, Chief, Information Management Division, 202–377–4217, on issues regarding administration of the Commission.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss trade reorganization, trade law reform, Domestic International Sales Corporation/Foreign Sales Corporation (DISC/FSC), dollar/foreign exchange value and export promotion proposals.

Dated: March 7, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–6573 Filed 3–9–84; 8:45 am]

BILLING CODE 3510–18–M

Foreign-Trade Zones Board

[Docket No. 6–84]

Foreign-Trade Zone 53, Rogers County, Oklahoma; Application for Subzone at Steel Tube Plant of Tubular Corporation of America in Muskogee, Oklahoma

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tulsa-Rogers County Port Authority (Port Authority), grantee of Foreign-Trade Zone 53 in Tulsa, requesting special-purpose subzone status for the steel tube manufacturing plant of Tubular Corporation of America, Inc. (TCA), in Muskogee, Oklahoma, some 40 miles from the Tulsa Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 2, 1984. The applicant is authorized to make this proposal under Section 1106(g) of Title 82, Oklahoma Statutes. The question of adjacency is being reviewed by the Customs Service.

On December 7, 1979, the Port Authority was authorized by the Board to establish a foreign-trade zone project in the Tulsa area (Board Order 151, 44 FR 76382, 12/26/79). The project covers 112 acres within the 2000-port terminal

and industrial park complex of the Tulsa Port of Catoosa in Rogers County. It is operated as part of the Port Authority's terminal operations.

The proposed subzone will be located at TCA's facilities, One Port Place, in the Port of Muskogee Industrial Park, Muskogee. The subzone request is for 197 acres which includes 42 acres the company is currently leasing and an adjacent 155 acres on which TCA has a lease option. TCA is in the business of manufacturing oil country steel tubular goods with outer diameters of 2⅜ inches to 10¾ inches, which are used as oil well casing and tubing, and oil and gas drill pipe. After purchasing semi-finished tubular shells, the company processes them into high quality tubing by heat-treating, upsetting, threading, and adding a domestically sourced coupling unit. The products are then tested and certified on the premises by an independent firm, Muskogee Inspection Company. Company plans call for an expansion of its product line to include tubular goods up to 13⅜ inches in outer diameter, and an expansion of annual plant capacity from 180,000 to 300,000 tons.

Zone procedures would allow TCA to defer duty until the finished products are shipped. Duty payments are a significant cost factor because the rates for both semi-finished and finished tubular goods range from 0.5 to over 12 percent and the goods can remain in inventory up to six months. The zone-related savings would help the company better compete with imported, finished tubular goods, which captured half the U.S. market in 1982, and encourage the company to proceed with expansion plans that would add some 300 employees to the current workforce of 300.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, TX 77057; and Colonel Franklin T. Tilton, District Engineeer, U.S. Army Engineer District Tulsa, P.O. Box 61, Tulsa, OK 74121.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 6, 1984.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office,
U.S. Customs Service,
Tulsa International Airport,
Tulsa, Oklahoma 74115
Office of the Executive Secretary,
Foreign-Trade Zones Board,
U.S. Department of Commerce, Room 1872,
14th and Pennsylvania, NW.,
Washington, D.C. 20230.

Dated: March 7, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-6569 Filed 3-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 7-84]

Foreign-Trade Zone 50, Long Beach, California; Application for Subzone for the Shipyard of National Steel and Shipbuilding Co.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach (BHC), grantee of Foreign-Trade Zone 50 in Long Beach, requesting special-purpose subzone status for the shipyard of National Steel and Shipbuilding Company in San Diego, California, within the San Diego Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulation of the Board (15 CFR Part 400). It was formally filed on March 6, 1984. The applicant is authorized to make this proposal under Sections 6300–6305 of the Government Code of California.

On September 14, 1979, the Board authorized BHC to establish a foreign-trade zone in the Los Angeles–Long Beach area (Board Order 147, 44 FR 55919, 9/28/79). The general-purpose zone is located on a 10-acre parcel in an industrial park in the Northwest part of the City.

The proposed subzone is for the shipyard of National Steel and Shipbuilding Company NASSCO), a wholly-owned subsidiary of Morrison-Knudsen Company. The NASSCO shipyard covers 126 acres, including 54 acres of water, on San Diego Bay. It is one of ten major oceangoing vessel construction facilities in the United States. The facility currently has orders for the conversion of 3 Maritime Prepositioning (TAKX) vessels to be leased to the Navy; the conversion of 3 TAKR–X Fast Logistic Ships for the Navy; and construction of 2 TAH 19 hospital ships for the Navy. It also performs repair work and constructs offshore oil facilities. Certain components used in the conversion or construction of these vessels will be purchased from abroad. These include cranes, doors, vehicle deck panels, helicopter decks, and air mixing systems. Other components that may be imported in the future include anchors, stern frame assemblies, diesel engines, life boats, ladders, gears, winches, valves, coolers and consoles.

Zone procedures will help NASSCO to reduce costs on its current orders and to compete internationally on bids for other projects. The benefits are related to the fact that most of the components are subject to significant duties, and that the finished products, as oceangoing vessels, are duty-free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Allan J Rappoport, District Director, U.S. Customs Service, Pacific Region, 880 Front Street, Room 5–S–9, San Diego, CA 92188; and Colonel Paul W. Taylor, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, CA 90053.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 12, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce Satellite Office,
P.O. Box 81404,
3165 Pacific Highway,
San Diego, CA 92138.
Office of the Executive Secretary,
Foreign-Trade Zones Board,
U.S. Department of Commerce, Room 1872,
14th and Pennsylvania, NW.,
Washington, D.C. 20230.

Dated: March 7, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-6550 Filed 3-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Business Development Center (MBDC); Solicitation of Applications; Washington/Oregon

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 10-month period in the following location:

Washington/Oregon—Project I. D. Number 10-10-84010-01

Basic MBDA contribution	$120,416
SCS contribution	12,042
Total Federal contribution	132,458
Minimum cost sharing contribution	23,375
Minimum total project cost	$155,833

Start and end date: July 1, 1984 to April 30, 1985.

Applications shall be required to contribute at least 15% of the total program cost through Non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

Closing Date: April 9, 1984.

ADDRESS: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Ms. Liz Embry at (415) 556-6733.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evalutation Process

All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experience. Provide resumes for all professional staff personnel.

—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

—Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 15% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order of priority: (1) cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other Non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—represents the value of non-cash contributions provided by the recipient and other Non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total Non-Federal contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

Clear explanations of all expenditures proposed, and

The extent to which the applicant can leverage Federal program funds and operate with economy and efficiency.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC). Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. Pre-Application Conference

A pre-application conference to assist all interested applicants will be held at the following address and time:

San Francisco, Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 13029, San Francisco, California 94102, March 23, 1984, at 10:00 A.M.

(11.800 Minority Business Development—Catalog of Federal Domestic Assistance)

Dated: March 5, 1984.

Xavier Mena,

Regional Director.

[FR Doc. 84-6598 Filed 3-9-84; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Secretary, Standards Council, at above address (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Each person who submits a proposal must include his or her name and address, must identify the notice, and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

Dated: March 2, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the Regulations Governing Committee Projects, Committees are now accepting proposals for recommendations on document content on the documents listed below. Proposals received by the closing date indicated will be acted on by the Committee, and that action will be published in the Committee's Report.

ATOMIC ENERGY: NFPA 801-1980, Facilities Handling Radioactive Materials.	July 13, 1984.
BUILDING CONSTRUCTION:	
NFPA 80A-1980, Protection of Buildings from Exterior Fire Exposure.	July 13, 1984.
Proposed NFPA 90S, Mechanical Smoke Control Systems.	(Open).
NFPA 204M-1982, Smoke and Heat Venting.	(Open).
NFPA 205MT-1973, Plastics in Building Construction.	(Open).
NFPA 241-1980, Safeguarding Construction and Demolition Operations.	July 13, 1984.

CHEMICALS AND EXPLOSIVES:

NFPA 40–1982, Cellulose Nitrate Motion Picture Film.	Dec. 31, 1985.
NFPA 40E–1981, Pyroxylin Plastic.	July 15, 1984.
NFPA 43A–1980, Liquid and Solid Oxidizing Materials.	July 15, 1984.
Proposed NFPA 43B, Organic Peroxide.	April 1, 1984.
NFPA 43C–1980, Gaseous Oxidizing Materials.	July 15, 1984.
NFPA 43D–1980, Pesticides in Portable Containers.	July 15, 1984.
NFPA 45–1982, Laboratories Using Chemicals.	June 30, 1984.
NFPA 490–1980, Ammonium Nitrate.	July 15, 1984.
NFPA 495–1982, Explosive Materials.	April 1, 1984.
NFPA 498–1982, Explosives Motor Vehicle Terminals.	Dec. 31, 1984.

COMBUSTIBLE METALS:

NFPA 48–1981, Magnesium.....	June 30, 1985.
NFPA 482–1982, Zirconium.....	June 30, 1985.
NFPA 481–1982, Titanium.....	June 30, 1985.

DRY CHEMICAL EXTINGUISHING SYSTEMS: Proposed NFPA 17A, Liquid Agent Extinguishing Systems for Fire Protection. — July 13, 1984.

DUST EXPLOSION HAZARDS:

NFPA 65–1980, Processing and Finishing of Aluminum.	(Open).
NFPA 651–1980, Manufacture of Aluminum or Magnesium Powder.	(Open).

FIRE REPORTING:

NFPA 901–1981, Uniform Coding for Fire Protection.	May 14, 1984.
NFPA 902M–1981, Fire Reporting Field Incident Manual.	May 14, 1984.
NFPA 903M–1981, Property Survey Manual.	May 14, 1984.
NFPA 904M–1981, Fire Reporting Investigative Report Manual.	May 14, 1984.

FIRE SERVICE TRAINING:

Proposed NFPA 1403, Live Fire Evolutions for Training Purposes.	July 13, 1984.
NFPA 1410–1979, Initial Fire Attack.	July 13, 1984.

FOAM:

NFPA 11–1983, Low Expansion and Combined Agent Systems.	June 15, 1984.
NFPA 11A–1983, High Expansion Foam Systems.	June 15, 1984.
NFPA 11C–1980, Mobile Foam Apparatus.	June 15, 1984.
NFPA 18–1979, Wetting Agents.	June 15, 1984.

HALOGENATED FIRE EXTINGUISHING AGENT SYSTEMS: NFPA 12C–T–1983, Halon 2402. — July 13, 1984.

INDUSTRIAL AND MEDICAL GASES:

NFPA 51–1983, Oxygen-Fuel Gas Welding and Cutting and Allied Processes.	Oct. 5, 1984.
NFPA 56F–1983, Nonflammable Medical Gas Systems.	Oct. 5, 1984.

LIQUEFIED PETROLEUM GASES: NFPA 58–1983, Storage and Handling of Liquefied Petroleum Gases. — May 1, 1984.

LOSS PREVENTION PROCEDURES AND PRACTICES:

NFPA 27–1981, Organization, Training and Equipment of Private Fire Brigades.	Dec. 31, 1984.
NFPA 601–1981, Guard Service in Fire Loss Prevention.	Dec. 31, 1984.
NFPA 601A–1981, Guard Operations in Fire Loss Prevention.	Dec. 31, 1984.

MARINE FIRE PROTECTION: NFPA 303–1984, Marinas and Boatyards. — Jan. 18, 1985.

MINING FACILITIES: Proposed NFPA 123, Underground Coal Mines. — July 13, 1984.

MOTOR VEHICLE AND HIGHWAY FIRE PROTECTION: NFPA 502–1981, Fire Protection for Limited Access Highways, Tunnels, Bridges, Elevated Roadways, and Air-Right Structures. — July 13, 1984.

PYROTECHNICS:

NFPA 1121L–1982, Model State Fireworks Law.	July 1, 1985.
NFPA 1122–1982, Code for Unmanned Rockets.	July 1, 1985.
NFPA 1123–1982, Public Display of Fireworks.	July 1, 1985.

STORAGE: NFPA 231C–1980, Rack Storage of Materials. — (Open).

WATER EXTINGUISHING SYSTEMS:

NFPA 14–1982, Standpipe and Hose Systems.	(Open).
NFPA 16–1980, Foam Water Sprinkler and Spray Systems.	(Open).
NFPA 16A–1983, Closed-Head Foam Water Sprinkler Systems.	(Open).
NFPA 20–1982, Fire Pumps	(Open).

[FR Doc. 84-6350 Filed 3-9-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Bolt Beranek and Newman, Inc.; Issuance of Permit To Take Endangered Species

On January 16, 1984, Notice was published in the **Federal Register** (49 FR 1927) that an application had been filed with the National Marine Fisheries Service by Bolt Beranek and Newman, Inc., 10 Moulton Street, Cambridge, Massachusetts 02238, for a Scientific Research and Scientific Purposes Permit to take Humpback whales by harassment.

Notice is hereby given that on March 5, 1984, the National Marine Fisheries Service issued a Scientific Research and Scientific Purposes Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), to Bolt Beranek and Newman, Inc., subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional director, National Marine Fisheries Service, Alaska Region, 709 West Ninth Street, Juneau, Alaska; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Gloucester, Massachusetts.

Dated: March 5, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-6597 Filed 3-9-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–539, 907
Control of Bean Rust with Bacillus subtilis

Department of Commerce

SN 6–567, 451
Process and Bath for Electroplating Nickel-Chromium alloys

Department of Health and Human Services

SN 6–283, 376 (4,428,943)
(N-Phosphonacetyl-L-Aspartato) (1,2-Diaminocyclohexane) Platinum-(II) or Alaki Metal Salt
SN 6–408,942 (4,427,664)
2'Halo Derivatives of Daunomycin, Desmethoxy Daunomycin, Adriamycin and Carminomycin
SN 6–550,040
Intra-Urethral Prosthetic Sphincter Valve
SN 6–565,212
Dental Composite Formulations and Method
SN 6–661,114 (4,425,112)
Flow-Through Centrifuge

Department of the Air Force

SN 6–237,021 (4,421,408)
Halogen Mass Flow Rate Detection System
SN 6–272,441 (4,420,834)
Flow Attenuator for Use With Liquid Cooled Laser Mirrors
SN 6–281,148 (4,422,344)
Load Proportional Antibacklash Gear Drive System
SN 6–291,863 (4,418,716)
Two-Way Flow Valve
SN 6–295,034 (4,420,755)
Telemetry Load Link Assembly
SN 6–311,378 (4,419,595)
Analog or Gate Circuit
SN 6–318,652 (4,418,531)
Flameholder Stabilization Plate for an Aircraft Engine Afterburner System
SN 6–324,342 (4,420,914)
Spherical Segment Edge Attachment
SN 6–343,033 (4,423,260)
Method for Introducing Fluorine into an Aromatic Ring
SN 6–350,494 (4,419,285)
Azido Fluorodinitro Amines
SN 6–353,984 (4,420,932)
Pressure Control System for Convergent-Divergent Exhaust Nozzle
SN 6–356,573 (4,420,650)
Wedged Channel Vertical Junction Silicon Solar Cell
SN 6–370,235 (4,419,286)
Azido Esters
SN 6–413,295
Fiber Optic Cable Connector
SN 6–511,592
Optical Electromagnetic Radiation Detector
SN 6–547,608
Semi- Two-Dimensional Decoys
SN 6–549,532
High Voltage Grounding Device For Pressurized Equipment
SN 6–552,552
Polyaramatic Ether-Sulfone-Keytones with Fluro-Substituted-p-Cyclophane Units as Cross-Linking Sites
SN 6–556,861
Dynamic Bar Pattern Apparatus and Method
SN 6–559,168
Hand Off Integrator Apparatus for Signal Detection
SN 6–559,169
Solar Rocket Absorber
SN 6–559,170
Low Shear Nickel Electrode
SN 6–559,561
Narrow Pulsewidth Pulse Generator Circuit Utilizing NPN Microwave Transistors
SN 6–559,611
Multiplexed Data Stream Monitor
SN 6–559,613
Phase-Conjugate Resonator with a Double SBS Mirror

Department of the Army

SN 6–246,984 (4,415,565)
Silver Metachloridine in Treatment of Infections
SN 6–359,012 (4,416,872)
Treatment of Malaria with Liposomes Containing 8-Aminoquinoline Derivatives and Glycoconjugates
SN 6–571,301
Digital Pulse Position Modulation Communications System with Threshold Extension
SN 6–572,350
Dielectric Waveguide Bandpass Apparatus
SN 6–573,546
Electron Beam Peripheral Patterning of Integrated Circuits
SN 6–573,547
Measurement of Proximity Effects in Electron Beam Lithography
SN 6–575,245
Protection of Radiation Detectors from Fast Neutron Damage
SN 6–575,973
Whip Antenna High Voltage Protection Device

National Security Agency

SN 6–153,984 (4,429,180)
Apparatus for Simultaneous Generation of Key at Two Locations

[FR Doc. 84–6529 Filed 3–9–84; 8:45 am]
BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Intent To Establish a Software Engineering Institute

The Office of the Under Secretary of Defense Research and Engineering, after examining all existing organizational alternatives, has decided to establish a Federally Funded Research and Development Center (FFRDC) to be named the DoD Software Engineering Institute (SEI). The mission of the SEI is to accelerate the transition of emerging or advanced computer software technology into use in the development and maintenance of DoD weapons systems. The ultimate objective is to reduce the labor intensiveness of developing and evolving military applications software such that the DoD can continue to serve a growing demand for sophisticated software systems in a manner which is both efficient and affordable. The scope and nature of the effort to be performed by the SEI are as follows: (1) Identifying and assessing the suitability of existing and potential software technologies from all available sources for use in the development and maintenance of software-intensive defense systems. (2) Developing the concept and architecture of an automated software "factory" (i.e., the engineering environment, tools, methods, and techniques supporting software development and maintenance) employing a coherent and integrated system of computerized software tools and reusable software as building blocks. (3) Acquiring and engineering high payoff software development and support tools and methods to mission-critical production standards for use in the "factory". (4) Designing a fully consistent set of interface specifications to enable integration of these engineered tools and methods and to facilitate industry extensions and additions to the software "factory". (5) Demonstrating and maintaining a model software "factory" containing these high payoff tools, methods and interface standards, which will be the showcase for the state of the

art in software engineering excellence. (6) Disseminating engineered software tools and methods throughout the DoD mission-critical software community. (7) Supporting the military services and other DoD components in software engineering matters. (8) Educating in support of software technology insertion into DoD weapons systems. (9) Performing goal-directed research in support of software technology transition into DoD weapons systems. The SEI will endeavor to bring together the best professional minds in the area of software systems engineering and technology to address these tasks. This announcement is not a synopsis in accordance with Pub. L. 98–72 or otherwise a synopsis of sources sought in connection with a procurement. It is published consistent with paragraph 6b(2) of the Office of Federal Procurement Policy draft policy letter on FFRDCs, which provides for at least three notices over a 90-day period in the Commerce Business Daily and the Federal Register indicating intention to sponsor an FFRDC and the scope and nature of the effort to be performed by the FFRDC. A competitive procurement is envisioned for the establishment of the SEI. Further details pertaining to this procurement, including a Synopsis of Sources Sought, will be provided at a later date by the procurement office of the Air Force Electronic Systems Division, Hanscom AFB, MA.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

March 7, 1984.

[FR Doc. 84–6596 Filed 3–9–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board Science Panel (Augmented) Meeting

The USAF Scientific Advisory Board Air Force Office of Research (AFOSR) Review Committee will meet May 17–18, 1984 at Bolling AFB, Bldg 410, Room 200, Washington D.C. 20332. On 17 May, meeting will begin at 8:30 a.m. and end at 5:45 p.m. On 18 May, meeting will begin at 8:30 a.m. and end at 3:00 p.m. The purpose of the meeting will be to review the balance and composition of the AFOSR Program.

For further information, contact the Scientific Advisory Board Secretariat at 202/697–4811.

Dated: April 15, 1984.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–6568 Filed 3–9–84; 8:45 am]

BILLING CODE 3910–01–M

Air University Board of Visitors; Meeting

The Air University Board of Visitors will hold an open meeting at 6:30 pm on 17 April 1984 in the Daedalian Room of the Maxwell Officers' Club, Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the board an opportunity to present to the Commander, Air University, a report of the findings and recommendations concerning Air University educational programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, telephone (205) 293–7423.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 84–6500 Filed 3–9–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Board of Visitors to the United States Naval Academy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on April 3, 1984, at the United States Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:30 a.m., April 3, 1984, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Rear Admiral Robert W. McNitt, U.S. Navy (Retired), Secretary to the Board of Visitors, Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402, (301) 267–4361.

Dated: March 7, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–6535 Filed 3–9–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee will meet on March 31, 1984 and April 1 and 2, 1984, at the Marine Corps Air Ground Combat Center, Twentynine Palms, California. The purpose of the meeting is to orient the NRAC members to a Marine Corps Combat arms Exercise, ongoing NRAC studies, new NRAC studies, and other research being conducted by the navy. Sessions of the meeting will commence at 5:30 p.m. and terminate at 6:30 p.m. on March 31, 1984; commence at 7:00 a.m. and terminate at 9:00 a.m. on April 1, 1984; and commence at 8:30 a.m. and terminate at 2:30 p.m. on April 2, 1984. All sessions of the meeting will be closed to the public.

The entire agenda for the meeting will consist of discussions relating to a Marine Corps Combat Arms Exercise, ongoing NRAC studies, new NRAC studies and other research being conducted by the Navy. 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. 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 Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: March 7, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–6536 Filed 3–9–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

meeting of the National Advisory Council on Women's Educational Programs Special Task Force on Forums Committee. This notice also describes the function of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: April 3, 1984, 9:00 a.m. to 12:00 noon, and 1:30 p.m. to 4:00 p.m.

ADDRESS: The meeting will be held at the Council offices, 425 13th Street, N.W., Suite 416, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Sharon Petersen, Special Assistant to the Executive Director, National Advisory Council on Women's Educational Programs, 425 13th Street, N.W., Suite 416, Washington, D.C., 20004. (202) 376–1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95–561. The Council is mandated to: (a) Advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Special Task Force on Forums Committee will take place on April 3, 1984, from 9:00 a.m. to 12:00 noon and 1:30 p.m. to 4:00 p.m. at the Council offices, 425 13th Street, NW., Suite 416, Washington, D.C. The Special Task Force Committee agenda will include preparation of a statement of goals, a proposed budget and a comprehensive report for the proposed Forums on educational equity for women in the 80's.

The meeting of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on March 7, 1984.

Rosemary Thomson,

Executive Director.

[FR Doc. 84-6515 Filed 3-9-84; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket PP-68SC]

Application for Electricity Export Authorization by Southern California Edison Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application by Southern California Edison Company for Authorization to Export Electricity to Mexico (Docket PP–68SC).

SUMMARY: On January 16, 1984, the Southern California Edison Company (Edison) filed an application with the Economic Regulatory Administration (ERA) for authorization to export electricity to Mexico pursuant to section 202(e) of the Federal Power Act. Edison's exports of electricity would be transmitted through the transmission network of the San Diego Gas and Electric Company (SDG&E). The electricity would be exported to Mexico via SDG&E's Miguel-Tijuana and Imperial Valley-La Rosita 230 kilovolt (kV) transmission lines which interconnect with facilities of the Comision Federal de Electricidad (CFE) in Mexico. The maximum amount of electrical power which may be exported at any one time over both these lines from all sources may not exceed 400 megawatts (MW).

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–5935.

Lise Courtney M. Howe, Office of Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Forrestal Building, Mail Stop 6A–141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On January 16, 1984, Southern California Edison Company filed an application with the Economic Regulatory Administration for authorization to export electricity to Mexico pursuant to section 202(e) of the Federal Power Act. Specifically, Edison has applied for authorization to transmit electricity to Mexico from the United States across two international electrical interconnections owned by SDG&E. The first of these interconnections is an existing 230 kV transmission line connecting Miquel substation in California and CFE's Tijuana substation in Mexico. The authority to construct this transmission line was granted by a Presidential permit issued by the Administrator of the ERA on January 12, 1981 (Docket PP–68). The second interconnection is a proposed 230 kV transmission line connecting SDG&E's proposed Imperial Valley substation in California and CFE's La Rosita substation in Mexico. The authority to construct this transmission line was granted by a Presidential permit issued by the Administrator of the ERA on December 20, 1983. This line is currently under construction.

According to Edison, the source of the capacity and/or energy to be transmitted to the CFE will be the electric system resources of Edison. Edison and SDG&E are interconnected at the San Onofre Nuclear Generating Station, which will be the point of receipt by SDG&E of export capacity and/or energy from Edison. SDG&E will deliver this electricity over its transmission facilities to the point of delivery with CFE at the boundary of the United States and Mexico. The nominal voltage of the energy delivered will be 230 kV, three phase, sixty hertz.

The terms and conditions for the exchange of power between Edison and CFE are set forth in the "Capacity and Electric Energy Exchange Agreement Between Edison and the Comision Federal de Electricidate." This Exchange Agreement provides, among other things, for economy energy, economy capacity, and short-term firm transactions between Edison and CFE. The Exchange Agreement was made part of the Edison application.

According to Edison, exports to CFE will not impair the sufficiency of electric supply on the Edison system because:

(1) Each export request will be reviewed to determine if sufficient generating resources and transmission service are available on the Edison and SDG&E system;

(2) Exports may be interrupted or curtailed in the event of jeopardy to the Edison system; and

(3) Capacity and energy transactions

will be from resources not otherwise being used or required by the Edison system for the period of the transaction.

The Administrator of the ERA will evaluate the reliability impact of Edison's proposed export and a Reliability Determination will be made part of the Docket and be available for public inspection.

According to the Edison application, the availability of transmission service from SDG&E will be determined at the time of request and at the sole discretion of SDG&E. For interruptible transmission service for economy energy transactions, SDG&E will reserve the right to interrupt or curtail transmission service at its sole discretion. With respect to firm transmission service for economy capacity or short-term capacity sales, SDG&E will reserve the right to interrupt or curtail such service in the event of jeopardy to SDG&E's electric system or limitations of transmission capability. Edison further states that rates of delivery of energy in any hour will not exceed the operating ratings of Edison's interconnection with SDG&E or the CFE/SDG&E interconnections at the boundary between the U.S. and Mexico. This issue also will be examined by the Administrator of the ERA in the Reliability Determination. SDG&E currently is limited to a total export authorization level of 400 MW over a combination of the Miquel-Tijuana and Imperial Valley-La Rosita interconnections.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed within 30 days of the publication of this notice. Protests will be considered by the ERA 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 application are on file with the ERA and will, upon request, be made available for public inspection and copying at the Coal and Electricity Division, Room GA-033, 1000 Independence Avenue, S.W., Washington, D.C.

Issued in Washington, D.C., March 6, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-6481 Filed 3-9-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Light Water Reactor Safety R&D Panel; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Light Water Reactor Safety R&D Panel (March 16, 1984) of the Energy Research Advisory Board as published in the issue of February 28, 1984 (49 FR 7279).

Issued at Washington, D.C. on March 6, 1984.

J. Ronald Young,

Director of Management, Office of Energy Research.

[FR Doc. 84-6480 Filed 3-9-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-68-001]

Bayou Interstate Pipeline Corp.; Petition To Amend

March 6, 1984.

Take notice that on February 17, 1984, Bayou Interstate Pipeline Corp. (Petitioner), 3000 Fidelity Union Tower, Dallas, Texas 75201, filed in Docket No. CP84-68-001, a petition to amend the order issued on December 30, 1983, in Docket No. CP84-68-000 pursuant to Section 7 of the Natural Gas Act in order to reflect a change in business organization from a corporation to a partnership all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The December 30, 1983, order authorized Petitioner to acquire and operate the facilities of West Lake Arthur Corporation (WLAC) and granted permission and approval for the abandonment by WLAC of the facilities and service, effective upon the date the certificate sought by Petitioner in Docket No. CP84-68-000 is accepted by Petitioner. Petitioner accepted the certificate on this same date.

Petitioner seeks to amend the certificate of public convenience and necessity in order to reflect the reorganization of Petitioner into Bayou Interstate Pipeline System, a general partnership organized under the laws of the State of Texas. It is asserted that Petitioner is a Delaware corporation wholly owned by Tex-Con Corporation (Tex-Con), which in turn is owned fifty percent by Texas Oil and Gas Corporation (TXO) and fifty percent by MidCon Corporation (MidCon). Petitioner states that Bayou Interstate Pipeline System, which would replace Petitioner is a general partnership in which TXO-Bayou Interstate Pipeline Corporation (TXO-Bayou), a Delaware corporation and a wholly owned subsidiary of TXO, and MCN-Bayou Interstate Pipeline Corporation (MCN-Bayou), a Delaware corporation and a wholly owned subsidiary of MidCon, are the only partners, each with an equal interest in the partnership. Petitioner states that the interests of the ultimate beneficial owners of Petitioner, TXO and MidCon, would not be altered by the reorganization. Petitioner further states that it and its parent corporation, Tex-Con, would become dormant if this petition is approved and may be dissolved in the future.

It is asserted that the reorganization of Petitioner into Bayou Interstate Pipeline System is for tax-related financial reasons and would not affect the services provided under the certificate issued on December 30, 1983. Further, it is asserted, that all of the duties and obligations of Petitioner would continue under the reorganization and that the management of the pipeline system would not change and the ultimate beneficial owners and their shares of ownership would remain the same.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-6555 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-296-000]

Connecticut Light and Power Co.; Filing

March 6, 1984.

The filing Company submits the following:

Take notice that on February 27, 1984, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated November 1, 1983 between (1) CL&P and Western Massachusetts Electric Company (WMECO and together with CL&P, the NU Companies) and (2) City of Holyoke, Massachusetts Gas and Electric Department (HG&E).

CL&P states that the Transmission Agreement provides for transmission services to HG&E for the wheeling of their purchase from MMWEC of a portion of MMWEC's entitlement obtained from Salem Harbor Units No. 1, 2, 3 and 4 during the period from November 1, 1983 to April 30, 1984.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the estimated annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month) and (ii) the number of kilowatts HG&E is entitled to receive during such month. The monthly transmission charge is reduce by up to 50 percent to give due recognition for payments made by HG&E to other systems also providing transmission service.

CL&P requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been mailed to WMECO and HG&E.

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 March 20, 1984. 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. 84-6556 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-243-000]

El Paso Natural Gas Co.; Application

March 6, 1984.

Take notice that on February 15, 1984, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP84-243-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting authorization, if necessary, for the continued operation of certain natural gas facilities and the sale and delivery of natural gas for resale therefrom, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that El Paso has identified 73 facilities for which historical data regarding their construction are not located in the corporate files in sufficient detail to permit El Paso to determine with certainty that appropriate Commission authorization was necessary or had been obtained. The 73 facilities consist of 69 right-of-way (ROW) grantor tap facilities and 4 pipelines comprised of 3 field feeder piplines and 1 branch transmission pipeline.

The application further states that the four pipeline facilities were installed by El Paso during the period from January 1, 1952, through January 1, 1963. With respect to the ROW grantor tap facilities, said facilities were installed by El Paso during the period from November 16, 1939, through October 10, 1948. El Paso believes that most, if not all, of these actual taps on the affected mainline or branch transmission pipelines were installed as appurtenances to such pipelines during the construction period authorized by various expansion certificate authorizations that were granted by the Commission from time to time. El Paso states that it was its operational policy during such expansion years to tap the pipelines during the constuction period in order to minimize the costs to El Paso of providing taps on ROW grantors which might request service in proximity to such pipelines in the future. El Paso states it has and continues to render natural gas service through said ROW grantor tap facilities in accordance with the applicable general tap provisions contained in effective service agreements entered into between El Paso and the appropriate distributor customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1984, 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 El Paso to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-6557 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP68-179-002]

Florida Gas Transmission Co.; Tariff Filing

March 6, 1984.

Take notice that on February 15, 1984, Florida Gas Transmission Company (FGT) filed in Docket No. CP68-179-002 pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act the following tariff sheets under this FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 20–D.1
Fourth Revised Sheet No. 20–E.1
Fourth Revised Sheet No. 20–F.1
Fourth Revised Sheet No. 20–G.1
Fourth Revised Sheet No. 20–H.1
Fourth Revised Sheet No. 20–I.1
Fourth Revised Sheet No. 20–J.1
Third Revised Sheet No. 20–K.1
Original Sheet No. 20–M.1
Original Sheet No. 20–N.1
Third Revised Sheet No. 22–K

On February 16, 1984, FGT filed a correction to its previously filed tariff revision, stating that Third Revised Sheet No. 22–K had been inadvertently and incorrectly attached to its February 15, 1984, filing. FGT also filed a correction on February 27, 1984, in which FGT indicates that Third Revised Sheet Nos. 20–D.1 and 20–K.1 had been improperly designated and should be labeled Fourth Revised Sheet Nos. 20–D.1 and 20–K.1.

FGT states that said sheets are filed pursuant to the Commission's order issued September 23, 1983, in Docket No. CP68–179–001, which, *inter alia*, approved a stipulation and agreement which eliminated restrictions on growth by removing volumetric entitlements in priorities 1–4 of FGT's currently effective curtailment plan; permitted a one-time adjustment to the volumetric limitations for priorities 5–9 that are restricted from further change; and established a "triggering mechanism" to halt growth and reimpose volumetric limitations in priorities 1–4 if excessive curtailment occurs on FGT's system in the future.

It is explained that in that order the Commission also waived its regulations to the extent necessary to allow the above-referenced sheets to become effective on September 23, 1983, the date of the Commission's order in this proceeding.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before March 29, 1984, 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. 84–6558 Filed 3–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–246–000]

Florida Gas Transmission Co.; Application

March 6, 1984.

Take notice that on February 16, 1984, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP84–246–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the West Lochridge purchase lateral line in Brazoria County, Texas, and a portion of the Half Moon Reef purchase lateral line in Aransas County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that recently the affected landowners have asked that Applicant abandon its gas supply facilities on their property due to the fact that gas is not flowing through the facilities, and in the case of West Lochridge, in order to allow for additional development of the land. Applicant further states that the gas supply which previously flowed through the facilities is depleted, and Applicant no longer has an expectation of future deliveries to the facilities so that continuance of service is unwarranted. Applicant asserts the abandonment of said laterials would have a negligible impact on its system operation and would not result in the termination of service to Applicant's customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1984, 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 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. 84–6559 Filed 3–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–34–000]

Florida Gas Transmission Co.; Proposed Changes in Rates and Charges Under Purchased Gas Adjustment and Incremental Pricing Provisions

March 6, 1984.

Take notice that on February 29, 1984, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective April 1, 1984.

Original Volume No. 1

33rd Revised Sheet No. 3–A
9th Revised Sheet No. 3–B

Original Volume No. 2

23rd Revised Sheet No. 128

The aforementioned tariff sheets contain changes in FGT's resale rates, under Rate Schedules G and I, and in its transportation service rate under Rate Schedule T–3 resulting from the purchased gas adjustment clause and incremental pricing provision of FGT's Tariff. FGT proposes to make the rate changes effective April 1, 1984.

The net effect of the adjustments being filed for Rate Schedules G and I is to increase the currently effective rate by .988¢/therm. Based on estimated G and I sales for the next 12 months, this results in an annual revenue increase of

approximately $8,405,000. The net effect on the adjustments being filed for Rate Schedule T–3 is a decrease of .55¢/Mcf. The annual effect on revenues from Rate Schedule T–3 is a decrease of approximately $224,000.

According to FGT, the changes contained on 33rd Revised Sheet No. 3–A and 23rd Revised Sheet No. 128 are made in accordance with the purchased gas cost adjustment and incremental pricing provision in its tariff (Section 15, General Terms and Conditions) and section 154.38 of the Commission's Regulations (18 CFR 154.38). FGT also states that 9th Revised Sheet No. 3–B contains the estimated incremental pricing surcharges by customer by month for the adjustment period.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Original Volume Nos. 1 and 2 and interested State Commissions and is being posted.

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 March 15, 1984. 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. 84–6560 Filed 3–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–237–000]

Northwest Central Pipeline Corp., Application

March 6, 1984.

Take notice that on February 9, 1984, Northwest Central Pipeline Corporation (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP84–237–000 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 tap facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate a tap on Applicant's 2-inch pipeline, approximately 0.1 mile of 2-inch pipeline, and measuring, regulating and appurtenant facilities, all in Sedgwick County, Kansas, for the sale of 30 Mcf of natural gas per day to The Ice Age Ice Rink.

Applicant states that the sale would be a direct interruptible sale of natural gas to be used for space heating and ice production.

Applicant states further that such sale would have no detrimental effect on existing customers.

It is asserted that the cost of the proposed facilities would be $11,430 which would be financed from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1984, 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 the 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 it own motion believes that a formal hearing is required, further notice of such hearing wil 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. 84–6561 Filed 3–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–39–000]

Pacific Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant To Purchased Gas Cost Adjustment Provision

March 6, 1984

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on February 29, 1984, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Twenty-Fourth Revised Sheet No. 4
Eighth Revised Sheet No. 4–A
Twentieth Revised Sheet No. 5

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provisions and Incremental Pricing Provision as set forth in Sections 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is April 1, 1984.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed April 1, 1984 Pacific Interstate Rate Schedule S–G–1 commodity rate is 219.92¢ per decatherm, a decrease of 3.38¢ per decatherm from 223.31¢ per decatherm rate effective October 1, 1983, the date of the last S–G–1 commodity rate change, and that such decrease reflects a current Gas Cost Adjustment and change in the Surcharge Adjustment.

Pacific Interstate states that the Current Gas Cost Adjustment is based on an annualized gas cost decrease of $9,794 and that the Surcharge Adjustment is designed to amortize over a six-month period beginning April 1, 1984 an amount of $52,074.80, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost account at December 31, 1983. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

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, Washington, D.C. 20426, in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR sections 385.211, 385.214). All such petitions or protests should be filed on or before March 15, 1984. 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. 84-6582 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-67-001]

Pelican Interstate Gas Corp.; Petition To Amend

March 6, 1984.

Take notice that on February 17, 1984, Pelican Interstate Gas Corp. (Petitioner), 3000 Fidelity Union Tower, Dallas, Texas 75201, filed in Docket No. CP84-67-001, a petition to amend the order issued on December 30, 1983, in Docket No. CP84-67-000 pursuant to section 7 of the Natural Gas Act in order to reflect a change in business organization from a corporation to a partnership, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The December 30, 1983, order authorized Petitioner to acquire and operate the facilities of Tidal Transmission Company (Tidal) and granted permission and approval for the abandonment by Tidal of the facilities and services, effective upon the date the certificate sought by Petitioner in Docket No. CP84-67-000 is accepted by Petitioner. Petitioner accepted the certificate on this same date.

Petitioner seeks to amend the certificate of public convenience and necessity in order to reflect the reorganization of Petitioner into Pelican Interstate Gas System, a general partnership organized under the laws of the State of Texas. It is asserted that Petitioner is a Delaware corporation wholly owned by Tex-Con Corporation (Tex-Con), which in turn is owned fifty percent by Texas Oil and Gas Corporation (TXO) and fifty percent by MidCon Corporation (MidCon). Petitioner states that Pelican Interstate Gas System, which would replace Petitioner is a general partnership in which TXO-Pelican Interstate Gas Corporation (TXO-Pelican), a Delaware corporation and a wholly owned subsidiary of TXO, and MCN-Pelican Interstate Gas Corporation (MCN-Pelican), a Delaware corporation, and a wholly owned subsidiary of MidCon, are the only partners, each with an equal interest in the partnership. Petitioner states that the interests of the ultimate beneficial owners of Petitioner, TXO and MidCon, would not be altered by the reorganization. Petitioner further states that it and its parent corporation, Tex-Con, would become dormant if this petition is approved and may be dissolved in the future.

It is asserted that the reorganization of Petitioner into Pelican Interstate Gas System is for tax-related financial reasons and would not affect the services provided under the certificate issued on December 30, 1983. Further, it is asserted, that all of the duties and obligations of Petitioner would continue under the reorganization and that the management of the pipeline system would not change and the ultimate beneficial owners and their shares of ownership would remain the same.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-6583 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-242-000]

Tennessee Gas Pipeline Co.; a Division of Tenneco Inc.; Application

March 6, 1984.

Take notice that on February 14, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-242-000 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 Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Transco from a point of receipt at the producer's platform in West Cameron Block 65, offshore Louisiana, for delivery to Transco at an interconnection between the facilities of Applicant and Transco at Kinder, Jefferson Davis Parish, Louisiana, or at Crowley, Acadia Parish, Louisiana. Applicant states that the volumes to be transported would be up to 8,500 Mcf of gas per day and would be on a best-efforts basis. It is asserted that such service is pursuant to a gas transportation and exchange agreement dated October 6, 1981.

The proposed service, it is said, would provide Transco with a means of transporting an additional supply of natural gas without its having to construct and operate duplicative facilities.

Applicant states that Transco would pay a volume charge equal to the sum of 8.54 cents multiplied by the total volume of gas received during the month for delivery to Kinder and 8.24 cents multiplied by the total volume of gas received during the month for delivery to Crowley. It is further stated that the agreement contains a provision for a minimum monthly bill.

Applicant states further that Transco would pay a liquids transportation charge of 43.7 cents per barrel for the transportation of liquids.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1984, 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. 84-6564 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-13-000]

United Gas Pipe Line Co.; Application

March 6, 1984.

Take notice that on January 27, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-213-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible sale of natural gas to an existing on-system, direct industrial customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization in Docket No. CP84-213-000 to make deliveries for interruptible sales of natural gas to Zapata Haynie Corporation (Zapata), an existing on-system, direct industrial customer located in Dulac and Cameron, Louisiana, and Moss Point, Mississippi. Specifically, United proposes to sell up to 8,920 Mcf of gas per day above the volumes under its existing sales agreement with Zapata. United further states that it intends to offer this service to Zapata only on such days as its supplies of natural gas exceed the demands of its customers for firm service, taking into account storage volumes and the requirements for storage injection. It is indicated that the proposed sale would be made under United's Rate Schedule IRS 82-104, which requires Zapata to pay United the sum of 30 cents per Mcf plus the weighted average cost of gas (WACOG) per Mcf in United's system, as calculated according to the terms and conditions of Schedule S-82 for the period extending from January 1, 1984, until 7:00 a.m. on January 1, 1985. Commencing at 7:00 a.m. on January 1, 1985, the price paid by Zapata would increase to the sum of 50 cents per Mcf plus the WACOG per Mcf in United's system, as calculated above, it is further indicated.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1984, 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 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 proceedings. 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 motions to intervene are 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 motions for leave to intervene are 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 United to appear or be represented at the hearings.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-6565 Filed 3-9-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of February 3 Through February 10, 1984

During the Week of February 3 through February 10, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 1, 1984.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 3 through Feb. 10, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 8, 1984	High Point Oil Company Indianapolis, Indiana	HEE-0086	Exception to the Reporting Requirements. If granted: High Point Oil Company would not be required to file Form EIA-782B "Reseller/Retailer's Monthly Petroleum Products Sales Reports."
Feb. 9, 1984	Ginsburg, Feldman & Bress Washington, D.C.	HFA-0208	Appeal of an Information Request Denial. If granted: The January 5, 1983 Freedom of Information Request Denial issued by the Office of Special Counsel would be rescinded, and Ginsburg, Feldman & Bress would receive access to the Office of Enforcement's Audit Report on Pipeline Transfers of Crude Oil by Refiners and Resellers, dated July 10, 1980.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 3 to Feb. 10, 1984]

Date	Name of refund proceeding name of refund applicant	Case No.
Feb. 6, 1984	Amoco/Washington	RQ21-56
Do	Belridge Oil & Gas/Washington	RQ8-57
Do	Amoco/South Carolina	RQ21-55
Do	Amoco/Ute Indian Tribe	RQ21-54
Feb. 7, 1984	Amoco/Coeur D'Alene Tribe of Idaho	RQ21-53
Feb. 1, 1984	Amoco/Panorama Truck Stop	RF21-12270
Do	Amoco/Morrison's Amoco	RF21-12271
Feb. 6, 1984	Amoco/Arkansas	RQ21-58
Do	Amoco/Ohio	RQ21-59
Feb. 7, 1984	Belridge/Ohio	RQ8-60
Feb. 9, 1984	Amoco/Augusta & Pauline Service Station	RF21-12272

NOTICES OF OBJECTION RECEIVED

[Week of Feb. 3-10, 1984]

Date	Name and location of applicant	Case No.
Feb. 6, 1984	Ergon, Inc	HEE-0084

[FR Doc. 84-6463 Filed 3-9-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 26 Through December 30, 1983

During the week of December 26 through December 30, 1983, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Phillip R. Kete, December 27, 1983, HFA-0202

Phillip R. Kete filed an Appeal from a denial by the Director of Personnel of a Request for Information which Kete had submitted under the Freedom of Information Act (the FOIA). The Director denied Kete's request for the annual performance appraisals of six DOE employees on the ground that these appraisals were exempt from mandatory disclosure under Exemption 6 of the FOIA. That Exemption protects from mandatory release documents whose disclosure would result in an unwarrented invasion of personal privacy. In considering the Appeal, the DOE found that release of the appraisals could prove embarrassing to the individuals involved and that Kete had not shown any public interest in disclosure of the information. Accordingly, the Appeal was denied.

Request for Exception

Monsanto Company, December 29, 1983, HED-0048, BEE-1618

Monsanto Company filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The firm requested additional entitlements for crude oil inventory established for a refinery that operated for only 11 days before crude oil was exempted from price controls. The firm also filed a discovery request regarding the timeliness of other refiners' requests for certification as participants in the Entitlements Program. The OHA determined that such an inquiry was not relevant to the issue of whether exception relief should be granted to Monsanto. Therefore, discovery was denied. With respect to the merits of Monsanto's Application for Exception, the DOE found that the refinery's limited operating experience of 11 days provided an insufficient basis for the approval of starting inventory relief. Accordingly, the exception request was denied.

Interlocutory Order

Office of Special Counsel/Texaco, Inc., December 30, 1983, HRZ-0140

The Office of Special Counsel sought an order resolving legal issues arising under the "very large tract" exception to the definition of "property" in connection with a Proposed Remedial Order issued to Texaco, Inc. The firm raised the "very large tract" exception as one of its defenses to the PRO's allegation that it had misclassfied its crude oil producing properties. The DOE found that the exception was not intended to apply routinely to leases of greater than average size, but rather to a narrow class of extraordinarily large leases. The DOE further found that the exception was to be applied only to geological "structures" and not to "fault traps" or "reservoirs." Finally, the DOE held that proof of "phased development" of a premises or the use of a "selection" clause in a lease is not required under the "very large tract" exception.

Refund Applications

Panhandle Eastern Pipeline Company, Missouri Self Service Gas Company, December 27, 1983, RF15-4

The Office of Hearings and Appeals (OHA) issued a Decision and Order granting an Application for Refund filed by Missouri Self Service Gas Company. Due to a clerical error, the Department of Energy's Office of the Controller paid Missouri Self Service $45,031.50 more than the refund due. After the error was discovered, a letter requesting repayment was sent to Missouri Self Service. However, the company did not repay the excess funds received. An attorney for the company informed OHA that Missouri Self Service was no longer a functioning business entity, and that the excess funds received had been distributed to the shareholders. Accordingly, OHA ordered Missouri Self Service and its shareholders to remit the sum of $45,031.50 plus interest to the Department of Energy.

Standard Oil Company (Indiana)/Crighton's Amoco Service, December 29, 1983, RF21-7913

The DOE issued a Decision and Order concerning an Application for Refund filed by Crighton's Amoco Service, a retailer of motor gasoline, which elected to file for a refund based upon the presumption of injury and formulae set forth in *Office of Special Council*, 10 DOE ¶ 85,048 (1982). After analyzing the material submitted in support of the application, the DOE authorized a refund of $2,954. However, the DOE further determined that the refund should be paid to the Internal Revenue Service, in partial satisfaction of a judgment lien for unpaid personal income taxes and employment taxes owed by the proprietor of Crighton's.

Standard Oil Company (Indiana)/the Southland Corporation, December 29, 1983, RF21-12254

As part of the refund proceedings involving the Standard Oil Company (Indiana) (Amoco) consent order fund, the DOE issued a Decision granting a refund of $29,395 to the Southland Corporation, based on 88,936,438 gallons of Amoco motor gasoline that the firm purchased and resold as a wholesaler. Subsequently, Southland contacted the DOE and requested a review of the refund calculations. Upon reviewing the gallonage figures, the DOE found that Southland's actual purchases totalled 58,931,438 gallons and that the firm's refund should be

calculated according to the revised gallonage figure. Since the firm elected to apply for a refund based on the presumption method set forth in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982), the DOE approved a refund of $22,915 and Southland was directed to remit $6,480 to the Amoco escrow account.

Dismissals

The following submissions were dismissed:

Name	Case No.
Roeland Park Amoco	RF21-12134
Ward Oil Company	RF21-10802 RF21-10803

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 1, 1984.

[FR Doc. 84-6482 Filed 3-9-84; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment for Cumberland Basin Projects, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes to replace Rate Schedules CR-1-E and CR-2-E currently applicable to Cumberland Basin Projects power and Rate Schedule LP-1-A currently applicable to the Laurel Project, and seeks approval of new Rate Schedule CC-1-A, CM-1-A, CBR-1-A, CSI-1-A, CEK-1-A, and CTV-1-A, for a five-year period, July 1, 1984, through June 30, 1989.

Opportunities will be available for interested persons to review the present rates, to review the proposed rates and supporting studies, to participate in a public forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before May 11, 1984. A public information and comment forum will be held in Nashville, Tennessee, on April 18, 1984. Persons desiring to speak at the forum should notify Southeastern at least 4 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum for the Cumberland Basin Projects will begin at 10 a.m. on April 18, 1984, in Conference Room A, 761 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-3261.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by order issued October 26, 1983, in Docket No. EF83-3021, confirmed and approved Wholesale Power Rate Schedules CR-1-E and CR-2-E applicable to Cumberland Basin Projects' power for a period ending June 30, 1984. The Commission by order issued August 31, 1983, in Docket EF83-3051, confirmed and approved Wholesale Power Rate Schedule LP-1-A applicable to Laurel Project's power for a period ending June 30, 1984.

Discussion

Existing rate schedules for the present Cumberland System are predicated upon a March 1983 repayment study and other supporting data all of which is contained in FERC Docket No. EF83-3021. Existing rate schedule for the Laurel Project is predicated upon a March 1983 repayment study and other supporting data all of which is contained in FERC Docket No. EF83-3051. The new written power marketing policy integrates Laurel into the Cumberland Basin System Projects. The current repayment study prepared in March of 1984 for the combined Cumberland System shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a net $2,820,000 revenue increase in each future year over the current repayment study demonstrates that all costs are paid within their repayment life.

The net additional requirement amounts to a net 12 percent increase in revenues and is primarily due to escalated costs at the generating projects. It is proposed that revised rate schedules applicable to TVA (for the benefit of preference customers served from the TVA System) and Other Preference Customers of SEPA contain the following unit rates:

TVA Rate Schedule:	
Capacity at the generator/kw/year	$11.52
Energy at the generator/kwh (mills)	5.4
Other Customers Rate Schedules:	
Capacity delivered at interconnections with adacent utilities/kw/year	18.00
Energy delivered at interconnections with adjacent utilities/kwh (mills)	5.5

The referenced March 1984 current repayment study along with a revised repayment study dated March 1984 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules CC-1-A, CM-1-A, CBR-1-A, CSI-1-A, CEK-1-A, and CTV-1-A are also available.

Issued at Elberton, Georgia, March 2, 1984.

Harry C. Geisinger,

Administrator.

[FR Doc. 84-6484 Filed 3-9-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51501 TSH-FRL 2506-2]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-937 beginning on page 1787 in the issue of Friday, January 13, 1984, make the following corrections:

On page 1788, first column, under the heading of "PMN 84-314", in the entry for "Toxicity Data", first and second lines, the symbol "<" should have read ">".

BILLING CODE 1505-01-M

[A-5-FRL 2542-8]

Section 321 Investigation; Employment Effects; Peabody Coal Co.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is announcing today that it has granted a request to conduct an investigation as authorized under Section 321 of the Clean Air Act to

determine what, if any, employment affects at the Peabody Coal Company, Sunnyhill Mine in New Lexington, Ohio are the direct result of air pollution regulations adopted pursuant to the Clean Air Act. As part of this investigation, EPA is requesting information from all interested and affected parties be submitted to EPA within the next 30 days.

DATE: Comments must be received by April 11, 1984.

ADDRESSES: Comments should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of all information relevant to the investigation will be placed in Docket 5A–84–1 which is available at the Region V office for review. (It is recommended that you telephone the contact person listed below before visiting the Region V office.)

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, (312) 886–6088.

SUPPLEMENTARY INFORMATION: In 1978, Consumers Power Company applied for an extension of the January 1, 1980, SIP compliance date for the applicable sulfur dioxide emission limit, and the Michigan Air Pollution Control Commission and Consumer Power Company subsequently entered into a Stipulation and Consent Order. On June 25, 1979, the final order was issued and it was approved as a SIP revision for the J. H. Campbell Plant in December 1980. The order contains a program and time schedule for controlling sulfur dioxide emissions from the J. H. Campbell Plant to meet the Michigan one percent sulfur-in-fuel limitation by January 1, 1985. Consumers Power Company applied for a second deferment of the limitation from January 1, 1985 until January 1, 1990. On November 28, 1983, the Michigan Air Pollution Control Commission voted to deny the Consumers Power Company's request for this second compliance date extension. Therefore, the J. H. Campbell Plant is required to meet the one percent sulfur-in-fuel limitation by January 1, 1985.

The Consumers Power Company purchases coal for the J. H. Campbell Plant from the Peabody Coal Company, Sunnyhill Mine which is located in New Lexington, Ohio and currently employs approximately 520 people. If the J. H. Campbell Plant chooses to comply with the one percent sulfur-in-fuel limit by fuel switching, it could result in the closure of the Sunnyhill Mine if a new buyer for its coal cannot be found.

As a result of the potential closure, on December 13, 1983, the Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, petitioned EPA to conduct an investigation as authorized by Section 321 of the Clean Air Act. He requested that the investigation be conducted to determine what, if any, employment effects at the Sunnyhill Mine are the direct result of air pollution regulations adopted pursuant to the Act. In addition, Mr. Clarence E. Miller, U.S. Representative for Ohio and various other concerned individuals expressed their support for this investigation in several letters to EPA.

EPA granted the request for this investigation in a letter to Chairman John D. Dingell on February 3, 1984. By this notice, EPA is announcing to the public that the agency has begun to conduct such an investigation and is requesting information from all interested and affected parties. In addition, EPA is sending letters to the Peabody Coal Company, Consumers Power Company and the Michigan Department of Natural Resources requesting specific information relating to this investigation. Upon receipt of this information, EPA will begin analyzing the data and may, if necessary, request further information. As part of this investigation, EPA will also conduct interviews, meetings and plant visits as necessary.

The purpose of a section 321 investigation is to determine the specific role, if any, the Clean Air Act and the applicable implementation plan played in either causing or contributing to the actual or potential discharges or layoffs of employees. It is important to note that Subsection (d) of Section 321 states that any findings resulting from such an investigation are not to be construed to require or authorize EPA to modify or withdraw any requirements imposed under the Act.

Because such an investigation must be based upon documentation from all parties involved as well as on documentation already on file at EPA, such an investigation is likely to take at least several months to complete. EPA's draft findings, conclusions or recommendations will be made available to the public for review.

(Section 321 of the Clean Air Act as amended)

Dated: March 1, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–6533 Filed 3–9–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

A Closed Circuit Test of the Emergency Broadcast System During the Week of March 19, 1984

March 5, 1984.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of March 19, 1984. Only ABC, CBS, MBS, NBC, NPR, AP Radio and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC and PBS television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–6489 Filed 3–9–84; 8:45 am]

BILLING CODE 6712–01–M

Meeting of the Telecommunications Industry Advisory Group Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group Steering Committee scheduled to meet on Thursday and Friday, March 22 and 23, 1984. The meeting will be open to the public. The meeting time and location is as follows:

March 22 and 23, 1984—9:30 a.m.: FCC Meeting Room 7317, 2025 M. Street, N.W., Washington, D.C.

The agenda is as follows:

I. Review of Minutes of Previous Meeting
II. General Administrative Matters
III. Review of Glossary
IV. Review of General Section
V. Other business
VI. Presentation of Oral Statements
VII. Adjournment

With prior approval of the Chairman, Gerald P. Vaughan, oral statements

while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Steering Committee objectives. Anyone not a member of the Steering Committee and wishing to make an oral presentation should contact Stephen T. Duffy, Group Vice-Chairman (202) 634–1509) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–6488 Filed 3–9–84; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1449]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

March 5, 1984.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision and update of Part 22 of the Rules (Public) Mobile Radio Services. (CC Docket No. 80–57)

Filed by:

Jan David Jubon, P. E., on 1–10–84. (Supplement filed 2–21–84).

Carl W. Northrop & Eliot J. Greenwald for Kadison, Pfaelzer, Woodard, Quinn & Rossi on 1–18–84. (Supplement filed 2–27–84).

Benjamin F. Dawson III, PE on 2–8–84.

Martin W. Bercovici, Attorney for AMCOM, Inc., on 2–17–84.

Dean George Hill & Riley M. Murphy, Attorneys for T-Com, Inc., on 2–27–84.

Lisa J. Stevenson, Gregory C. Stample & Mary M. Hendriksen, Attorneys for Telephone and Data Systems, Inc., on 2–27–84.

John Q. Hearne, Larry A. Blosser & Bruce D. Jacobs for Fisher, Wayland, Cooper and Leader on 2–27–84.

Subject: Amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979. (Gen Docket No. 80–739)

Filed by:

Gordon Schlesinger, Secretary for The Southern California Repeater and Remote Base Association on 2–17–84.

Christopher D. Imlay, Attorney for The American Radio Relay League, Incorporated on 2–21–84.

Subject: Amendment of Part 15 to add new interim provisions for cordless telephones. (Gen Docket No. 83–325, RM's 4062 and 4075).

Filed by:

Daniel L. Bart & Elliott Light, Attorneys for GTE Service Corporation and its domestic affiliated telephone equipment and service companies on 2–13–84.

Subject: Amendment of the Amateur Radio Service Rules, Part 97, to make additional frequencies available to the Radio Amateur Civil Emergency Service during declared national emergencies. (PR Docket No. 83–524)

Filed by:

Gary David Gray, WB6HUG on 2–16–84.

Robert C. Jones, Chief of Communications for The County of Orange, California on 2–21–84.

Gordon Schlesinger, Secretry for The Southern California Repeater and Remote Base Association on 2–22–84.

John B. Sauvajot, Director, Department of General Services for The County of San Diego on 2–24–84.

W. M. Kahn, Chief Communications Supervisor (Acting) for The San Diego County Sheriff's Department on 2–24–84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–6490 Filed 3–9–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 84–155 et al.; File No. BP–810807AI et al]

Arby R. Beardslee, et al.; Hearing Designation Order

In the matter of applications of Arby R. Beardslee, Central Valley, California, Req: 840 kHz, 500 W, 10 kW–LS, U (MM DOCKET NO. 84–155, File No. BP–810807AI); Pete Pappas and Mike Pappas, d.b.a. The Pete Pappas Company, KTRB(AM), Modesto, California, Has: 860 kHz, 1 kW, 10 kW–LS, DA–2, U, Req: 860 kHz, 10 kW, 50 kW–LS, DA–2, U (MM DOCKET NO. 84–156, File No. BP–810923AI); International Broadcast Consultants, Inc., Gardnerville, Nevada, Req: 840 kHz, 1 kW, 10 kW–LS, DA–N, U (MM DOCKET NO. 84–157, File No. BP–811015AH); Juarez Communications Corporation, North Las Vegas, Nevada, Req: 840 kHz, 25 kW, 50 kW–LS, DA–2, U (MM DOCKET NO. 84–158, File No. BP–811015AI); Alegria I, Inc., Marina, California, Req: 840 kHz, 1 kW, 5 kW–LS, DA–2, U (MM DOCKET NO. 84–159, File No. BP–811015AJ); Elizabeth Waters, Phyllis Moore, Louis Lauro, Gloria McKinley, and Verna Rolls, d.b.a., Heritage Communications, Yountville, California, Req: 840 kHz, 250 W, 2.5 kW–LS, DA–2, (MM DOCKET NO. 84–160, File No. BP–811015AK); and Nevada County Broadcasters, Inc., KNCO(AM), Grass Valley, California, Has: 1250 kHz, 1 kW, 500 W–LS, DA–2, U, Req: 830 kHz, 1 kW, 5 kW–LS, DA–N, U (MM DOCKET NO. 84–161, File No. BP–811015AL).

Adopted: February 6, 1984.

Released: February 29, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Arby R. Beardslee (Beardslee), Pete Pappas and Mike Pappas d/b/a The Pete Pappas Company (Pappas),[1] International Broadcast Consultants Inc. (IBC),[2] Juarez Communications Corporation (Juarez), Algria I, Inc. (Alegria),[3] Heritage Communications (Heritage), and Nevada County Broadcasters, Inc. (Nevada). Also before the Commission are petitions to deny and informal objections filed by the various applicants [4] and outside parties, and

[1] Pappas has filed amendments, dated January 21, 1983 and June 17, 1983, that fail to meet the requirements of Section 73.3522 of the Rules. The amendment of June 17, 1983 reports the availability of a complete standby generator system to provide KTRB with continuous service in the event of a general power outage; the minor amendment of January 21, 1983 proposes to operate KTRB during daytime hours with a directional antenna radiation system that will eliminate prohibited overlap with XEMO, Tijuana, Mexico. Under Section 1.65, however, good cause has been shown for the acceptance of these amendments, though comparative advantage may not be sought from their contents.

[2] Petitions were filed against the IBC application by Lloyd Higuera, applicant for a new FM station to be licensed to Gardnerville-Minden, Nevada, and by Arby Beardslee, an applicant in this proceeding. We have acted on these pleadings independently of this Order and, in response, we initially dismissed the IBC proposal. Subsequently, on reconsideration the proposal was reinstated. Having fully considered the issues in this other context, we will here dismiss the petitions as moot.

[3] Amendments filed by Alegria on April 15, 1983 and September 22, 1983 serve to correct various ownership errors made in a timely-filed amendment of December 27, 1982; therefore, these corrective amendments comply with § 73.3514(a) of the Rules and are acceptable under § 73.3522(a)(2). The remaining amendment, filed by Alegria on May 26, 1983, reflects minor changes in the principals of the applicant and in their respective holdings and is acceptable under Section 1.65.

[4] A motion to enlarge issues would normally be filed by the parties after designation for hearing pursuant to § 1.229 of the Commission's Rules. In the instances present in this Order, however, the pleadings will be considered at this stage of the proceeding because the several allegations relate to the alleged failure of some of the parties to meet our criteria governing the acceptance of proposals for filing.

pleadings responsive thereto. For purposes of convenience, we will consider the requested issues on an applicant-by-applicant basis rather than considering each petition in turn.

2. *Juarez.*[5] [6] [7] A petition to deny was filed by Western Cities Broadcasting, Inc., licensee of KMJJ(AM), North Las Vegas, Nevada and KLUC(FM), Las Vegas, Nevada,[8] and an informal objection was filed by Arby R. Beardslee, an applicant in this proceeding. Western states that Juarez has failed to meet its stated gateway criterion of § 73.37(e)(2) i.e., that it is minority controlled, because although Mrs. Yolanda M. Juarez-Naismith ostensibly owns 51 percent of the applicant, her husband, Robert A. Naismith, has directed all preparations of the exhibits furnished with the application and has conducted all relevant negotiations. Consequently, Western alleges that it cannot be assumed that Mrs. Juarez-Naismith will be in sole control of her shares in Juarez and that, at a minimum, one-half of Mrs. Juarez-Naismith's stock interest should be attributed to her husband. In that event, Juarez would fail to meet the 50% minority ownership provision of § 73.37(e)(2)(iv).

3. Western's allegations constitute a claim that Robert Naismith is, in effect, a real party in interest to this application. Neither a family relationship nor assistance in the preparation of an application, however, is sufficient to support the addition of such an issue. In arguing to the contrary when husband-wife relationships are involved, Western relies upon a series of multiple ownership cases, among them *Lady Sarah McKinney Smith*, 59 FCC 2d 398 (1976). These cases, however, stand simply for the proposition that husbands and wives cannot reasonably be expected to compete with each other on an arms-length basis. That the spouses in fact own and control the interests attributed to them is assumed in these holdings; the primary concern is not where control lies but rather how it will be exercised. With respect to the former question, our long-standing policy is to accept ownership interests as reported in the absence of specific evidence indicating otherwise; the existence of a family relationship is insufficient specific evidence for this purpose. *Cf. Ottumwa Broadcasting Company*, 92 FCC 2d 1011, 1015–16 (1982) [declining to attribute a wife's ownership interest to her non-owner husband's full-time participation for integration of ownership and management purposes]. Consequently, we will not impart Mrs. Juarez-Naismith's ownership and control of the stock to her husband.

4. In its petition to deny, Western also contends, and we agree, that Juarez has failed to demonstrate that it is financially qualified to construct and operate its proposed station. Thus, Juarez' letter from City National Bank of Detroit promising a loan or letter of credit to be secured by bonds or cash of Lillian and Jim Wegerly is deficient because neither has formally pledged bonds or cash for this purpose. Moreover, the bank letter fails to include interest terms or a repayment schedule. In addition, the Juarez application contains a realtor's letter dated May 14, 1981, indicating that the owners of property Juarez presumably would use for a transmitter site would consider selling the property. The amended financial statement provides figures for this transaction, but Juarez has failed to detail and document completely the formal terms of the transaction.

5. In response to Western's allegations, Juarez has filed a petition for leave to amend containing the financial certification found in Section III of Form 301. We cannot accept this certification. When an applicant submits insufficient information to demonstrate its financial qualifications, a substantive and material question of fact arises. The subsequent submission of a certification by the applicant is not sufficient to resolve the factual issue the applicant itself has raised by its prior submission of specific and inconsistent information. *South Florida Broadcasting Company, Inc.*, FCC 83–265, released June 2, 1983. Consequently, an appropriate financial issue will be specified.

6. Western and Arby R. Beardslee also state that Juarez has proposed an excessive nighttime power of 25 kilowatts. Section 73.21(a)(2)(ii)(C) limits new class II–B stations on the clear channels to a nighttime power of 1 kilowatt if the station fails to meet the 25 percent white area coverage provision of § 73.37(e)(2)(i). Juarez has indicated that it will provide new service to only 16.6% of the area within the nighttime contour of the proposed station. Consequently, waiver is necessary to permit operation as proposed.

7. The Commission has adopted a strict standard for waiver requests of this nature, however. A waiver will be granted only upon a showing that the higher power proposed is necessary to provide principal city service and will not impede our allocation objectives. Juarez has not established compliance with these requirements and an appropriate issue will be specified.

8. *Heritage.* On April 9, 1982, Heritage submitted an amendment to its application providing for a change in the proposed transmitter site and increasing nighttime power from 250 watts to 1 kilowatt. Upon notification that this proposal constituted a major change pursuant to § 73.3571(a)(1) of the Rules, Heritage submitted an amendment, dated December 17, 1982, that withdrew the earlier amendment as it pertained to the nighttime increase, but proposed to operate daytime at the new site proposed in the April 9 amendment. Contrary to Alegria's allegation in its motion to dismiss, the December 17 amendment is by definition minor under our rules.

9. A petition to dismiss or to deny application was filed against this proposal (the original application as amended on December 17) by Pete Pappas and Mike Pappas, d/b/a The Pete Pappas Company, licensee of standard broadcast station KTRB and an applicant in this proceeding. Pappas states that, based on actual field strength measurements, the 25 mV/m groundwave signal contour of the Heritage proposal would overlap the KTRB 2 mV/m groundwave signal in contravention of § 73.37(a) of the Commission's Rules; therefore, Pappas contends that the Heritage application should be dismissed.

10. Heritage has countered Pappas' contention with a petition for leave to amend, filed July 8, 1983, in which Heritage has attempted to resolve the interference issue by changing the location of the proposed daytime transmitter and antenna site. Pappas, in its further petition to dismiss application

[5] The petition to deny the Juarez proposal filed by KFI, Inc., licensee of KFI(AM), Los Angeles, California, and the informal objection filed by Sawtooth Radio Corporation, licensee of KLIX(AM), Twin Falls, Idaho, have been rendered moot by a subsequent modification of the Juarez proposal from 650 kHz to the present 840 kHz designation.

[6] Juarez has submitted an amendment dated May 17, 1983, that deletes and replaces its original engineering report. The amendment covers a change of transmitter and antenna site and modification of the proposed day and night directional patterns. The amendment proposes no changes in frequency, power (day or night) or city of license. Thus, it is a minor amendment and is acceptable pursuant to Section 1.65.

[7] Juarez has also filed a petition for leave to amend, dated August 25, 1983, that provides additional ownership information. The amendment complies with the Commission's requirement under Section 1.65 that each applicant's application be kept current, complete, and accurate; the petition will therefore be granted.

[8] Western has filed a supplement to petition to deny and a second supplement to petition to deny; in its motion to dismiss supplements to petition to deny, Western has requested that we dismiss these pleadings without prejudice to its petition to deny. We will grant the motion.

and Arby R. Beardslee, in his petition for major amendment designation, state that Heritage's amendment would cause massive increased interference to Beadslee's application. We agree, and conclude as a result, that the Heritage submission is a major amendment under § 73.3571(j)(1) of our rules, which states that a new file number will be assigned to any amendment modifying the engineering proposal "unless [the] amendment is accompanied by a complete engineering study showing that the amendment would not involve new or increased interference problems with * * * applications pending at the time the amendment was received * * *." We will assume, under these circumstances, that Heritage would prefer withdrawing its amendment to losing its status in this hearing; therefore we will not accept the amendment. The Heritage proposal thus reverts to its status prior to the July 8, 1983 amendment, wherein it causes overlap to KTRB in violation of § 73.37(a).

11. Under normal circumstances, Commission policy would dictate that the Heritage application be dismissed; the applicant would then have available 30 days in which to eliminate deficiencies preventing acceptance through minor amendment. *James River Broadcasting Corp.* v. *FCC*, 399 F.2d 581 (D.C. Cir. 1968). In this instance, however, we believe that the public interest would be better served by allowing Heritage to remain in the proceeding and to submit to the presiding Administrative Law Judge, if it is able, an amendment permitting acceptance of its proposal. The presiding Administrative Law Judge may then retain the application in hearing status or dismiss it pursuant to § 73.37(a) as appropriate.

12. *Nevada.*[9] [10] We cannot determine from the nighttime coverage map submitted whether Nevada's 25 mV/m contour covers the main business district of Grass Valley. Therefore, Nevada should submit an amendment more clearly demonstrating where the contour lies. The presiding Administrative Law Judge may then determine whether a waiver of § 73.24(j) of our Rules is necessary and, if so, warranted.

13. The Commission, in *In re Applications of City of New York Municipal Broadcasting System (WNYC)*, 91 FCC 2d 635 (1982), *recon. denied*, FCC 83-232, released May 19, 1983, denied the minor change application (BP-19151) of WCCO(AM), Minneapolis, Minnesota, to build a new antenna tower, finding that the tower would be an unacceptable hazard to air navigation. WCCD has appealed the Commission's decision to the United States Court of Appeals for the District of Columbia Circuit. If the WCCO proposal is granted by the court, the grant of Nevada's application will be conditioned in the manner specified below.

14. *Beardslee.*[11] A petition to designate for hearing and to specify issues was filed by Loyola University, licensee of standard broadcast station WWL, New Orleans, Louisiana. Because Loyola has failed to demonstrate by specific allegations of fact that it is a party in interest with respect to the challenged application, the pleading will be treated as an informal objection pursuant to § 73.3587 of our Rules.

15. Loyola contends that the primary objective of our clear channel proceeding was the fostering of minority ownership of broadcast facilites. Hence Loyola asks that we evaluate whether grant of the Beardslee application would preclude potential minority-owned stations in the future. We must, however, reject that argument. While the fostering of minority ownership was indeed one of our goals in opening up the U.S. Class I-A clear channels for new facilities, it was not our only objective. Service to unserved and underserved areas, first and second local service, and non-commercial service were also to be encouraged. Loyola's contentions to the contrary notwithstanding, our clear channel decision does not place a higher priority on one of these objectives than on others. Hence, the possibility of a minority-owned station in the future is not a proper basis for withholding present grants to applicants otherwise qualified to be Commission licensees. Consequently, the objection will be denied.

16. In addition, Beardslee states in his response to the question of where the main studio is to be located that this is "to be determined". Section 73.1125 of our Rules states that each AM station shall maintain a main studio in the principal community which it is licensed to serve, unless the studio is located at the station's transmitter. Beardslee does not state whether the main studio is to be located in Central Valley; if it is not to be located in the community to be served or at the station's transmitter, Beardslee must provide a justification pursuant to § 73.1125(a)(3). Consequently, Beardslee must submit a clarifying amendment indicating the location of the proposed main studio, and a justification if the studio is not to be located in the community of license or at the transmitter site, to the presiding Administrative Law Judge within 30 days of the release of this Order.

17. *Alegria.* Since the Alegria proposal constitutes a major environmental action as defined by § 1.1305(a) of the Commission's Rules, the applicant is required to submit the environmental impact information described in § 1.1311 of our Rules. Alegria's environmental impact statement fails to state whether construction of the proposed facility has been a source of local controversy in the community.

18. Consequently, Alegria will be required to file within 30 days of the release of this Order an amended environmental narrative statement with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

19. *Local notice certification issues—Juarez and IBC.* Applicants for new broadcast stations are required to give local notice of the filing of their applications in accordance with § 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Juarez

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[9] Nevada currently has an application pending (BP-801105AM) on its present 1250 kHz frequency to increase KNCO's daytime power from 500 W to 1kW. The application in this proceeding proposes a modification of KNCO's facilities from 1250 kHz to 830 kHz. We do not believe that the pendency of BP-801105AM is inconsistent with this proposal, as the applications contemplate alternative, not simultaneous, operations. Section 73.3518 is therefore not violated in this instance.

[10] Nevada had requested a waiver of the § 75.35(a) multiple ownership provision because of potential 1 mV/m overlap of this proposal with an existing station and a pending application in which two of Nevada's principals, Carl Auel and Marvin Clapp, have an ownership interest. The need for a waiver, however, has been obviated by the submission of an ownership form on July 25, 1983 stating that Messrs. Auel and Clapp are no longer directors or shareholders of Nevada. While we take note of this ownership information, and while its submission clearly establishes no intent to conceal, the applicant should amend this proposal to reflect the change in ownership, as indicated below.

[11] A petition for leave to amend was filed by Beardslee on August 5, 1983 providing the Commission with additional ownership information. Under Section 1.65, good cause has been shown for the acceptance of the amendment.

and IBC have done either.[12] If they have not already done so, Juarez and IBC will be required to give local public notice and to file a statement that they have complied with the local public notice requirement with the presiding Administrative Law Judge within 30 days of the release of this Order.

20. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[13] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

21. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Alegria I, Inc. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 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 to construct and operate as proposed.

2. To determine, with respect to Juarez Communications Corporation, whether circumstances exist which warrant waiver of Section 73.21(a)(2)(ii)(C) of the Commission's Rules.

3. To determine with respect to Juarez Communications Corporation:

(a) Whether the bank commitment upon which the applicant relies is reasonably available to it;

(b) The terms and conditions upon which the applicant will acquire its proposed transmitter site; and

(c) Whether, in light of the above, the applicant is financially qualified to construct and operate as proposed.

4. To determine the areas and populations that would receive primary service from each proposal and the availability of other primary aural service to such areas and populations.

5. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

6. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

22. It is further ordered, that the amendments filed by Pete Pappas and Mike Pappas d/b/a The Pete Pappas Company on January 21, 1983, and June 17, 1983, are accepted.

23. It is further ordered, that the petition to deny filed by Lloyd Higuera, and the petition to dismiss application filed by Arby R. Beardslee, are dismissed as moot.

24. It is further ordered, that the amendments filed by Alegria I, Inc. on April 15, 1983, May 26, 1983, and September 22, 1983 are accepted.

25. It is further ordered, that the petition to deny filed by KFI, Inc., is dismissed as moot.

26. It is further ordered, that the informal objection filed by Sawtooth Radio Corporation, is dismissed as moot.

27. It is further ordered, that the petition to deny filed by Western Cities Broadcasting, Inc., is granted to the extent indicated herein and is denied in all other respects.

28. It is further ordered, that the informal objection filed by Arby R. Beardslee, is granted.

29. It is further ordered, that the motion to dismiss supplements to petition to deny filed by Western Cities Broadcasting, Inc., is granted.

30. It is further ordered, that the petition for leave to amend filed by Juarez Communications Corporation on February 8, 1983, is denied.

31. It is further ordered, that the amendment filed by Juarez Communications Corporation on May 17, 1983, is accepted, and the petition for leave to amend filed by Juarez Communications Corporation on August 25, 1983, is granted.

32. It is further ordered, that the motion to dismiss filed by Alegria I, Inc. is denied.

33. It is further ordered, that the petition to dismiss or deny filed by Pete Pappas and Mike Pappas, d/b/a The Pete Pappas Company, is granted to the extent indicated herein and denied in all other respects.

34. It is further ordered, that the petition for leave to amend filed by Heritage Communications on July 8, 1983, is denied, and the accompanying amendment is not accepted.

35. It is further ordered, that the petition for major amendment designation filed by Arby R. Beardslee, is granted to the extent indicated herein and denied in all other respects.

36. It is further ordered, that Elizabeth Waters, Phyllis Moore, Louis Louro, Gloria McKinley, and Verna Rolls, d/b/a Heritage Communications shall submit the amendment establishing its acceptance for filing specified in paragraph 11 herein, to the presiding Administrative Law Judge within 30 days of the release of this order.

37. It is further ordered, that Nevada County Broadcasters shall submit the clarifying amendment concerning the nighttime coverage of its proposed operation specified in paragraph 12 herein, to the presiding Administrative Law Judge within 30 days of the release of this order.

38. It is further ordered, that Nevada County Broadcasters shall submit an amendment indicating the current ownership of the proposed station to the presiding Administrative Law Judge within 30 days of the release of this order.

39. It is further ordered, that in the event that the proposal of Nevada County Broadcasters, Inc. is granted, and the minor change proposal of WCCO(AM), Minneapolis, Minnesota, is granted by court action, Nevada County Broadcasters, Inc. shall file an amendment to protect WCCO's nighttime 0.5–50% skywave contour.

40. It is further ordered, that the petition for leave to amend filed by Arby R. Beardslee on August 5, 1983, is granted.

41. It is further ordered, that the informal objection filed by Loyola University, is denied.

42. It is further ordered, that Arby R. Beardslee shall submit the clarifying amendment concerning the location of its proposed studio, as indicated in paragraph 16 herein, to the presiding Administrative Law Judge within 30 days of the release of this order.

43. It is further ordered, that Juarez Communications Corporation and

[12] Juarez did publish local notice certification for its original proposal of 850 kHz with 10 kW power both night and day. The present proposal, however, involves a change in frequency to 840 kHz and an increase in power to 50 kW daytime, 25 kW nighttime. This constitutes a major amendment under 73.3571 and therefore triggers the local notice provision of 73.3580(a).

[13] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

International Broadcast Consultants, Inc. shall comply with the local notice provision of § 73.3580 of the Commission's Rules, as discussed in paragraph 19 above, and advise the presiding Administrative Law Judge as to compliance within 30 days of the release of this order.

44. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Alegria I, Inc. shall submit the amended environmental narrative required by § 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

45. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

46. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing to the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

The Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-6467 Filed 3-9-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-261; File No. BRH-810924UK]

Metroplex Communications of Florida, Inc.; Memorandum Opinion and Order

In re Application of Metroplex Communications of Florida, Inc., For Renewal of License Station WHYI(FM) Fort Lauderdale, Florida (MM Docket No. 84-261; File No. BRH-810924UK).

Adopted: March 1, 1984.

Released: March 9, 1984.

By the Commission.

1. The Commission has before it: (i) The above-captioned license renewal application for Station WHYI(FM), Fort Lauderdale, Florida, filed September 24, 1981 by Metroplex Communications of Florida (WHYI or licensee); (ii) an informal objection to the application filed December 31, 1981, by Linda Silverstein;[1] (iii) an opposition thereto filed March 1, 1982, by the licensee; (iv) a letter dated September 23, 1982 from the Chief, Renewal and Transfer Division, Broadcast (now Mass Media) Bureau to the licensee; (v) the licensee's response filed November 22, 1982; (vi) the petitioner's rebuttal filed December 27, 1982; (vii) a letter dated April 15, 1983 from the Chief, Enforcement Division, Mass Media Bureau to the licensee; and (viii) the licensee's response filed June 17, 1983. For the reasons set forth herein, the Commission finds an evidentiary hearing is needed to resolve substantial and material questions concerning the truthfulness of representations made by the licensee in the EEO portion of its 1981 license renewal application concerning the promotion of women, the hiring of minorities, and the recruitment and classification of women and minorities.

2. Our action is compelled because information and explanations submitted by the licensee are internally inconsistent and appear to lack candor. In this regard, we reiterate that we are dependent on licensees to provide accurate information in responses submitted to us. *See Northern Television, Inc.*, FCC 83-504, released November 1, 1983. Thus, when it appears that a licensee has not submitted accurate information nor provided complete and candid explanations as to why inaccuracies occurred, we have little choice but to examine the licensee's qualifications in a hearing. Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e).

3. As noted, the Commission's concern with this licensee's EEO compliance was most recently triggered by an informal objection filed by a former employee, Ms. Linda Silverstein.[2] Ms. Silverstein charges that the licensee misclassified several females by improperly placing them in the "officials and managers" category of the employment report filed with the renewal application. In addition, she contends that she was a victim of intentional employment discrimination in that she was paid less than a similarly situated male employee. She also alleges that during her job interview, she was asked improper questions. The licensee opposed Ms. Silverstein's pleading, providing reasons for its classification decisions and a rebuttal of Ms. Silverstein's discrimination charges.

4. The licensee's opposition, however, did not address all of the issues raised by Ms. Silverstein. In addition, a comparison of the station's renewal application EEO program, particularly those sections setting forth job hires and promotions, with the station's license term Annual Employment Reports raised questions about the accuracy of the information submitted. In an attempt to resolve these questions, the Commission asked the licensee for additional information about the classification of its office manager, the terms and conditions of Ms. Silverstein's employment, and the implementation of its EEO program.

5. Review of the licensee's response, filed November 22, 1982, disclosed unexplained and disturbing inconsistencies among the licensee's several submissions, that is, its Annual Employment Reports, EEO program, opposition pleading, and the response. Indeed, the nature and extent of the inconsistencies suggested that one or more of the station's submissions were so inaccurate as to raise questions about the licensee's candor. Hence, a second inquiry was made of the licensee in an attempt to obtain accurate data as well as explanations for the inconsistencies. However, review of the licensee's second response, filed June 17, 1983, in light of the licensee's earlier submissions, leads us to conclude that substantial and material questions remain concerning the licensee's candor and its compliance with our EEO rule.

6. In order to set forth clearly our concern with the licensee, we will analyze the licensee's submissions issue by issue. Further, although our concern with the licensee arose initially from Ms. Silverstein's informal objection, we will begin our discussion of the licensee's performance with a review of its EEO program in view of the serious inconsistencies which exist there.

I. Promotions

7. The most obvious inconsistencies arise from statements made about specific promotions. In Section IX (Promotion) of the station's 1981 EEO program, the licensee lists 13 protected group members whom it claimed were promoted between 1979 and 1981, together with a narrative describing the nature of the promotions. However, the licensee's November 22, 1982 and June 17, 1983 letters list fewer promotions during a period of time greater than the time period referenced in the renewal application. Even more disturbing is that only 7 of the 13 people named in the

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[1] Although Ms. Silverstein styled her pleading a petition to deny, she did not comply with the service requirements of section 309(d)(1) of the Communications Act of 1934, as amended, and § 1.47(g) of our rules. Accordingly, it is being considered an informal objection.

[2] In this regard, we note that a letter of admonishment was sent to the station at the beginning of the license term regarding its EEO practices as to Blacks.

renewal application appear in the subsequent lists. For example, the renewal application states:

"In 1978 Maryann Grahovac was hired as secretary to the General Manager, she was promoted Administrative Assistant and Office Manager in 1980. She left to pursue other careers in 1981. (Female Minority)"

That name does not appear in the November 22 or June 17 list of promotions, nor in the 1981 list of station employees, nor in the list of persons terminated during the license term. A second example is Marybeth Benivegna, who is shown as promoted to research director and supervisor in the renewal application. In one subsequent list, her job title is "Music Research," and she is classified as a clerical employee and ranked 32nd out of 34 employees in terms of pay. In another, she is shown as having been promoted from "Phone Assistant" to "Music Research Director." A third example is Joan Siani, shown in the EEO program as promoted from program assistant to public affairs director; however, she does not appear in subsequent lists of people promoted but is shown on the roster of employees as a "Program Secretary." In sum, the promotion information in the station's EEO program is not corroborated by subsequent licensee submissions nor are reasons provided for the discrepancies which exist among the three submissions. Accordingly, we find that a hearing is necessary to resolve the questions raised by the conflicting data.

II. Job Hires

8. The primary gauge used to determine whether a station's recruitment efforts are attracting qualified minority and female job applicants is Section VIII of the Model EEO program filed with the License renewal application. In that section, the licensee reports the number, race and sex of the hires it made during the preceding 12 months. Analysis of this section of WHYI's renewal application shows that during the license term there were no more than 25 hires, of whom 13 or 52.0% were minorities. Since the available labor force contained 15.6% minorities, this hiring record indicated affirmative recuritment practices.

9. This hiring information became suspect when compared with the station's license term Annual Employment Reports (Form 395). For example, the station's renewal application report shows 41 employees (32 full-time and 9 part-time), but only 2 (or 4.9%) minorities. Other license term reports show: in 1981, 5 minorities or 12.1%; in 1980, 4 minorities or 9.3%; and in 1979, 4 minorities or 9.5%. The comparison of the minority hiring percentage (52.0%) with the percentage of minority employees (4.9% to 12.2%) raised substantial questions about the accuracy of the reporting or, if the figures were correct, the reasons for the high turnover of minorities. In an attempt to resolve this question, the licensee was asked to supply job hire and termination data.

10. The licensee's first response only raised further questions. Analysis of the hiring and termination data, in conjunction with the station's list of employees, indicated a minority hiring percentage of 25.6%, not 52.0% as the licensee's original submissions suggested. No explanation was provided by the licensee for this discrepancy. Consequently, the licensee was asked to describe how the various lists were prepared and to resubmit lists of employees, hires and terminations.

11. Review of the second response indicates that during the relevant period, 11 of 42 hires, or 26.2%, were minorities. The licensee explains that the discrepancies between its license renewal submission and later ones arose because several different persons, using various sources, prepared the submissions. In addition, the licensee asserts that its general manager was unfamiliar with the station's EEO records.

12. We view the licensee's explanation for the discrepancies to be inadequate. We are particularly troubled by the magnitude of the error present in the station's report of job hires (at least 17 more hires and 2 less minority hires than originally reported) and by the licensee's continued failure to report any of the part-time hires it made during the license term. Accordingly, in order to develop a complete record as to why the station's initial report of job hires was so far off the mark and to determine what the station's hiring figures for the license term actually were, it is necessary to explore these matters at the hearing.

III. Recruitment

13. In Section IV of the Model EEO program, the licensee is asked to list the recruitment sources utilized during the 12 months preceding the filing of the station's renewal application and note the number of referrals received from each source. Analysis of this information in conjunction with job hire data, enables the licensee and the Commission to determine whether the licensee's listed recruitment sources have been "productive", *i.e.*, whether the station's employment needs are being communicated to sources of qualified female and minority job applicants.

14. The station's initial list of recruitment sources contains four minority/female organizations (showing no referrals), plus the Florida State Employment Agency (1 referral), 3 schools (5 referrals), and 5 newspapers, including a Black newspaper and a Spanish-language newspaper ("Total over 15" referrals). Hence, the station's EEO program represents that various recruitment sources/techniques were used and that referrals resulted. In responding to the Commission's first inquiry about its recruitment efforts, the licensee states:

"In response to Paragraph 2 concerning referral sources, we realized we had not been keeping adequate files concerning applicants and referrals. This is one of the reasons why Ms. Walker was promoted to Office Manager. [According to other material in the same letter, this occurred on December 12, 1980, seven months prior to filing the renewal application.] Since that time, we have extremely accurate files of applicants, and Ms. Walker is aggressively seeking minorities from newspapers, letter writing campaign and cultivating relationships with various employment services. For every job opening a letter is written to NAACP, Florida Employment Services, Equal Employment Opportunity Commission, and an ad is placed in the following newspapers: The Fourt [sic] Lauderdale News, the Miami Times, the Miami Courier.

In addition to the foregoing recruitment sources, we have resorted to paying fees to employment agencies.

15. Because the sources cited were not the same as those initially listed and because the licensee's first reference to a person hired as a result of a referral contact occurred *subsequent* to the filing of the station's renewal application, a question was raised as to whether the sources cited by the licensee in its EEO program had actually been used. The licensee was advised of the above and directed to state the dates on which the recruitment contacts referenced in its renewal application had occurred.

16. Although the licensee has responded, our concern about the variance between the two lists has not been satisfied, and the information provided raises questions not only about the renewal application's claimed recruitment efforts but also about the licensee's claims concerning Ms. Cynthia Walker. *See infra*, Sections IV and V. According to the station's former general manager, Matt Mills, recruitment contacts, primarily by telephone, were made by him with the organizations listed in the station's renewal application during the "month preceding the filing of the renewal application." June 17, 1983 letter Exhibit G. He also

contends that in preparing the EEO program he referred to other unspecified documentation. The licensee's other exhibits which reflect recruitment contacts and referrals show that most if not all of the station's pre-renewal recruitment activities occurred between February 1979 and May 1980—the latter date being 1 month before Mr. Mills became the station's general manager and some 15 months before the station's renewal application was filed. Similarly, the recruitment efforts cited in the licensee's November 22 letter are shown to have occurred *not* during the period immediately following Ms. Walker's promotion to the position of office manager on December 12, 1980, but after August 26, 1981, when she supposedly became responsible for EEO program implementation. However, even assuming the latter date to be correct, the first documented recruitment effort under Ms. Walker did not occur until February 24, 1982. Hence, none of the recruitment efforts reflected in the licensee's November 22 and June 17 letters occurred during the 12-month period referenced in the station's renewal application. Further, contrary to the station's initial claim that increased recruitment activity occurred immediately after Ms. Walker's promotion to office manager, it appears that increased recruitment did not begin until after the filing of Ms. Silverstein's challenge. Given the foregoing, we believe it necessary to explore thoroughly the station's license term recruitment efforts to determine whether any of the licensee's several descriptions of its efforts resulted from misrepresentations or a lack of candor.

IV. Responsibility for EEO Program Implementation

17. Section II of the WHYI(FM) renewal application EEO program names Cynthia Walker as the person responsible for the program's administration and implementation. In the licensee's opposition to Ms. Silverstein's renewal challenge, no mention is made of Ms. Walker's EEO responsibilities. Nevertheless, the licensee, in its next submission (November 22 letter) declares that Ms. Walker's new duties subsequent to her promotion included responsibility for the implementation of the station's EEO program. Although the licensee's final submission repeats that Ms. Walker was responsible for EEO program implementation, the supporting documentation appears inconsistent with related and previously filed claims. For example, while the licensee's November 22 letter indicates that Ms. Walker became responsible for the EEO program after her promotion on December 12, 1980, its June 17 letter shows that her EEO responsibilities commenced no earlier than August 26, 1981. Further, the affidavit from the station's former general manager, Matt Mills, states that he was the person who made recruitment contacts "over the month preceding the filing of the renewal application" (*i.e.*, September 1981), a fact seemingly affirmed in an affidavit from Ms. Walker that reflects no EEO recruitment contacts by her prior to February 1982. Accordingly, it appears that the licensee's claims regarding Ms. Walker's responsibilities are inaccurate, and we therefore believe that the truthfulness of the station's representations needs to be explored.

V. Classification of Employees and EEO Profile

18. Since 1977, the Commission, at the time of license renewal, has applied processing guidelines to a station's employment profile for all full-time jobs and for full-time positions in the upper-four job categories in order to determine which EEO programs warrant in-depth review by the staff. *EEO Processing Guidelines*, 79 F.C.C. 2d 922 (1980). Hence, a licensee's classification of its employees, pursuant to Section VII of the EEO program, is significant since such in-depth review of the station's employment practices will not generally occur where the employment profile is within the Commission's processing guidelines. The staff relies on the licensee's classification of its employees and will only question or disagree with the licensee's decision where the record plainly indicates that erroneous information has been submitted. *Renewals of Louisiana and Mississippi Broadcast Stations*, FCC 83-228, 53 R.R. 2d 1294, 1298 n.11 (1983); *Malrite of Ohio, Inc.*, 64 F.C.C. 2d 601, 603 (1977). Even when it appears that a licensee's classification of an employee is erroneous, the Commission will not explore that classification decision in a hearing unless an intent to deceive the Commission is discernible. *Malrite of Ohio, Inc., supra. See also, CBS, Inc.*, 88 F.C.C. 2d 649, 666 (1981); *Nondiscrimination in Employment Practices*, 60 F.C.C. 2d 226, 238 (1976). With these principles in mind, we turn to Ms. Silverstein's charges of misclassification and the licensee's responses.

19. In her informal objection, Ms. Silverstein contends that "[m]anagement hypes job titles when it comes to the classification of female employees." The example she focuses on is the classification of Cynthia Walker, the station's office manager, as an official and manager. Ms. Silverstein charges that Ms. Walker's duties included typing, filing, switchboard relief, and the ordering of office supplies, and that Ms. Walker was simply the secretary of Matt Mills, the general manager, and David Ross, a vice president. With respect to herself, Ms. Silverstein claims that the licensee retained her past the renewal filing date solely to enhance the station's employment profile. (She was one of three females classified by the station as an official and manager.) In responding to these allegations as well as to Commission inquiries about these matters, the licensee has once more submitted conflicting statements. These inconsistencies not only raise doubts about the licensee's candor with respect to the classification of Ms. Walker and Ms. Silverstein, but also call into question its classification of other females.

20. With respect to Ms. Silverstein's charge concerning Cynthia Walker, the licensee's initial response states: "Her [Ms. Walker's] duties extend far beyond her role as Secretary to myself and David Ross * * * in the absence of myself and David Ross from the station, Ms. Walker is responsible for the oversight of the *entire* operation of the radio station." (Emphasis added.) In response to a Commission request for a clarification, the licensee modified its claim by asserting that Ms. Walker supervised a number of persons, including the business manager and engineer. The same response reveals that Ms. Walker was ranked 20th of 34 station employees in terms of salary while the business manager and engineer were ranked 7th and 4th, respectively. An additional inconsistency relative to the classification of Ms. Walker is the licensee's contention that her promotion to office manager occurred on December 12, 1980 even though the licensee's 1981 Annual Employment Report, based on a March 1981 pay period, reflects Ms. Walker as a clerical employee.

21. The classification of Ms. Silverstein as an official and manager also raises doubt about the candor of the licensee. For instance, the licensee states in its opposition that: "* * * Ms. Silverstein was in charge of over 48 sales persons in various McGavren-Guild (our National Sales Representative) offices throughout the United States." When asked for a full description of her supervisory responsibilities over employee of a separately owned company, the licensee modified the "in charge of" description to "coordination" with McGavren-Guild

employees. Thus, although WHYI substantiates Ms. Silverstein's duties as a bona fide sales worker, it is unable to demonstrate that she had supervisory responsibility over any station employee, thus calling into question the accuracy of her classification as an official and manager.

22. Finally, it appears that the licensee misclassified two workers reported as technicians. The renewal application EEO program shows 27 full-time employees classifed in the upper-four job categories, including two female technicians. However, a list submitted with the licensee's November 22 letter shows 26 upper-four employees but no female technicians. When asked to explain the discrepancy, the licensee never directly addresses the inconsistency but contends that the use of sophisticated office machines warrents the classification of the station's traffic manager and her assistant as technicians, a classification that does not comply with Form 395 instructions.

23. In our view, the incidents of questionable employee classifications appear to support the contentions of Ms. Silverstein. In this regard, we are concerned that not only has the licensee portrayed women as occupying higher level jobs than they perform, but also it has made conflicting statements for each action. Since the Commission has historically cautioned licensees about inflated classifications (*see Nondiscrimination in Employment Practices, supra* at 238) and provided addition guidance to licensees with regard to classification parameters, (*FCC Form 395–EEO*, 70 F.C.C. 2d 1466, 1478–79 (1979)), we believe it necessary based on this record, to determine the accuracy of the licensee's classifications by way of a hearing.

24. It also appears that WHYI relied on the inflated classifications of its female employees to show that their representation on the station's staff exceeded the Commission's processing criteria. WHYI begins the self-analysis portion of the EEO program Section X as follows: "Ten of the stations thirty-two full-time employees (31%) are women, and six of the station's twenty-seven full-time upper-level (22%) are women." [3] However, predicated on our best estimate of the correct showing, there were 34 full-time employees, including 10 (or 29.4%) women and 2 (or 5.9%) minorities, and 25 upper-four employees, including only 3 (or 12.0%) women and 1 (or 4.0%) minority, an Asian American.[4] When the revised figures are compared to the Fort Lauderdale-Hollywood SMSA labor force—39.1% women and 15.6% minorities (12.9% Black, 2.4% Hispanic and .3% others)—WHYI fails the Commission's processing guidelines for women in upper-level jobs and for minorities both overall and in the upper-four jobs. Thus, we are concerned that WHYI may have intentionally overstated its female representation [5] and not mentioned the level of minority representation at the station [6] to avoid in-depth scrutiny of its EEO program and we believe the hearing should also explore this matter.

VI. Candor Concerning Compensation and Termination

25. Ms. Silverstein also charges in her informal objection that, because of gender, she was paid less than a male alleged to be similarly situated. She also claims she was asked "illegal" questions during her job interview for the position of WHYI(FM) national sales manager. In its opposition and in subsequent reponses, the licensee denies these allegations. However, review of the licensee's statements regarding Ms. Silverstein's termination again raises questions about the licensee's candor. Accordingly, although we are referring Ms. Silverstein's claims of discrimination to the Equal Employment Opportunity Commission for investigation and resolution,[7] we will explore the inconsistencies present in the various statements of the licensee concerning Ms. Silverstein's termination only insofar as they relate to the licensee's candor and the question of misrepresentation.

26. In responding to claims about Ms. Silverstein's compensation, the licensee initially declares that through November 1981, Ms. Silverstein earned $22,638 and that, on an annualized basis, she would have earned $24,138 for all of 1981. In addition, the licensee states that in the job interview for national sales manager, she was informed she could expect to earn between $24,000 and $25,000 in 1981. Nonetheless, in its November 22 letter, the licensee states that one of the reasons for Ms. Silverstein's termination was her failure to achieve her sales goal of $1,500,000.[8] The licensee also contends that Ms. Silverstein's performance, relative to her goal, was substantially less than that of her predecessor. According to the licensee, Ms. Silverstein's predecessor exceeded her goal of $900,000 by more than $200,000. In rebuttal, Ms. Silverstein claim that at the time of her termination, national sales were at 92% of projections in spite of declining station ratings, and that her predecessor's alleged performance was based on a combination of billing from WHYI and WHTT, Metroplex' co-owned AM station in the area.

27. In view of the above, the licensee was directed to submit additional information about the reasons for Ms. Silverstein's termination. In response, the licensee alters its sales goal for Ms. Silverstein from $1,500,000 to $1,600,000, states that 1981 national sales were only $1,408,000 (or 88% of the revised projection), and alters its previous claim about the performance of Ms. Silverstein's predecessor. Further, the licensee explains that had Ms. Silverstein achieved her sales goal, she would have earned $24,936 in 1981.

28. We are both confused and troubled by the licensee's claims regarding Ms. Silverstein. Specifically, we have from the licensee two figures for what Ms. Silverstein should have achieved, two sets of figures for her predecessor's sales goal and actual sales, and an apparently incorrect figure for Ms. Silverstein's earnings on an annualized basis.[9] In view of the foregoing as well as our concerns about the licensee's overall veracity, we believe it appropriate to have these matters resolved in the hearing.

VII. Discrimination

29. We also believe that a substantial and material question exists with regard to the station's compliance with our EEO rule (Section 73.2080 of the Commission's Rules). As noted, the corrected final license term employment

[3] The analysis is devoid of any reference to the number or percentage of minority employees. Rather the program states: "The record of the station has been good with respect to hiring minorities * * *"

[4] For this analysis, the station's office manager as well as the females classified as technicians are being considered as clerical employees. In addition, one clerical employee who was originally listed as white is now stated to be Hispanic and is being considered as such.

[5] Such a scenario is consistent with Ms. Silverstein's claim that she was retained by the licensee past the renewal filing date in order to enhance the station's profile.

[6] *See* note 2, *supra*.

[7] *FCC & EEOC Memorandum of Understanding*, 70 F.C.C. 2d 2320 (1978).

[8] The licensee also claims that Ms. Silverstein's termination was premised on her failure to relate well with McGavren-Guild employees and on the licensee's desire to reorganize its sales department. However, with regard to the first reason we note that Ms. Silverstein has supplied documentation indicating that McGavren-Guild employees appreciated her work. As to the second reason, the sales staff appears, subsequent to Ms. Silverstein's termination, to differ little from the organization existing before her termination.

[9] Assuming that Ms. Silverstein earned $22,638 for 11 months, her projected compensation for 12 months is $24,696, not $24,138 as claimed by the licensee.

report for the station reflects 34 full-time employees, including 10 (29.4%) women and 2 (5.9%) minorities, and 25 persons in the upper-four job categories, including 3 (12.0%) women and 1 (4.0%) minority, an Asian American. The station's 1981 Annual Employment Report, as corrected, reflects 33 full-time employees, including 9 (27.3%) women and 2 (6.1%) minorities, and 25 employees in upper-level jobs, including 2 (8.0%) women and no minorities. In 1980, the report, as corrected, lists 32 full-time employees, including 12 (37.5%) women and 4 (12.5%) minorities, and 23 persons in upper-level jobs, including 4 (17.4%) women and 2 (8.7%) minorities, both Hispanics. Finally, the 1979 report shows 34 persons, including 13 (38.2%) women and 3 (8.8%) minorities, and 26 persons in upper-level jobs, including 7 (26.9%) women and 1 (3.8%) minority, a Black. These figures show that while the station has employed women and minorities in various positions of responsibility during the 1979–1982 license term, there was a steady decline in female employment in upper-level jobs and, except for 1979, there were no Blacks in upper-level positions. Consistent with this data are the station's job hire figures which indicate that for 23 upper-level jobs, only 4 (17.4%) went to women and none went to a Black. When this information is coupled with the licensee's evasive responses to Commission inquiries concerning the station's recruitment efforts, we find that a question exists as to whether the EEO program was either passive or nonexistent. Since our attempts to resolve the questions raised by the conflicting licensee submissions outside of the hearing process have failed, we have no choice but to explore at the hearing whether the station did in fact fail to implement its affirmative action program during the license term, and, if it did so fail, whether that failure was the result of inadvertence or intentional discrimination. *Bilingual Bicultural Coalition on Mass Media* v. *FCC*, 595 F.2d 621 (D.C. Cir. 1978).

VIII. Conclusion

30. Accordingly, it is ordered, that the petition to deny filed by Linda Silverstein is dismissed and when considered as an informal objection is granted to the extent indicated herein and is denied in all other respects.

31. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned license renewal application is designated for hearing at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether the licensee made misrepresentations or was lacking in candor in the 1981 renewal application EEO program and in its explanations submitted in response to Commission inquiries about that program.

2. To determine whether the licensee made misrepresentations or was lacking in candor with regard to its classification of female employees and its explanations submitted in response to Commission inquiries about the classifications.

3. To determine whether the licensee made misrepresentations or was lacking in candor with regard to statements concerning Ms. Silverstein's termination.

4. To determine whether Station WHYI(FM) violated Section 73.2080 of the Commission's Rules with regard to the employment of females and Blacks.

5. To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal application would serve the public interest, convenience, and necessity.

32. It is further ordered, that in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence upon issues (1)–(4) and the burden of proof with respect to all issues shall be upon the applicant, Metroplex Communications of Florida, Inc.

33. It is further ordered, that to avail itself of the opportunity to be heard, the applicant shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order.

34. It is further ordered, that Metroplex shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in that rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

35. It is further ordered, that the licensee may transfer freely its other broadcast station licenses, unless and until it is otherwise directed.[10]

36. It is further ordered, that the Mass Media Bureau send by Certified Mail—Return Receipt Requested one copy of this Order to the applicant and to Ms. Silverstein.

[10] *See Transferability of Broadcast Licenses*, FCC 83-65, 53 R.R. 2d 126 (1983).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-6492 Filed 3-9-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-8]

Puerto Rico Maritime Shipping Authority and Puerto Rico Marine Management, Inc. v. New York Shipping Association; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Puerto Rico Maritime Shipping Authority and Puerto Rico Marine Management, Inc. against the New York Shipping Association was served March 2, 1984. Complainant alleges that respondent has violated sections 15, 16, 17 and 18(a) of the Shipping Act, 1916, in connection with the basis for fringe benefit funding in Assessment Agreement No. LM-86. Complaints also pray that Agreement No. LM-86 be modified.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.75. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-6587 Filed 3-9-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Formation of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under

§ 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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 resoures, 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to acquire 100 percent of the voting shares of RIHT Financial Corporation (RIHT), Providence, Rhode Island, and thereby indirectly acquire Rhode Island Hospital Trust National Banks and 100 percent of the voting shares of National Columbus Bancorp, Inc., (a subsidiary of RIHT), Providence, Rhode Island, and thereby indirectly acquire National Columbus Bancorp. Bank of Boston Corporation, Boston, Massachusetts, has also applied to acquire the following companies and engage in the following non-banking activities: RIHT Mortgage Corporation, Charlotte, North Carolina, making and servicing loans in North Carolina, Virginia, Florida, and Georgia; Hospital Trust of Florida, N.A., Palm Beach, Florida, trust company functions primarily in the state of Florida; RIHT Life Insurance Company, Phoenix, Arizona, underwriting credit life, accident and health insurance primarily in the state of Rhode Island; and The Washington Row Company, Providence, Rhode Island, making and servicing loans in Rhode Island and Connecticut.

Board of Governors of the Federal Reserve System, March 6, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6496 Filed 3-9-84; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancorp, Inc., et al.; Formation of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 2, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Community Bancorp, Inc.*, Nazareth, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Second National Bank of Nazareth, Nazareth, Pennsylvania. Comments on this application must be received not later than April 4, 1984.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Fairbanco Holding Company, Inc.*, Fairburn, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Fairburn Banking Company, Fairburn, Georgia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Crystal Valley Financial Corporation*, Middleburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Middleburg, Middleburg, Indiana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Security Bancshares, Inc.*, Bixby, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Security Bank and Trust Company, Bixby, Oklahoma.

2. *Selko Banco, Inc.*, Mead, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Mead, Mead, Nebraska.

Board of Governors of the Federal Reserve System, March 6, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6495 Filed 3-8-84; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp., Proposed Acquisition of Manufacturers Hanover Money Market Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 84-4442), published at page 6170 of the issue for Friday, February 17, 1984.

Manufacturers Hanover Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. section 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 Manufacturers Hanover Money Market Corp., New York, New York.

Applicant states that the proposed subsidiary would engage in the activities of underwriting, dealing in, brokering, purchasing and selling such obligations of the United States government and its various agencies, general obligations of various states and political subdivisions thereof and other such obligations, including money

market instruments such as certificates of deposit, bankers acceptances and commercial paper to the extent a state member bank is permitted to do so. In connection with these activities, the subsidiary would offer investment advice on a nonfee basis to purchasers and sellers of these instruments.

These activities would be performed from offices of Applicant's subsidiary in Chicago, Illinois; Miami, Florida; Los Angeles, California; Atlanta, Georgia; and Houston, Texas and the geographic area to be served is the entire United States. 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 New York.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, not later than March 27, 1984.

Board of Governors of the Federal Reserve System, March 6, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6496 Filed 3-9-84; 8:45 am]

BILLING CODE 6210-01-M

RIHT Financial Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Co. Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *RIHT Financial Corporation*, Providence, Rhode Island, to engage *de novo* through its subsidiary, HT Investors, Inc., Providence, Rhode Island, in investment advisory services. Comments on this application must be received not later than March 28, 1984.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

Correction

Peoples Ban Corporation

This notice corrects a previous **Federal Register** document (FR Doc. No. 84-5931), published at page 8297 of the issue for Tuesday, March 6, 1984. Peoples Ban Corporation proposes to engage in equity financing nationwide, not in the limited geographic service area previously specified.

Board of Governors of the Federal Reserve System, March 6, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-6497 Filed 3-11-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Newark District Office, chaired by Matthew H. Lewis, District Director. The topic to be discussed is Drug Use and the Elderly.

DATE: Friday, March 23, 1984, 10:30 a.m. to 12:30 p.m.

ADDRESS: Bloomfield College, College Center, 198 Liberty St., Bloomfield, NJ 07007.

FOR FURTHER INFORMATION CONTACT: Joan A. Godal, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-6365.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: March 6, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-6485 Filed 3-9-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare Program; Utilization and Quality Control Peer Review Organization (PRO) Area Designations

Correction

In FR Doc. 84-5202, beginning on page 7209 in the issue of Monday, February 27, 1984, make the following correction.

On page 7209, third column, sixth line from the bottom of the page, "insults" should read "results".

BILLING CODE 1505-01-M

National Institutes of Health

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; NIH Conference on Application of Monoclonal Antibodies to Renal Research

Notice is hereby given of the NIH Conference on "Application of Monoclonal Antibodies to Renal Research," sponsored by the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases. The Conference will be held on May 3 and 4, 1984 in Conference Room 6 of Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20205.

This Conference is designed to review the latest advances in monoclonal antibody technology as well as the multiple applications of this technology. Since this new technology appears to have considerable promise if used in conjunction with other basic studies, and is in a state of rapid evolution, its application to the problems of the kidney appears to be just emerging. This meeting will provide a forum for investigators studying the kidney to interact with investigators working with this technique, and afford the opportunity to plan expanded application of the technique to many renal problems. It is anticipated that the continued refinement of this new technology may greatly enhance the assault on immunologic kidney diseases, which appear to have multifaceted etiologies. The application of hybridomamonoclonal antibody technology may also provide further assistance in the definition of the role of cell-mediated mechanisms in human renal disease. Information on the program may be obtained from Dr. M. J. Scherbenske, Renal Physiology/Pathophysiology Program Director, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 621, Bethesda, Maryland 20205, (301) 496–7458.

Dated: March 1, 1984.

James B. Wyngaarden, M.D.,

NIH, Director.

[FR Doc. 84–6503 Filed 3–9–84; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program Board of Scientific Counselors; Meeting.

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Room Building 13, National Center for Toxicological Reasearch (NCTR), Jefferson, Arkansas, on March 27 and 28, 1984.

The meeting will be open to the public from 8:30 a.m. to adjournment on March 27. The preliminary agenda with *approximate* times are as follows:

8 9:30 a.m.–9:00 a.m. Report of the Director, NTP
9:00 a.m.–9:20 a.m. Advisory Review Panel for NTP Reproductive and Developmental Toxicology Programs
9:20 a.m.–10:00 a.m. NIOSH/NTP Concept Reviews
10:15 a.m.–12:00 p.m. NIEHS/NTP Concept Reviews

NCTR Programs:

1:00 p.m.–1:20 p.m. Introduction and Overview
1:20 p.m.–2:30 p.m. Developmental and Reproductive Toxicology:
  a. NCTR Research Program
  b. Pharmacodynamics
2:45 p.m.–4:00 p.m. Biochemical Toxicology—Overview:
  a. Saccharin
  b. Promotion
  c. Aromatic Amines
4:00 p.m.–4:20 p.m. Microbial Toxicology
4:20 p.m.–4:45 p.m. Metal Toxicity

The meeting on March 28 will be open to the public from 8:30 a.m. to adjournment. The preliminary agenda with *approximate* times are as follows:

NCTR Programs (Continued):

8:30 a.m.–10:00 a.m. Progress Report of TDMS:
  a. Objectives/Philosophy
  b. Implementation at NTP Sites
  c. Demonstration
  d. Future of TDMS
10:00 a.m.–10:20 a.m. Identification of Genetic Modulation of Toxicity
10:20 a.m.–10:40 a.m. Male vs. Female Expression of Toxicity
10:40 a.m.–11:00 a.m. Biometry—Maximizing Numbers of Animals
11:00 a.m.–11:20a.m. Chemical Toxicology—Gentian Violet and Sulfamethazine
11:20 a.m.–11:40 a.m. Microencapsulation
12:45 p.m.–2:30 p.m. Tour of NCTR

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FTS 629–3971, will furnish a roster of Board members and other program information prior to the meeting, and summary minutes subsequent to the meeting. For information on hotels and directions to the Center contact Mrs. Linda Vetsch at NCTR, telephone (501) 541–4516, FTS 542–4516.

Dated: March 5, 1984.

David P. Rall, M.D., Ph. D,

Director, National Toxicology Program.

[FR Doc. 84–6502 Filed 3–9–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[516 DM 6, Appendix 7]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed revised instructions for the National Park Service.

SUMMARY: This notice announces a proposed revised appendix to the Department's National Environmental Policy Act (NEPA) procedures for the National Park Service (NPS). The proposed revised appendix includes instructions for traditional NPS functions and for functions assumed by NPS with the abolishment of the Heritage Conservation and Recreation Service (HCRS). The proposed appendix will replace the present Appendices 3 and 7 to Chapter 6 of part 516 of the Departmental Manual (516 DM 6) which prescribes the Department's NEPA procedures. The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541). Appendix 3 for HCRS was published on November 20, 1980 (45 FR 76801), and the current Appendix 7 for NPS was published on January 5, 1981 (46 FR 1042).

DATE: Comments due by April 15, 1984.

ADDRESS: Comments to Joseph W. Gorrell, Deputy Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Blanchard, Director of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240, telephone (202) 343–3891, FTS 343–3891. For NPS, contact Mr. David Jervis, Chief, Environmental Compliance Division, (202) 343–2163, FTS 343–2163.

SUPPLEMENTARY INFORMATION: This revised appendix to the Departmental Manual (516 DM 6, Appendix 7) provides specific NEPA compliance instructions to the National Park Service. In particular it provides information about NPS organizational responsibilities for NEPA compliance, advice to applicants, actions normally

requiring the preparation of an EIS, and categorical exclusions from the NEPA process. The revision consolidates in one appendix the NPS NEPA responsibilities and updates and revises the instructions to reflect the NPS's continued experience with the NEPA process.

The appendix must be taken in conjunction with the Departmental procedures (516 DM 1–6) and the Council on Environmental Quality Regulations implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500–1508). In addition, the NPS has prepared a handbook of technical guidance, NEPA Compliance Guideline (NPS–12), on how to apply these procedures to its programs.

Comments on the proposed revised appendix which are received by April 15, 1984 will be carefully considered in finalizing the appendix. Comments received after that date will also be considered to the extent practicable.

Outline

Dated: March 7, 1984.

Bruce Blanchard, *Director, Environmental Project Review.*

516 DM 6, Appendix 7; National Park Service

7.1 NEPA Responsibilities

A. The Director is responsible for NEPA compliance for National Park Service (NPS) activities.

B. Regional Directors are responsible to the Director for integrating the NEPA process into all regional activities and for NEPA compliance in their regions.

C. The Denver Service Center performs most major planning efforts for the National Park Service and integrates NEPA compliance and environmental considerations with project planning, consistent with direction and oversight provided by the appropriate Regional Director.

D. The Environmental Compliance Division (Washington), which reports to the Associate Director—Planning and Development, serves as the focal point for all matters relating to NEPA compliance; coordinates NPS review of NEPA documents prepared by other agencies; and provides policy review and clearance for NPS EISs. Information concerning NPS NEPA documents or the NEPA process can be obtained by contacting this office.

7.2 Guidance to Applicants

Actions in areas of NPS jurisdiction that are initiated by private or non-Federal entities include the following.

A. Minerals. Mineral exploration, leasing and development activities are not permitted in most units of the National Park System. There are exceptions where mineral activities are authorized by law and all mineral activities conducted under these exceptions require consultation with and evaluations by officials of the NPS and are subject to NEPA compliance. Some procedures whereby mineral activities are authorized are outlined below. Interested parties should contact the appropriate NPS Regional Director for a determination of whether authorities for conducting other types of mineral activities in particular areas exist and, if so, how to obtain appropriate permits.

(1) *Mining Claims and Associated Mining Operations.* All units of the National Park System are closed to mineral entry under the 1872 Mining Law, and mining operations associated with mining claims are limited to the exercise of valid prior existing rights. Prior to conducting mining operations on patented or unpatented mining claims within the National Park System, operators must obtain approval of the appropriate NPS Regional Director. The Regional Directors base approvals on information submitted by potential operators that discusses the scope of the proposed operations, evaluates the potential impacts on park resources, identifies measures that will be used to mitigate adverse impacts, and meets other requirements contained in 36 CFR Part 9, Subpart A, which governs mining operations on mining claims under the authority of the Mining in the Parks Act of 1976.

(2) *Non-Federal Mineral Rights.* Privately-held oil, gas and mineral rights on private land or split estates (Federally-owned surface estate and non-Federally owned subsurface estate) exist within some park unit boundaries. Owners of outstanding subsurface oil and gas rights are granted reasonable access on or across park units through compliance with 36 CFR 9, Subpart B. These procedures require an operator to file a plan of operations for approval by the appropriate NPS Regional Director. An approved plan of operations serves as the operator's access permit.

(3) *Federal Mineral Leasing and Mineral Operations.* (a) Leasing of Federally-owned minerals is restricted to five national recreation areas in the National Park System, where leasing is authorized in the enabling legislation of the units. According to current regulations (43 CFR 3100.0–3(g)(4)) these areas are: Lake Mead, Glen Canyon, Ross Lake, Lake Chelan and Whiskeytown National Recreation Areas. The Bureau of Land Management (BLM) issues leases on these lands and controls and monitors operations. Applicable general leasing and operating procedures for oil and gas are contained in 43 CFR Part 3100, et seq. and for minerals other than oil and gas in 43 CFR Part 3500, et seq. Within units of the National Park System, the NPS, as the surface management agency, must concur at all stages of the permitting, leasing and operating process of the BLM. Leases and permits can only be granted upon a finding by the NPS Regional Director that the activities authorized will not have a significant adverse effect on the resources and administration of the unit. The NPS can also require special lease and permit stipulations for protecting the environment and other park resources. In addition, the NPS participates with BLM in preparing environmental analyses of all proposed activities and in establishing reclamation requirements for park unit lands.

(b) Glen Canyon National Recreation Area is the only unit of the National Park system where tar sands development is permissible under the Combined Hydrocarbon Leasing Act of 1981. In accordance with the requirements of this Act, the BLM has promulgated regulations governing the conversion of existing oil and gas leases located in special tar sands areas to combined hydrocarbon (oil, gas and tar sands) leases and for instituting a competitive combined hydrocarbon leasing program in the special tar sands areas. Both of these activities, lease conversions and new leasing, may occur within the Glen Canyon NRA provided that they take place commensurate with the unit's minerals management plan and that the Regional Director of the NPS makes a finding of no significant adverse impact on the resources and administration of the unit or on other contiguous units of the National Park System. If the Regional Director does not make such a finding, then the BLM cannot authorize lease conversions or issue new leases within the Glen Canyon NRA. The applicable regulations are contained in 43 CFR 3140.7 and 3141.4–2, respectively. Intra-Departmental procedures for processing conversion applications have been laid out in a Memorandum of Understanding (MOU) between the BLM and the NPS. For additional information regarding the MOU and combined hydrocarbon

leasing matters, interested parties should contact the NPS Rocky Mountain Regional Office in Denver, Colorado.

B. *Grazing.* Grazing management plans for NPS units subject to legislatively-authorized grazing are normally prepared by the NPS or jointly with the BLM. Applicants for grazing allotments must provide the NPS and/or the BLM with such information as may be required to enable preparation of environmental documents on grazing management plans.

Grazing is also permitted in some NPS areas as a condition of land acquisition in instances where grazing rights were held prior to Federal acquisition. The availability of these grazing rights is limited and information should be sought through individual Park Superintendents.

C. *Permits, Rights-of-Way, and Easements for Non-Park Uses.* Informational requirements are determined on a case-by-case basis, and applicants should consult with the Park Superintendent before making formal application. The applicant must provide sufficient information on the proposed non-park use, as well as park resources and resource-related values to be affected directly and indirectly by the proposed use in order to allow the Service to evaluate the application, assess the impacts of the proposed use on the NPS unit and other environmental values, develop restrictions/stipulations to mitigate adverse impacts, and reach a final decision on issuance of the instrument. Authorities for such permits, rights-of-way, etc., are found in the enabling legislation for individual National Park System units and in 16 U.S.C. 5 and 79 and 23 U.S.C. 317. Right-of-way and easement regulations are found at 36 CFR Part 14. Policies concerning regulation of special uses are described in the NPS Management Policies Notebook.

D. *Archaeological Permits.* Permits for the excavation or removal of archaeological resources on public and Indian lands owned or administered by the Department of the Interior, and by other agencies that may delegate this responsibility to the Secretary, are issued by the Director of the NPS. These permits are required pursuant to the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95) and implementing regulations (43 CFR Part 7), whenever materials of archaeological interest are to be excavated or removed. These permits are not required for archaeological work that does not result in any subsurface testing and does not result in the collection of any surface or subsurface archaeological materials. Applicants should contact the Department Consulting Archeologist in Washington about these permits.

E. *Federal Aid.* The NPS administers financial and land grants to States, local governments and private organizations/individuals for outdoor recreation acquisition, development and planning (Catalog of Federal Domestic Assistance (CFDA #15.916), historic preservation (CFDA #15.904), urban park and recreation recovery (CFDA #15.919), and Federal surplus real property for park, recreation and historic monument use (CFDA #15.403).

The following program guidelines and regulations list environmental requirements which applicants must meet:

(1) Land and Water Conservation Fund Grants Manual—Part 650.2;

(2) Historic Preservation Grant-in-Aid Manual, Chapter 4;

(3) Urban Park and Recreation Recovery Guidelines, NPS–37;

(4) Policies and Responsibilities for Conveying Federal Surplus Property (draft) Manual, Part 271.

Copies of documents related to the Land and Water Conservation Fund and the Historic Preservation Fund have been provided to all State Liaison Officers for outdoor recreation and all State Historic Preservation Officers. Copies of these and documents related to the Urban Park and Recreation Recovery Program are available for inspection in each NPS Regional Office as well as the NPS Office of Public Affairs in Washington, D.C.

Many State agencies which seek NPS grants may prepare related EISs pursuant to Section 102(2)(D) of NEPA. Such agencies should consult with the appropriate NPS Regional Office.

F. *Conversion of Acquired and Developed Recreation Lands.* The NPS must approve the conversion of certain acquired and developed lands prior to conversion. These include:

(1) All State and local lands and interests therein, and certain Federal lands under lease to the States, acquired or developed in whole or in part with monies from the Land and Water Conservation Fund Act are subject to Section 6(f) of the Act which requires approval of conversion of use.

(2) All receation areas and facilities (as defined in Section 1004), developed or improved, in whole or in part, with a grant under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95–625, Title 10) are subject to Section 1010 of the Act which requires approval for a conversion to other than public recreation uses.

(3) Most Federal surplus real property which has been conveyed to State and local governments for use as recreation demonstration areas, historic monuments or public park and recreation areas (under the Recreation Demonstration Act of 1942 or the Federal Property and Administrative Services Act of 1949, as amended), are subject to approval of conversion of use.

(4) All abandoned railroad rights-of-way acquired by State and local governments for recreational and/or conservation uses with grants under Section 809(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, are subject to approval of conversion of use.

Applications for approval of conversion of the use of these lands must be submitted to the appropriate Regional Director of the NPS. Early consultation with the Regional Office is encouraged to insure that the application is accompanied by any required environmental documentation. If the property was acquired through the Land and Water Conservation Fund, then the application must be submitted through the appropriate State Liaison Officer for Outdoor Recreation.

7.3 Major Actions Normally Requiring Environmental Impact Statements

A. The following types of NPS proposals will normally require the preparation of an EIS:

(1) Wild and Scenic River proposals;

(2) National Trail proposals;

(3) Wilderness proposals;

(4) General Management Plans for major National Park System units;

(5) Grants, including multi-year grants, whose size and/or scope will result in major natural or physical changes, including interrelated social and economic changes and residential and land use changes within the project area or its immediate environs.

(6) Grants which foreclose other beneficial uses of mineral, agricultural, timber, water, energy or transportation resources critical to National or State welfare.

B. If for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared and made available for public review in accordance with § 1501.4(e)(2).

7.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions in Appendix 1 of 516 DM 6, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. *Plans, Studies and Reports:*

(1) Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.

(2) Cultural resources maintenance guides, collections, management plans and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

(4) Plans, including priorities, justifications and strategies, for nonmanipulative research, monitoring, inventorying and information gathering.

(5) Statements for management, outlines of planning requirements and task directives for plans and studies.

(6) Technical assistance to other Federal, State and local agencies or the general public.

(7) Routine reports required by law or regulation.

(8) Authorization or funding for the preparation of surveys, studies, reports and plans, including Statewide Comprehensive Outdoor Recreation Plans and similar documents.

(9) Adoption or approval of surveys, studies, reports, plans and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.

(10) Preparation of internal reports, plans, studies and other documents containing recommendations for action which NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.

(11) Land protection plans which propose no change to existing land or visitor use or propose no or only minimal environmental impact.

(12) Documents which interpret existing mineral management regulations and policies, and do not recomend action.

B. *Actions Related to General Administration:*

(1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.

(2) Land and boundary surveys.

(3) Reissuance/renewal or permits, rights-of-way or easement not involving new environmental impacts.

(4) Issuances, extensions, renewals, reissuances or minor modifications of concession contracts or permits not entailing new construction.

(5) Commercial use licenses involving no construction.

(6) Preparation and issuance of publications.

(7) Conversion of existing permits to rights-of-way, when such conversions do not continue unsatisfactory environmental conditions.

(8) Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land use; or

(d) Cause a nuisance to adjacent owners or occupants.

(9) Leasing of historic properties in accordance with 36 CFR Part 18 and NPS–38.

C. *Actions Related to Development:*

(1) Land acquisition within authorized park boundaries.

(2) Land exchanges which will not lead to significant changes in the use of land.

(3) Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds and trails.

(4) Routine maintenance and repairs to cultural resource sites, structures, utilities and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide; or if the action would not adversly affect the cultural resource.

(5) Installation of signs, displays, kiosks, etc.

(6) Installation of navigation aids.

(7) Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing systems (e.g., routes and schedule changes).

(8) Replacement in kind of minor structures and facilities with little or no change in location, capacity or appearance.

(9) Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

(10) Sanitary facilities operation.

(11) Installation of wells, comfort stations and pit toilets in areas of existing use and in developed areas.

(12) Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

(13) Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not change existing pole line configurations.

(14) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will involve no clearance of vegetation other than for placement of poles.

(15) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

(16) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing overhead utility right-of-way.

(17) Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

(18) Construction or rehabilitation in previously disturbed or developed areas required to meet health or safety regulations, or to meet requirements for making facilities accessible to the handicapped.

(19) Landscaping and landscape manipulation in previously disturbed or developed areas.

(20) Construction of fencing enclosures or boundary fencing enclosures or boundary fencing posing no effect on wildlife migrations.

(D) *Actions Related to Visitor Use:*

(1) Carrying capacity analyses.

(2) Minor changes in amouns or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental educational programs.

(4) Minor changes in programs and regulations pertaining to visitor activities.

(5) Issuance of permits for demonstrations, gatherings, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance.

(6) Designation of trailside camping zones with no or minimal improvements.

(E) *Actions Related to Resource Management and Protection:*

(1) Archeological surveys and permits, involving only surface collection or small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and research natural areas.

(4) Stabilization by planting native plant species in disturbed areas.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Restoration of noncontroversial native species into suitable habitats within their historic range, and elimination of exotic species.

(7) Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources or become a nuisance in areas surrounding a park, when such removal is included in an approved resource management plan.

(8) Removal of non-historic materials and structures in order to restore natural conditions.

(9) Development of standards for, and identification, nomination, certification and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.

F. *Actions Related to Grant Programs*:

(1) Proposed actions essentially the same as those listed in paragraphs A–E above.

(2) Grants for acquisition of areas which will continue in the same or lower density use with no additional disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural resources of the area; or the integrity of the existing setting.

(4) Grants for construction of facilities on lands acquired under a previous NPS or other Federal grant provided that the development is in accord with plans submitted with the acquisition grant.

(5) Grants for the construction of new facilities within an existing part or recreation area provided that the facilities will not:

(a) Cause a nuisance to adjacent owners or occupants; e.g., extend use beyond daylight hours;

(b) Introduce motorized recreation vehicles;

(c) Introduce active recreation pursuits into a passive recreation area;

(d) Increase public use to the extent of compromising the nature and character of the property or adjoining property, or causing physical damage to them;

(e) Introduce noncompatible uses which might compromise the nature and characteristics of the property or adjoining property, or cause physical damage to them;

(f) Add or alter access to the park from the surrounding areas; or

(g) Conflict with adjacent ownerships or land use.

(6) Grants for the restoration, rehabilitation, stabilization, preservation and reconstruction (or the authorization thereof) of properties listed on or eligible for listing on the National Register of Historic Places, at their same location and provided that such actions:

(a) Will not alter the integrity of the setting;

(b) Will not increase public use of the area to the extent of compromising the nature and character of the property; and

(c) Will not cause a nuisance to adjacent property owners or occupants.

[FR Doc. 84-6501 Filed 3-9-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[W-51505, W-69324, and W-74184]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31–245 and Title 43 Code of Federal Regulations, Section 3108.2–1(c), and Pub. L. 97–451, petitions for reinstatement of oil and gas lease W–51505 for lands in Niobrara County, Wyoming, oil and gas lease W–69324 for lands in Campbell County, Wyoming, and oil and gas lease W–74184 for lands in Campbell County, Wyoming were timely filed and were accompanied by all the required rentals accruing from their respective dates of termination.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice. The lessees having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W–51505 effective September 1, 1983, lease W–69324 effective November 1, 1983, and lease W–74184 effective January 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 84-6499 Filed 3-9-84; 8:45 am]

BILLING CODE 4310-22-M

Anchorage District Advisory Council Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of Public Hearing.

SUMMARY: The Anchorage District Citizens' Advisory Council will reconvene on March 20 at 9 a.m. to continue its meeting of February 9, 1984. The principal issue for discussion is the implementation of the new Bureau regulations for issuance of recreation permits.

Any member of the public wishing to address the council on any matter is requested to contact Joette Storm, Public Affairs Officer, in advance of the meeting by calling 267–1200 or writing her at the district office, 4700 East 72nd Avenue, Anchorage, AK 99507–2899.

DATE: March 20, 1984—9 a.m. to 4 p.m.

PLACE: Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska.

SUPPLEMENTARY INFORMATION: Agenda.

9:00—Call to Order; Review Minutes of previous meeting
9:15—Recreation permit regulations
10:00—Break
10:15—Council discussion on regulations
11:00—Update of district programs
12:30—Adjournment

Wayne A. Boden,

District Manager.

[FR Doc. 84-6552 Filed 3-9-84; 8:45 am]

BILLING CODE 4310-JA-M

Platte River Resource Area, Casper District, Wyoming; Availability of Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice that the Draft Resource Management Plan and Environmental Impact Statement for the Platte River Resource Area, Casper District, Wyoming is available for public review and comment.

SUMMARY: The Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) presents a range of resource management alternatives and the consequences of implementing each alternative for the public lands in the Platte River Resource Area (PRRA). The preferred management plan in the draft is made up of elements of Alternatives 1, 2, 3, and 4, depending on which of the alternatives best meets the needs of each resource program in resolving the issue identified.

Location of Documents

The draft RMP/EIS plus associated background and source material is available for public review at the Platte River Resource Area Office, 111 South Wolcott, Casper, Wyoming.

Additional information on the the draft RMP/EIS or requests to be placed on the mailing list should be addressed to Jim Melton, Area Manager, Platte River Resource Area, Bureau of Land Management, 951 Rancho Road, Casper,

Wyoming 82601, telephone (302) 261–5556.

Public Participation

Public comments on the draft RMP/EIS should be submitted to the person and address noted above. A ninety (90) day comment period is allowed on the draft plan. The comment period extends from March 14, 1984, to June 11, 1984. Four public hearings have been scheduled to allow individuals to present oral or written testimony on the draft RMP/EIS. The hearings will be held on April 23, 1984 in Wheatland, Wyoming at the 4–H Hall at Platte County Fairgrounds; on April 24, 1984 in Torrington, Wyoming at the Citizens National Bank, Wyoming Room, 2000 North Main; on April 25, 1984 in Douglas, Wyoming at the East Elementary School gymnasium, East Hamilton Street; and on April 26, 1984 in Casper, Wyoming at the City Council Chamber, 200 North David. All hearings will begin at 7:00 p.m.

Public comments on this draft RMP/EIS will be evaluated and a final RMP/EIS will be published about September 30, 1984. A resource management plan will be selected in a record of decision that will be published after the final EIS.

SUPPLEMENTARY INFORMATION: The Casper District is proposing a Resource Management Plan (RMP) to guide future management actions on the public lands within the Platte River Resource Area which includes Natrona, Converse, Platte, and Goshen Counties. Within these four counties, BLM manages 16 percent of the surface, approximately 1.4 million acres, and about 55 percent of the mineral estate, approximately 4.7 million acres.

The major purpose in preparing the Platte RMP was to provide a comprehensive framework for managing and allocating resources in the PRRA for the next ten years or more. The planning process included the identification of issues, the development of planning criteria, inventory and data collection, an analysis of the management situation, the formulation of alternatives, an analysis of effects of alternatives, and the selection of a preferred management plan as the best approach for addressing each issue. The four alternatives included the continuation of present management, low level management, moderate level management, and high level management. The consequences of implementing each alternative is presented in the environmental statement. Resource management plans are authorized under the Federal Land Management Policy Act of 1976. Standards, guidelines, and procedures for RMP preparation are contained in 43 CFR Part 1600.

The Platte RMP/EIS was prepared by an interdisciplinary team of specialists from the PRRA and the Casper District Office. Disciplines included cultural, energy and minerals, fire, forestry, grazing (range), lands, recreation, soil, water, air, wildlife, and socio-economics. In depth reviews for accuracy and consistency were provided by both the district office and state office staffs. Consultation, coordination, and public involvement have occurred throughout the process through public meetings, informal meetings, individual contacts, newsletters, and a **Federal Register** notice.

The 13 major issues addressed in the draft RMP/EIS are the protection of cultural resources; sand and gravel extraction, fire management; timber harvest and pine beetle control; grazing management; disposal, acquisition and leasing; withdrawals; corridors; access; recreation management; watershed protection; wildlife habitat management; and areas with special designations.

Dated: February 29, 1984.

James W. Monroe,

District Manager.

[FR Doc. 84–6553 Filed 3–9–84; 8:45 am]

BILLING CODE 4310–22–M

[OR 36612 (WA)]

Realty Action—Sale, Public Land in Douglas County, Washington

The following described land has been identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value:

WILLAMETTE MERIDIAN, DOUGLAS COUNTY, WASHINGTON

Parcel Number and legal description	Acreage	Value
1 T. 27 N., R. 28 E., Sec. 15, SW¼SW¼	40.00	$2,000
2 T. 27 N., R. 28 E., Sec. 22, NE¼NW¼	40.00	2,800
3 T. 28 N., R. 28 E., Sec. 20, SW¼NE¼ & SE¼NW¼	80.00	5,200
4 T. 28 N., R. 28 E., Sec. 28, SE¼SW¼	40.00	2,000
5 T. 29 N., R. 30 E., Sec. 19, Lot 2	40.29	3,000

The sale will be held on May 16, 1984, at the bureau of Land Management, Spokane District Office, East 4217 Main avenue, Spokane, Washington 99202.

These isolated parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another federal agency. There is no legal access to these parcels. The sale is consistent with the BLM's planning for the land involved and the public interest would be served by offering this land for sale.

The patent issued will be subject to:

1. A reservation to the United States for ditches and canals (43 U.S.C. 945).

2. A reservation to the United States for all mineral rights (43 U.S.C. 1719).

3. All other easements, encumbrances, reservations, and restrictions of record.

Parcels No. 1 through 4 will be offered for sale by sealed bids only, using competitive bidding procedures (43 CFR 2711.3–1). No bid will be accepted for less than the appraised value, and bids for a parcel must include all the land in the parcel. Federal law requires that individuals be 18 years of age or over and U.S. citizens, and corporations be subject to the laws of any State or of the United States.

Bids must be made by the principal or his duly qualified agent. Bids delivered or sent by mail must be received at the BLM, at the above address, before 10:00 a.m., May 16, 1984, to be considered. Each sealed bid must be accompanied by postal money order, bank draft, or cashier's check, made payable to the Bureau of Land Management for not less than one-fifth of the amount of each bid. The sealed envelope must be marked in the lower left-hand corner as follows: "Public Sale Bid Parcel No. ——, Serial No. OR 36612. Sale held May 16, 1984."

If two or more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by drawing. The highest qualifying sealed bid on each parcel will be the sale price. The successful bidder will be required to pay the remainder of the sale price within 30 days. Failure to submit the full sale price within 30 days shall cancel sale of the specific parcel and the bidder's deposit shall be forfeited. All unsuccessful bids will be returned.

If any of the Parcels No. 1–4 are not sold on May 16, 1984, they will remain available for sale on a continuing basis until removed from market. Bids will be solicited on these parcels at the BLM, Spokane District Office during regular business hours. All bids received will be opened the first Wednesday of each month, beginning on June 6, 1984. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Parcel No. 5 will be sold to Richard S. Rice (adjacent landowner) using direct sale procedures [43 CFR 2711.3–2(b)]. This direct sale will protect his interest in the parcel. If he does not submit the full purchase price within 30 days of the offer on May 16, 1984, he waives his preference right and the parcel will be

sold through competitive bidding procedures.

Detailed information concerning the sale, including the planning documents, environmental assessment, land report, and fair market appraisal, is available for review at the BLM, at the above address.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Spokane District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional committees and delegations pursuant to Pub. L. 97–394 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 a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Date of Issue: March 2, 1984.

Joseph K. Buesing,

District Manager.

[FR Doc. 84–6543 Filed 3–9–84; 8:45 am]

BILLING CODE 4310–33–M

[A–327, A–328]

Realty Action; Public Lands; Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 21 W.,
Sec. 6, Lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
Containing 629.81 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Blanche W. Peterson, of Kingman, Arizona.

Gila and Salt River Meridian, Arizona

T. 28 N., R. 15 W.,
Sec. 31, N½, E½SE¼, and E½SW¼SE¼.
T. 27N., R. 16 W.,
Sec. 9, All;
Sec. 17, All, excluding 8.0 acres in N½NW¼NE¼;
Sec. 31, E½ and E½NW¼.
T. 26 N., R. 16 W.,
Sec. 5, Lots 1 to 4, inclusive, S½N½, E½SW¼, and SE¼.
Comprising 2,651.48 acres, more or less.

The purpose of the exchange is to acquire the non-federal lands that contain critical mule deer habitat and exhibit potential for unique recreational opportunities in and near the Music Mountains northeast of Kingman, Arizona. The exchange is consistent with the Cerbat and Black Mountain Management Framework Plan and the public interest will be well served.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal value following the completion of the appraisal.

Lands to be transferred from the United States will be subject to the following reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. A reservation to the United States of all minerals together with the right to prospect for, mine and remove same under the applicable laws and regulations.

3. A reservation for gas pipeline right-of-way AR–011040 as provided under the authority of the Act of February 25, 1920, as amended, 30 U.S.C. 185.

4. A reservation for gas pipeline right-of-way A–4545 as provided under the authority of the Act of February 25, 1920, as amended, 30 U.S.C. 185.

5. Subject to such right for powerline right-of-way A–1876 as provided under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

6. Subject to such rights for road right-of-way A–13877 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

7. Subject to such rights for roadway purposes as secured under the authority of RS 2477 by Mohave County Board of Supervisors Resolution 947, recorded March 9, 1977 (Book 380 of Official Records, Page 874).

8. Subject to whatever restrictions may be imposed by the County Floodplain Administrator in accordance with the "Amended Floodplain Regulations For The Unincorporated Area of Mohave County, Arizona," as adopted by the Mohave County Board of Supervisors by Resolution No. 82–1 of May 17, 1982, and recorded in Book 824, Page 895 of Official Records, Mohave County, Arizona.

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 77 of Deeds, Page 188, Mohave County, Arizona.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. 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.

Dated: March 2, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84–6544 Filed 3–9–84; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2010, Block 543, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 5, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of

Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 5, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–6551 Filed 3–9–84; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[FINANCE DOCKET NO. 30342; Sub-1]

Chicago and North Western Transportation Company; Purchase (Portion); Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, Trustee) Between Jefferson and Herndon, IA

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration and proceedings scheduled.

SUMMARY: The Commission is accepting the application of Chicago and North Western Transportation Company to acquire and operate a 13.08-mile line of railroad track owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) which runs between Jefferson and Herndon, IA. The Commission, is also setting a schedule for the proceeding, and will issue a final decision by May 11, 1984.

DATES: (1) Verified statements supporting or opposing the application must be received at the Commission by April 2, 1984. (2) Verified replies are due April 11, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30342 (Sub-No. 1). to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Applicant's representative: Stuart F. Gassner, Chicago and North Western Transp. Co., One North Western Center, Chicago, IL 60606
(3) Attorney General of the United States, 10th & Constitution Ave., NW, Washington, DC 20530
(4) United States Secretary of Transportation, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 5, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–6532 Filed 3–9–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1984

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Publication of Proposed Office of Juvenile and Delinquency Prevention Program Plan for Fiscal Year 1984.

SUMMARY: Notice is given that the Office of Juvenile Justice and Delinquency (OJJDP) is planning for implementation of programs funded under Title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, in Fiscal Year 1984.

The Office of Juvenile Justice and Delinquency is established by Title II of the Juvenile Justice and Delinquency Prevention Act of 1974. The Title II grant program consists of formula grants awarded to the States and research, training, standards, information, statistics and Special Emphasis categorical grants made directly to eligible recipients.

DATES: Comments must be submitted on or before April 7, 1984.

FOR FURTHER INFORMATION CONTACT: Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, telephone: (202) 724–7751.

SUPPLEMENTARY INFORMATION:

I. Special Emphasis Division

Special Emphasis funds are utilized by the Office of Juvenile Justice and Delinquency Prevention to fund demonstration programs. Projects funded under the Special Emphasis Program are consistent with the provisions of Section 224(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The Office intends to fund some new programs as well as continue others previously funded. Those that will be funded in FY 84 with FY 84 dollars are listed in 1A and 1B.

A. Continuation Projects

1. *Delinquency Prevention and Runaway Children.* This is a continuation grant for Covenant House of New York to provide crisis care services to runaway and homeless youth through two emergency crisis intervention centers. This project will provide short-term shelter to runaways or homeless youth in Houston and another location to be determined. The shelters will offer a temporary respite from an unstable living environment, during which the shelter staffs will assist the youth in actively pursuing constructive plans for the future. The shelters will offer immediate, comprehensive services to prepare youth for independent living. Whenever possible, juveniles who come to the shelter for help will be returned to their families. If this is not possible or appropriate, alternative placements will be sought.

2. *Habitual Serious and Violent Juvenile Offender.*[1] OJJDP is developing an experimental program to control and provide treatment to that small percentage of offenders who commit a disproportionately large share of juvenile crimes. Up to 15 grants will be made. Eligible agencies will be required to coordinate project activities with their local prosecutor. Guidelines for this program have been published in the **Federal Register.**

3. *Private Sector Corrections.*[2] OJJDP will fund a number of private sector corrections projects in order to evaluate

[1] Funded with FY 83 and FY 84 dollars.

their relative efficiency and effectiveness in dealing with serious offenders. All participating programs will be analyzed by an independent evaluator using a generic experimental design. Up to 4 grants will be made. Guidelines for this program have been published in the Federal Register.

4. *Insular Areas Supplemental Award.* The statutorily required supplement to American Samoa, The Commonwealth of the Northern Mariana Islands, Guam, Trust Territories of the Pacific Islands, and the Virgin Islands will also be funded with FY 84 Special Emphasis dollars. (These are known as "Insular Areas.")

B. New Projects

1. *Probation.* OJJDP plans to search for innovative approaches to probation which are efficient and effective in controlling the delinquency of adjudicated youths.

2. *Proyecto Esperanza/Project Hope.* The National Coalition of Hispanic Mental Health and Human Services Organizations (COSSMHO) will provide training and technical assistance to eight geographic sites in implementing a program to identify and reach Hispanic runaways; sexually exploited, abused, and neglected youth; and to foster safe schools. COSSMHO will identify and prevent the spread of runaways, monitor and evaluate programmatic options to generate a data bank, mobilize concerned parents and neighborhood volunteers, and identify and secure clinical treatment for Hispanic juvenile runaways and exploited youth.

3. *National Center for Missing and Exploited Children.* The National Center for Missing and Exploited Children will provide active assistance to parents and relatives of missing children, law enforcement agencies, the criminal justice system, communities, state and local institutions, schools, and private citizen ACTION groups that have been established to aid those who are seeking to locate and safely return missing children. The Center will be a professionally staffed national resource office, independent of any federal agency. It is anticipated that the National Center will have three divisions: missing children, exploited children, and education, prevention and public awareness.

C. Financial Information: Special Emphasis Programs

Continuation Projects:	
Delinquency Prevention and Runaway Children	$750,000
Habitual Serious and Violent Juvenile Offender [1]	1,800,000
Private Sector Corrections [1]	3,500,000
Insular Areas	718,250
New Projects:	
Probation	2,000,000
Proyecto Esperanza/Project Hope (COSSMHO)	900,000
National Center for Missing and Exploited Children	1,500,000

[1] Funded with FY 83 and 84 dollars.

Note.—These are approximate figures which are subject to change. Evaluations of Special Emphasis programs and projects funded through the NIJJDP using Special Emphasis funds are contained in the section describing "Research and Program Development Division" activities. Other activities utilizing Special Emphasis funds are also found under "Training, Dissemination and Standards Division" activities.

D. Further Information: Special Emphasis

For further information on the Special Emphasis Program, please contact: Emily C. Martin, Director, Special Emphasis Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, D.C. 20531, (202)724–5921.

II. Research and Program Development Division

Section 241(e)(4) of the JJDP Act authorizes "contracts with public or private agencies, organizations, or individuals, for the partial performance of any of the functions of the Institute * * *." The statutory functions of NIJJDP are: Information (Sec. 242), Research, Demonstration, and Evaluation (Sec. 243), Training (Sec. 244), and Standards (Sec. 247).

A. Continuation Projects

1. *Analysis of Victimization Data.* This analyses of trends in juvenile crime as reported through the National Crime Surveys will be updated through 1982. The nature and extent of victimization of youth and children will be examined. Analyses of offender—victim interrelationships will also be conducted.

2. *Juvenile Involvement in Violent Crime.* This study is designed to determine the frequencies and patterns of juvenile involvement in violent crime. This approach includes conducting a self report survey, an analysis of official records and a victimization survey of a representative sample of the juvenile population in a metropolitan area.

3. *The Violent Few Revisited.* This project is a follow-up to a longitudinal study of juvenile offenders who have been arrested for at least one violent offense. This follow-up study is tracking youth in the original study group into the adult system to analyze their patterns of criminal careers. The supplement will support the collection and analysis of data on child abuse and welfare system contacts among the offenders, and additional analyses of the entire data base.

4. *The Relationship of Foster Care to Delinquency.* This is a study of foster care and its relationship to juvenile delinquency. The purpose is in part to determine the correlation between foster care experiences and subsequent delinquent behavior and other social problems.

5. *Follow-up to Delinquency in a Birth Cohort.* Utilizing the 1958 Philadelphia Birth Cohort (29,000 males and females), this study will consist of a follow-up of a sample of the cohort at age 25. A self-report survey and an archival search of official justice system records will form the basis of the analyses on desistance or the transition from delinquency to adult crime.

6. *Developing Intervention Strategies for Chronic, Serious Offenders.* A program of research on juveniles who are chronically involved in crime was initiated in FY'83. The emphasis is on correctional system handling of these offenders. This supplement will support the model development phase.

7. *Program of Executive Sessions and Research Examining the Juvenile Court.* The purpose of this project is to create a forum for the discussion of basic and critical issues facing the juvenile justice system. Federal, state and local public and private experts will be convened to establish an on-going dialogue regarding the philosophical underpinnings of the juvenile justice system and social policies related to juvenile crime.

B. New Projects

1. *Possible Linkages Between Sexual Abuse and Exploitation of Children and Juvenile Delinquency, Violence and Criminal Activity.* This project consists of a longitudinal follow-up of 60 children who were victims of sexual exploitation, and a retrospective study of offenders who have committed sexual crimes or murders involving juveniles as victims.

C. Financial Information: Research and Program Development

Continuation Projects:	
Analyses of Victimization Data	$100,000
Minority Involvement in Violent Crime	50,000
Violent Few Revisited	65,000
The Relationship of Foster Care to Delinquency	150,000
Follow-up to Delinquency in a Birth Cohort	700,000

Developing Intervention Strategies for Chronic Serious Offenders	100,000
Program of Executive Sessions and Research Examining the Juvenile Court	181,000
New Projects: Possible Linkages Between Sexual Abuse and Exploitation of Children and Juvenile Delinquency, Violence and Criminal Activity	840,825

Note.—All figures are approximate and are subject to change.

D. Further Information: Research and Program Development

For further information on the National Institute of Juvenile Justice and Delinquency Prevention, Research and Program Development projects contact: Ms. Pamela Swain, Director, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (202)724-7560.

III. Training, Dissemination and Standards Division

A. Continuation Projects:

1. *Law Related Education.* This is a dissemination program based on the findings and activities of the Law Related Education (LRE) Research and Development (R&D) effort. The R&D effort tested the application of specially designed education material, practices and activities to help youth in grades K–12 understand and appreciate the fundamentals, principles, and processes of the justice system in everyday life. This program will utilize the same participant organizations to initiate a national information, training, and technical assistance network to familiarize and provide assistance to justice and education professionals interested in using the LRE material within educational and correctional settings.

2. *Research and Development Training Institute, Inc.* (Formerly known as the Association for Children with Learning Disabilities.) The Research and Development Training Institute, Inc., will conduct three training modules to present the results and implications of its project, which investigated the linkage between learning disabilities and juvenile delinquency and to demonstrate the remediation treatment program for offenders.

3. *National District Attorneys Association* (NDAA). The NDAA will: (1) Expand and broaden access of district attorneys in the United States to experts and other professionals and private citizens concerned with issues of juvenile justice and delinquency prevention; (2) make available to district attorneys through formal training, newsletters, publications, and technical assistance, state-of-the-art information on current research, national trends, standards, model legislation, promising programs and other topics of special importance to the field of juvenile justice and delinquency prevention; (3) assist in preparing district attorneys to assume a more active role locally in the formation of juvenile justice policy; (4) to increase the capacity of NDAA to participate fully and actively in the national dialogue regarding juvenile justice and delinquency prevention programs and priorities.

4. *Institute for Non-Profit Organization Management* (INPOM). INPOM will conduct training geared to the serious and violent juvenile offender in the areas of management and evaluation, for approximately 90–120 executive and senior level juvenile justice personnel, administrators of community-based organizations and other youth workers.

5. *American Justice Institute* (AJI). During this period of close-out, AJI will complete three major activities: a background report on juvenile probation; a topical report on juvenile runaways, prostitution, and pornography; and a workshop on police handling of youth gangs. This award will also support administrative activities related to the closing of the Assessment Center.

6. *National Criminal Justice Reference Service/Juvenile Justice Clearinghouse* (NCJRS/JJC). The general purpose of this effort shall be to expand and improve the Juvenile Justice Clearinghouse operations in the juvenile justice field. In order to accomplish these goals the major activities will include the expansion and improvement of services to the juvenile justice community; enhancement of the quality and depth of information requests; and the continued support of OJJDP, OJJDP grantees and contractors in their program development activities.

7. *National Uniform Juvenile Justice Reporting System* (NUJJRS). The National Center for Juvenile Justice will collect, analyze and disseminate information from juvenile courts to build an understanding of their processes and trends affecting them.

8. *Juvenile Information System and Records Access* (JISRA). The NCJFCJ will assist jurisdictions to develop juvenile information systems that also produce data on court handling of juveniles and dispositions.

9. *Children in Custody Survey.* The Bureau of Census will complete data collection and prepare reports on selected characteristics of the residents, facilities and operations within the juvenile custody system, both national and state-by-state; to assist authorities in assessing trends, and in developing relevant policies and legislation.

10. *Printing.* In order "to serve as a clearinghouse and information center," NIJJDP has established mechanisms to review, assess, and market, through a continuum of dissemination options, OJJDP documents for publication to appropriate audiences in the most cost-effective and cost-recovery methods. This aspect of the OJJDP program will serve to print and disseminate those documents to the juvenile justice community.

11. *American Correctional Association*—Establishing Model Juvenile Detention Resource Centers. This program is a continuation of project in which the American Correctional Association developed Model Guidelines for the Development of Policies and Procedures for Juvenile Detention Centers. This document translated nationally recommended standards for the administration of juvenile detention centers into sample operating policies and procedures that are adaptable to any juvenile detention facility. The purpose of the new effort is to identify at least three model juvenile detention centers which reflect the model guidelines and which are willing to serve as resource centers to conduct training and technical assistance workshops for other detention center administrators and staff.

12. *Juvenile Justice Training Program—Institute for Court Management.* The Institute for Court Management will conduct three seminars for juvenile justice professionals on management training, policy and program strategies relating to programs handling serious and repetitive juvenile offenders.

B. New Projects

1. *Abused Neglected and Handicapped.* The primary goal of this program is to establish an effective means of offering and providing training and technical assistance to key state legislators; juvenile and family court judges; state foundations or private funding source representatives; volunteer organization representative and state social service of the fifty (50) United States and five(5) American Territories. This training will address the substantive legal, procedural and social issues related to the nation's

children living in foster care and the need to recognize the benefit of providing these children with permanent homes.

2. *Crime in Schools.* The primary goal of this program is to establish a National School Safety Center which will provide a national focus on school safety by making the nation aware of the magnitude of campus and school crime and violence, identifying the ways and means to diminish crime and violence, and promoting innovative, workable and university campus crime prevention and school discipline restoration. Making schools safer places in which to learn, work and teach are the expected results of this program.

3. *State Legislators Training.* A training program for state legislators and legislative staff of committees who deal with juvenile justice issues. This program would serve as a vehicle to inform state legislators about recent trends and developments in juvenile justice based on national statistical data on youth crime.

A national survey of the opinions of jurists, legislators and other experts as to how best to deal with juvenile crime will be conducted; a review and analysis of the legal codes in each of the fifty states to determine the approaches taken in dealing with juvenile crime will be performed; a model code to guide states in dealing with juvenile crime will be developed; training materials to guide legislators and others in implementing new approaches to juvenile crime will be designed; and one national and three regional conferences will be conducted.

C. Financial Information: Training, Dissemination and Standards Division

Continuation Projects:	
Law Related Education (LRE)	$1,400,000
Association for Children with Learning Disabilities (ACLD)	40,000
National District Attorneys Association (NDAA)	60,000
Institute for Non-Profit Organization Management (INPOM)	75,000
American Justice Institute (AJI)	70,000
National Criminal Justice Reference Services (NCJRS)	400,000
National Uniform Juvenile Justice Reporting System (NUJJRS)	300,000
Juvenile Information System and Records Access (JISRA)	200,000
Children in Custody Survey	250,000
Printing	100,000
American Correctional Association—Establishing Model Juvenile Detention Resource Centers	100,000
New Projects:	
Abused, Neglected and Handicapped	1,500,000
Crime in Schools	2,250,000
State Legislators Training	1,000,000

D. Further Information: Training, Dissemination and Standards Division

For further information on the National Institute of Juvenile Justice and Delinquency Prevention's Training, Dissemination and Standards projects contract: Mr. Terrence Donahue, Director, Training, Dissemination and Standards Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (202) 724-5940.

IV. Formula Grants and Technical Assistance Division

Technical Assistance is provided to Federal, State and local governments, courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs.

The States have initial responsibility for planning technical assistance to assure close coordination with state plans and attention to local needs. The Office of Juvenile Justice and Delinquency Prevention is responsible for developing a national technical assistance plan, using as a prime consideration those needs for which states do not have resources.

The Technical Assistance Program is planned and directed to achieve a positive change which, in turn, contributes to the achievement of the goals and priorities of the Office. Furthermore, to use its limited resources effectively, OJJDP focuses its assistance on the development and implementation of programs with the greatest potential for reducing juvenile crime, while enhancing juvenile justice.

A. Continuation Projects

1. *Improved Detention Practices and Alternative Services.* This program provides TA to state and local communities in their efforts to comply with the requirements of Section 223, Paragraphs (12)(A), (13), and (14) of the Act; these deal respectively with deinstitutionalization of status offenders, separation of juveniles and adults during incarceration, and removal of juveniles from adult jails and lock-ups.

2. *Dispositional Alternatives to Incarceration for Adjudicated Juveniles.* This program provides TA to improve the various dispositional alternatives to incarceration, including restitution, probation, foster home care, and secure group home care. Correctional improvement is covered in another part of this program.

3. *Delinquency Prevention.* This program provides TA to prevent delinquency, concentrating on neighborhood self-help efforts. Approaches to leadership selection, training, networking, program development, and communications with juvenile justice agencies will be emphasized.

4. *Technical Assistance by OJJDP Staff.* Staff personnel of the Formula Grant and Technical Assistance Division as well as other OJJDP staff have specialized experience and are particularly capable of providing TA in various areas of juvenile justice and delinquency prevention and in improving the operations of State and local agencies. Funds will support their travel for TA purposes.

5. *Systems Improvement.* TA will be provided to the various agencies of juvenile justice to improve operations, management, policies, and skills of all relevant types.

B. New Projects

1. *Courts Improvement.* Juvenile courts will receive TA in a program that will focus on those concerns that are central to judges and juvenile court administrators and that are at the heart of court operation.

2. *Juvenile Corrections Network.* As a result of a recent review of state juvenile corrections, it became apparent that this area of the juvenile justice system and its professionals have been largely neglected and need assistance. As a first major step in providing assistance, a major conference or series of regional conferences will bring the key leadership in each state together to review conditions and needs in juvenile corrections.

C. Financial Information: Formula Grants and Technical Assistance Division

Continuation Projects	
Improved Detention Practices and Alternative Services	$433,458
Dispositional Alternatives	350,000
Delinquency Prevention	200,000
Technical Assistance by OJJDP Staff	150,000
Systems Improvement	200,000
New Projects	
Courts Improvement	420,000
Juvenile Corrections Network	50,000

Note: All figures are approximate and are subject to change.

D. Further Information: Formula Grants and Technical Assistance Division

James E. Gould, Chief, Program Development, Formula Grants and Technical Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–8491.

V. Concentration of Federal Effort

Concentration of Federal Effort funds are utilized by the Office of Juvenile Justice and Delinquency Prevention for activities authorized under Sections 204, 205, 206 and 207 of the JJDP Act, as amended. Funds provide operational support for the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC), the Coordinating Council on Juvenile Justice and Delinquency Prevention (CC), as well as provide for the funding of interagency projects and activities intended to coordinate the overall Federal effort to prevent delinquency and improve the juvenile justice system in the United States.

A. Concentration of Federal Effort Projects

New Project: $900,000.

OJJDP and the Coordinating Council are considering funding two (2) to five (5) interagency projects pertaining to the prevention and treatment of juvenile substance abuse among offenders and non-offenders within the community.

B. Further Information: Concentration of Federal Effort

For further information on the Concentration of Federal Program please contact: Ms. Roberta Dorn, Acting Director, Concentration of Federal Effort Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7655.

Alfred S. Regnery,

Administrator.

[FR Doc. 84–6498 Filed 3–9–84; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84–18]

Intent To Grant an Option Agreement for an Exclusive Patent License

Correction

In FR Doc. 84–4871 appearing on page 7015 in the issue of Friday, February 24, 1984, make the following correction in the "**DATE**" paragraph. The parenthetical expression should be replaced with "April 24, 1984.".

BILLING CODE 1505–01–M

NUCLEAR REGULATORY COMMISSION

[License Nos.: 37–00611–09, SUB–868; EA 84–14]

Automation Industries, Inc.; Sperry Division; Order To Show Cause and Order Temporarily Suspending License

I

Automation Industries, Inc., Kimberton Road and Highway 113 South, Phoenixville, PA 19460 (the licensee), is the holder of a specific byproduct material license (No. 37–00611–09) and a source material license (SUB–868) issued by the Nuclear Regulatory Commission (the Commission) pursuant to, among other regulations, 10 CFR Part 30 and 10 CFR Part 40. The licensee assembles iridium-192 and cobalt-60 radiography exposure devices at their Phoenixville facility (the facility). The licensee also ships these assemblies in U.S. Department of Transportation approved shipping containers to customers authorized to receive them. License No. 37–00611–09 was originally issued on October 4, 1966 and most recently renewed on February 22, 1982, with an expiration date of October 31, 1983; however, the license is currently in effect because a timely renewal application was received September 16, 1983. License No. SUB–868 was originally issued on April 30, 1966 and most recently renewed on June 4, 1981 with an expiration date of June 30, 1986.

II

On February 28, 1984, the NRC Region I was advised by an individual familiar with the licensee's Phoenixville facility that he had observed unusual activity while passing the facility in that many people unfamiliar to him were standing outside the facility. Thereafter, two Region I NRC inspectors inspected the facility on February 28, 1984 and determined that the licensee had experienced a radioactive contamination incident on February 23, 1984 and was attempting to decontaminate the facility.

On February 23, 1984 a licensee employee was repackaging radioactive waste from an old drum to another drum. A major portion of the contents of the old drum was sand that contained broken beakers that had previousy been used in the facility's hot cell and were highly contaminated with radioactivity. Contaminated dust was raised during the waste transfer and spread contamination from the waste storage area to the rest of the facility. The employee performing the transfer wore a respirator, but a nasal swab showed contamination of 800 disintegrations per minute (dmp). Two other employees in the facility at the time of the transfer who were not wearing respirators were checked and their nasal swab results ranged from 400 dmp to 4600 dpm. On February 29, 1984, the licensee obtained whole body counts on these three individuals and a fourth employee who had stopped at the facility later on the date of the incident. The maximum individual uptake was determined to be 24 nanocuries of iridium-192 as compared to approximately 1,500 nanocuries that could result from a continuous exposure to the maximum permissable concentration of airborne iridium-192 contamination.

Surface contamination levels in the facility, according to the licensee, ranged from 1000 to 86,000 dpm/100 square centimeters (sq. cm.). Region I took independent smears in the facility on February 28, 1984 (some decontamination had already occurred) and found iridium contamination levels of 50 to 11,000 dpm/100 sq. cm. Preliminary surveys indicate that no contamination was deposited on the ground outside the facility or removed to other locations, but additional surveys are being conducted.

The NRC inspectors determined that the decontamination activities being conducted by the licensee on February 28, 1984 were not adequaely planned or supervised in that there were (1) no procedures to prevent the spreading of contamination into the areas already decontaminated, (2) inadequately trained technicians to perform the decontamination, and (3) no professional health physicist coverage and supervision of the activities. Further, prior to the inspection, the licensee had not adequately evaluated the exposure of their employees involved in the February 23, 1984 incident, had not reported the event to

the NRC, and had been operating for at least a month with alarms associated with the hot cell ventilation in a bypassed condition.

III

As a result of the incident, employees of the licensee were threatened with exposures that could exceed the levels of 10 CFR 20.403(b)(1) and the licensee lost the use of part its facility and sustained contamination damage in excess of $2,000. Incidents involving licensed material such as occurred on February 23, 1984, which may cause or threaten to cause a loss of operation of facilities for a day or more, damage to property in excess of two thousand dollars, or an exposure in excess of the levels of 10 CFR 20.403(b)(1) are required by 10 CFR 20.403(b) to be reported to the Commission within 24 hours of the incident. The licensee did not notify the Commission of the incident.

IV

On February 17, 1981, the NRC issued to the licensee an Order Suspending License and to Show Cause Why the Suspension of the License Should Not Be Continued Pending Further Order (EA 81–25), 46 FR 14096 (Feb. 25, 1981). The suspension Order was issued because of an apparent excess radiation exposure to the thumb and fingernails of two radiation technicians while working in a restricted area. Although the licensee apparently knew of the possible overexposures in November 1980, the licensee did not report the overexposures to the NRC until February 2, 1981, in violation of 10 CFR 20.403(b). The evidence available to the NRC at that time indicated that the licensee did not take action until January 1981, to preclude other exposures, as required by 10 CFR 20.101. Moreover, it appeared that the licensee may have sought to conceal the injury to one of its employees from the NRC. By Order dated March 6, 1981, the NRC lifted the suspension upon a showing by the licensee that changes to the facility management and radiation protection program, along with procedural changes, would assure adequate control of the operation of the facility. 46 FR 17687 (March 18, 1981).

The licensee in February 1984 was also issued a Notice of Violation and Proposed Imposition of Civil Penalties (EA–83–128) in the amount of $5,625 for violations of NRC requirements involving shipments of licensed material with surface radiation levels in excess of regulatory limits. This enforcement action was based in part on the licensee's failure to implement corrective action for previous violations.

V

While Region I's investigation of the recent contamination incident is not yet complete, it appears that continued conduct of licensed activities could pose a potential threat to the health of the public including licensee's employees. Given the licensee's enforcement history and the latest incident involving a failure to make a required report and the lack of adequate planning and supervision regarding the decontamination activities, there is a serious question whether this licensee will comply with Commission requirements. Therefore, I have determined that the public health, safety, and interest require that License Nos. 37–00611–09 and SUB–868 be suspended, pending the completion of the ongoing Region I investigation and a determination as to whether the licenses should be revoked. I have further determined pursuant to 10 CFR 2.202(f) that the suspension be immediately effective pending further Order.

VI

In view of the foregoing and pursuant to Sections 81, 161(b) and 186 of the Atomic Energy Act of 1954, and the Commission's regulations, 10 CFR Parts 2 and 30, it is hereby ordered effective immediately that:

A. The licensee's authorization under License 37–00611–09 and SUB–868 is suspended and the licensee shall not receive or use byproduct or source material or otherwise fabricate or ship radiography sources except as permitted below.

B. The licensee shall schedule and conduct whole-body counts (*in vivo* bioassay) of all employees and contractors, past and current who have worked at the facility on or after February 23, 1984 and any persons who visited the facility since the incident. The licensee shall within 72 hours of receipt of this Order inform NRC Region I of its schedule for completing this action.

C. The licensee shall immediately initiate action to determine if any off-site areas were contaminated as a result of the incident. The licensee shall immediately notify Region I if any off-site areas are found to be contaminated. All such areas shall be decontaminated to levels specified in "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material" (NRC, Division of Fuel Cycle and Material Safety, July 1982). Completion of decontamination work shall be evidenced by means of a final survey and verification of completed decontamination submitted under oath to the Regional Administrator, NRC Region I. Pending completion of the decontamination, the licensee shall provide a written report weekly to James H. Joyner, III, Chief, Materials and Safeguards Branch, Region I (215) 337–5251 on the status of decontamination.

D. The licensee shall perform a survey of all interior areas of the facilities to evaluate potential exposure to sources of radiation and radioactive materials, including airborne radioactive materials. However, prior to entry into any High Radiation Area (HRA), any Airborne Radioactivity Area (ARA), or the radioactive waste storage area, a detailed plan for entry, including radiation protection procedures to be followed, will be provided to NRC Region I. No entry into any HRA, ARA, or the radioactive waste storage area, will be made until the NRC has confirmed receipt of the procedures and has at least two working days to review the submitted procedures.

E. Prior to entry into the licensee's facility to initiate decontamination operations, and no later than March 30, 1984, the licensee shall submit a proposed decontamination plan for its facility to NRC's Region I Office and obtain the Region I Regional Administrator's approval of the plan. The plan shall include (1) the qualifications of the persons responsible for radiation safety during the decontamination operations; (2) a description of the location and levels of all sources of radiation and contamination; (3) the levels of contamination that will be permitted to remain in the facility after decontamination; (4) a timetable for performance and completion of the decontamination activities and the transfer of contaminated waste; (5) a description of the methods to be used to assure protection of workers and the environment against radiation hazards during the decontamination operations; and (6) a description of the methods to be used for disposal of contaminated materials. Following the approval of the plan, the licensee shall submit to the Regional Administrator, Region I, a copy of the decontamination procedures and the radiation protection procedures to be used during the decontamination of the facility. Decontamination efforts will not be initiated until the NRC has confirmed receipt of the procedures and

has had at least two working days to review the submitted procedures.

F. The licensee shall notify NRC Region I of all proposed radioactive material shipments required by the decontamination effort at least 48 hours prior to the proposed shipment date.

G. The licensee shall neither abandon nor release for unrestricted use the facility until the NRC has confirmed a successful decontamination of the facility.

H. The Regional Administrator, Region I, may relax, modify or terminate any of the actions required by this Order upon good cause shown.

I. The licensee shall show cause, why License Nos. 37–00611–09 and SUB–868 should not be revoked.

VII

Pursuant to 10 CFR 2.202(b), the licensee may show cause, within 25 days after issuance of this Order above, by filing a written answer under oath or affirmation setting forth the matters of fact and law on which licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order in substantially the form proposed in this Order to Show Cause. Upon failure of the licensee to file an answer within the specified time, the Director, Office of Inspection and Enforcement may issue without further notice an Order revoking License Nos. 37–00611–09 and SUB–868.

VIII

Pursuant to 10 CFR 2.202(b), the licensee may, in its answer filed under Section VII, request a hearing. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address and the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, PA 19406. A Request for Hearing shall not stay the immediate effectiveness of this Order.

If a yearing is requested by the licensee, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be:

Whether this Order should be sustained.

Dated at Bethesda, Maryland this 2nd day of March 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84–6576 Filed 3–9–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325/324]

Carolina Power & Light Co. (Brunswick Steam Electric Plant, Units 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I.

Carolina Power & Light Company (CP&L or the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62 which authorize the operation of the Brunswick Steam Electric Plant, Units 1 and 2 at steady state reactor power levels each not in excess of 2436 megawatts thermal. The units are boiling water reactors located in Brunswick County, North Carolina.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III.

CP&L responded to Generic Letter 82–33 by letter dated April 15, 1983. By letter dated October 14, 1983, CP&L modified several dates as a result of negotiations with the NRC staff. In these submittals, CP&L made commitments to complete the basic requirements. The attached Table summarizing the schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by CP&L.

CP&L commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed the April 15, 1983 letter from CP&L and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates by letter dated October 14, 1983. The NRC staff finds that the dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CP&L's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV.

Accordingly, pursuant to Sections 103, 161i, 161o and 182 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, effective immedately, that the licensee shall:

Implement the specific items described in the Attachment to this ORDER in the manner described in CP&L's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the

Director, Division of Licensing, for good cause shown.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

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 IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 22nd day of February, 1984.

For the Nuclear Regulatory Commission.

Darrel G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	December 31, 1984.
	1b. SPDS fully operational and operators trained	Submit a firm completion date by December 31, 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	December 31, 1984.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit a firm completion date by December 31, 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Submit a firm completion date by December 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgraded EOPs	Complete.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Submit a firm completion date by December 31, 1984.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Submit firm completion date by December 31, 1984.

[FR Doc. 84-6577 Filed 3-9-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251

Florida Power and Light Company (Turkey Point Plant, Unit Nos. 3 and 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-31 and DPR-41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power level not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florida.

II

The Commission has incorporated the American Society of Mechanical Engineers (ASME) Code in 10 CFR 50.55a "Codes and Standards." Section XI of the ASME Boiler and Pressure Vessel Code allows for extension of the Inspection Interval (required by IWA-2400, IWB-2400, IWC-2400 and IWD-2400) for extended continuous outages of six months or more.

Section 50.55a(g)(ii) of 10 CFR requires that a new program be submitted to the Commission at least six months before the start of the period during which the provision become applicable.

III

By letter dated October 3 and revised October 21, 1983, Florida Power and Light Company requested to: (1) Update the requirements for system pressure tests to the 1980 Edition through Winter 1981 Addenda of Section XI of the ASME Code and (2) extend the ten-year inspection interval due to lengthy steam generator repair outages for both Turkey Point Units.

The Regulations, 10 CFR 50.55a, allows use of requirements in later editions and addenda of Section XI which have been approved by the Commission and incorporated in paragraph (b) of 10 CFR 50.55a. Paragraph (b) presently cites the 1980 Edition through Winter 1981 Addenda as the latest approved edition and addenda. This request is therefore within the requirements of the Regulations and no other action by the Commission is required. The licensee has been informed by letter dated March 1, 1984.

The request to extend the inspection intervals to September 1, 1984 is unacceptable. The extensions, to September 1, 1984, are in excess of that allowed by the Code, which may have been misinterpreted by Florida Power and Light Company. The extension of an interval, i.e., a change of the ten-year interval date, which is calculated from the start of plant commercial operation, is different from the extension of the time interval allowed by Section XI of the ASME Code to accommodate the occurrences of plant outages and inservice inspections. The extension of the interval date can occur only if the plant is out of service continously for six months or more during that interval. The amount of time to which the interval date may be extended is equivalent to the plant's out-of-service time.

The interval date signifies the beginning of a new inspection interval and serves as the date for determining Code editions and addenda to be used for the new ten-year inservice inspection program plan.

Turkey Point Unit No. 3 was down continuously from February 2, 1981 to April 10, 1982 and Unit No. 4 was down continuously from October 9, 1982 to May 16, 1983 for replacement of steam generators. The ten-year interval date extension for Unit No. 3 is therefore one year, two months, and eight days; for Unit No. 4 it is seven months and seven days. The downtime is added to the end of the ten-year interval, which is calculated from the date that the plant started commercial operation. Turkey Point Unit No. 3 started commercial operation on December 14, 1972 and

Unit No. 4 on September 7, 1973, making the end of the ten-year interval December 13, 1982 and September 6, 1983 for Unit No. 3 and Unit No. 4, respectively. Therefore, the ten-year interval starts on February 22, 1984 for Unit No. 3 and April 15, 1984 for Unit No. 4.

The Commission has determined that extending the inspection interval to February 22, 1984 for Unit No. 1 and April 15, 1984 for Unit No. 4 is in accordance with the ASME Code and will not change the Code edition and addenda to be used for the new inservice inspection program.

The Commission has also detemined that extending the submittal date to March 1, 1984, for the new ten-year Inservice Inspection Programs for both Turkey Point Unit Nos. 3 and 4 is acceptable. The new approved programs will not be needed until the first refueling outage of the new ten-year interval. The current schedule for the first outage of the new interval for Unit No. 3 is approximately 18 months and Unit No. 4 approximately 20 months. Therefore, the new programs will have adequate time for approval prior to their need.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the requirements of 10 CFR 50.55a(g)(5)(ii):

The submittal date is extended to March 1, 1984 for the new ten-year Inservice Inspection Programs for Unit Nos. 3 and 4.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 1st day of March 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-6578 Filed 3-9-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061, Source Material License No. STA 583]

Kerr-McGee Chemical Corporation (Kress Creek Decontamination); Order To Show Cause

I

Kerr-McGee Chemical Corporation ("the licensee") is the holder of Source Material License No. STA 583 issued by the Nuclear Regulatory Commission (NRC) ("the Commission"). The license authorizes the possession of an unlimited quantity of thorium at the Rare Earths Facility, West Chicago, Illinois. Production operations under the license ceased in December, 1973.

II

Over the years, a portion of the wastes from the plant site have been disposed of by being discharged into Kress Creek, a tributary of the DuPage River, either via a storm sewer or a drainage ditch. The wastes entered the creek at a point about 0.7 Km south of the Kerr-McGee site. The creek flows in a southeasterly direction for about 2 Km to its confluence with the West Branch of the DuPage River.

Radioactive contamination along Kress Creek and the DuPage River was detected as a result of an aerial survey in 1977 and later verified by extensive surveys of the West Chicago area undertaken by Argonne National Laboratory in 1977 and 1978 under contract to the NRC. The results of these surveys, which were limited to measurements of surface exposures and dose rates, were reported in NUREG/CR-0413 published in September 1978. Additional surveys of the creek and river were made by the United States Environmental Protection Agency (EPA) (1980) and Oak Ridge Associated Universities (ORAU) under NRC Contract (1981). Based on these surveys, the NRC staff, in a letter dated December 18, 1981, requested that the licensee submit a plan for the decontamination of Kress Creek and for storage or disposal of the contaminated soil. After discussions with the licensee, further review of existing data on contamination along the creek and consideration of potential changes in EPA and NRC cleanup actions, the staff decided to further assess the radiological contamination in Kress Creek and informed the licensee, in a letter dated June 4, 1982, it was not necessary to take further action in regard to the December 18, 1981, letter and that the staff would further advise Kerr-McGee upon completion of the assessment.

III

A comprehensive, radiological survey of Kress Creek has now been performed by ORAU under contract to NRC. The comprehensive radiological survey was specifically designed to determine not only current direct radiation levels, but also the depth distribution of contamination in the creek and river beds and in bank soils along the creek and river. This survey indicated that lands adjacent to Kress Creek and the West Branch of the DuPage River are contaminated with thorium and with daughter products of the thorium decay chain essentially in secular equilibrium. Soil contamination levels and direct levels of radiation were found to be relatively constant throughout the length of Kress Creek, and to extend downstream along the West Branch of the DuPage River.

The average concentrations of total thorium (Th-232 + Th-228) at 1 meter from the edge of the creek at various depths were: 26.1 pCi/g (picocuries per gram) at the surface; 40.2 pCi/g at 15 cm depth; 38.9 pCi/g at 30 cm depth; 28.9 pCi/g at 60 cm depth; and 18.7 pCi/g between 60 and 90 cm. The soil concentrations decreased with increasing distance from the creek. The highest level of total thorium measured in a sample was 555 pCi/g, with a number of other samples exceeding 200 pCi/g. Many of the highest levels were detected in areas near the storm sewer outfall, and hence constitute a potential source of continuing contamination for locations further downstream.

Direct levels of radiation measured at 1, 5, 10, and 25 meters from the edge of the creek and 1 meter above ground surface averaged 28, 25, 21 and 14 uR/hr (microroentgen per hour) respectively. However, radiation levels greater than 100 uR/hr were detected in several locations. Normal background radiation levels in this area averaged 8.6 uR/hr.

The contamination levels found along the creek exceed the environmental standards promulgated by EPA under authority of the Atomic Energy Act of 1954, as amended, for unrestricted use of areas on which thorium processing wastes have been disposed. *See* 40 CFR 192.41 (48 FR 45947). The NRC is charged with implementation and enforcement of these standards. *See* Section 275d of the Atomic Energy Act of 1954, as amended. The contamination levels also exceed the identical standards established for cleanup of vicinity properties under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, and published in 40 CFR Part 192, Subpart B. The EPA has stated that

these standards are appropriate for cleanup of offsite vicinity properties.[1] In each case, the EPA standards were established under a statutory directive to establish standards of general application for the protection of public health, safety, and the environment from the radiological hazards associated with processing of thorium processing waste.

Accordingly, the NRC staff concludes that cleanup of the offsite vicinity properties along Kress Creek and the DuPage River is required and that the following levels of contamination specified in EPA standards are to be used as criteria for the offsite properties:

1. 5 picocuries of radium per gram of soil (pCi/g), averaged over the first 15 centimeters (cm) below the surface, and

2. 15 pCi/g averaged over 15 cm thick layers more than 15 cm below the surface.

The specified levels of contamination may be averaged over areas of 100 square meters.

IV

In view of the foregoing and pursuant to Sections 62, 63, 81, 83, 84, 161b, and 275d of the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2 and 40, the licensee is hereby ordered to show cause why it should not be required to take the following actions:

1. Prepare a remedial action plan for the cleanup of radiologically contaminated areas in and along Kress Creek and the West Branch of the DuPage River and for the subsequent safe storage or disposal of contaminated soil.

2. By July 2, 1984, submit the plan to the Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, for review and approval.

3. After approval by the Office of Nuclear Material Safety and Safeguards, execute the cleanup plan in an expeditous manner.

4. In both the planning and execution of remedial actions, priorities shall be established based on the extent of public exposure resulting from the contamination and the timing of projected disposal or safe storage capacity.

The licensee may show cause why the actions described in Section IV should not be ordered by filing a written answer under oath or affirmation that sets forth the matters of fact and law on which the licensee relies. As provided in 10 CFR 2.202(d), the licensee may answer by consenting to the order proposed in Section IV. Upon the licensee's consent or the licensee's failure to answer this order, the terms of Section IV of this order shall be effective. Alternatively, the licensee may demand a hearing on this order.

Any request for a hearing or answer to this order must be filed within 20 days of the date of this order and shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request for hearing or answer shall also be sent to the Executive Legal Director at the same address.

If the licensee demands a hearing, the issue to be considered at a hearing is:

- Whether on the basis of the matters stated in Sections II and III, the licensee should be ordered to take the actions stated in Section IV.

Dated at Silver Spring, Maryland, this 2nd day of March, 1984.

For the Nuclear Regulatory Commission.

John G. Davis,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 84-6579 Filed 3-9-84; 8:45 am]

BILLING Code 7590-01-M

[1] United States Environmental Protection Agency "Final Environmental Impact Standards for the Control of Byproduct Material from Uranium Ore Processing (40 CFR Part 192)", EPA 520/1-83-008-2, September 1983, Page A.1-3, Comment 6. Also, **Federal Register** notice, published October 7, 1983 (48 FR 45940).

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Station); Order Confirming Licensee Commitments on Emergency Response Capability

I

Nebraska Public Power District (NPPD) (the licensee) is the holder of Facility Operating License No. DPR-46 which authorizes the operation of the Cooper Nuclear Station (the facility) at steady-state power levels not in excess of 2381 megawatts thermal. The facility is a boiling water reactor (BWR) located in Nemaha Country, Nebraska.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Sitting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

NPPD responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated July 11, 28, and December 30, 1983, NPPD modified several dates as a result of negotiations with the NRC staff. In these submittals, NPPD made commitments to complete the basic requirements. The attached Table summarizing NPPD's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by NPPD.

NPPD's commitments include: (1) Dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed NPPD's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 11 and 28, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule

proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of NPPD's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 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, effective immediately, that the licensee shall:

Implement the specific items described in the Attachment to this ORDER in the manner described in NPPD's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

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 IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 22 day of February, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety parameter display system (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	March 1, 1984.
	1b. SPDS fully operational and operators trained	Submit a firm completion date by March 1, 1984.
2. Detailed control room design review (DCRDR)	2a. Submit a program plan to the NRC	March 1, 1984.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation	Submit a firm completion date by March 1, 1984.
3. Regulatory guide 1.97—application to emergency response facilities.	3a. Submit a report to the NRC describing how the requirements of supplement 1 to NUREG-0737 have been or will be met.	March 1, 1984.
	3b. Implement (installation upgrade) requirements	Submit a firm completion date by March 1, 1984.
4. Upgrade emergency operating procedures (EOPs).	4a. Submit a procedures generation package to the NRC	June 30, 1984
	4b. Implement the upgraded EOPs	September 30, 1985.
5. Emergency response facilities	5a. Technical support center fully functional	Submit a firm completion date by March 1, 1984.
	5b. Operational support center fully functional	Complete.
	5c. Emergency operations facility fully functional	Submit a firm completion date by March 1, 1984.

[FR Doc. 84-6580 Filed 3-11-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23238; (70-6171)]

Appalachian Power Co.; Supplemental Notice Related to Pollution Control Financing

March 5, 1984.

Appalachian Power Company ("Appalachian"), 40 Franklin Road, Roanoke, Virginia 24011, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

By order dated June 30, 1978 (HCAR No. 20610), Appalachian was authorized to enter into an agreement of sale ("Agreement") with Mason County, West Virginia ("County") concerning the financing of pollution control facilities at Appalachian's Mountaineer Plant and Phillip Sporn Plant. Under the Agreement the County would issue and sell its pollution control revenue bonds, in one or more series. The proceeds would be deposited by the County with the trustee ("Trustee") under the indenture ("Indenture") between the County and Trustee pursuant to which the revenue bonds would be issued and secured. The proceeds would then be applied to the payment of the costs of construction of the facilities, then estimated at $120,000,000. The Agreement provides for the sale of the facilities to Appalachian and the payment by Appalachian of the purchase price in installments.

The County has issued and sold four series of bonds, Series A, B, C, and D. (HCAR Nos. 20610, 21103, 21927, and 23208). It is now proposed that the County issue and sell prior to May 1, 1984 a series of refunding bonds ("Series E") in the aggregate principal amount of $30,000,000. The proceeds from that issue will be used to refund, at their stated maturity on May 1, 1984, $30,000,000 aggregate principal amount of bonds issued and sold by the County on January 30, 1984. The Series E Bonds will be issued under an amended and supplemented Indenture. Pursuant to that Indenture, the proceeds from the sale of the Series E Bonds are to be deposited with the Trustee and applied by the Trustee on or before May 1, 1984 to the payment at maturity of the $30,000,000 principal amount of Series D Bonds. Under the Agreement, Appalachian will incur obligations which run parallel to the County's obligations under the Series E Bonds.

It is contemplated that the Series E Bonds will be issued and sold by the County pursuant to arrangements with a group of underwriters represented by Goldman Sachs & Co. Appalachian is

advised that the Series E Bonds will bear interest semi-annually. It is expected that the Series E Bonds will mature at a date or dates not less than five years nor more than 30 years from the date of their issuance. Due to interest rate volatility, the Series E Bonds may be issued with a maturity of 270 days or less, rather than on a long-term basis. The Series E Bonds will be subject to mandatory redemption under the circumstances and terms specified in the Supplemental Indenture, including, if it is deemed advisable, a sinking fund provision. The Series E Bonds will be on a parity with, and secured in the same manner as, the A, B, C, and D Bonds previously issued under the Indenture. Appalachian understands that interest on the Series E Bonds will be exempt from federal income taxation under the provisions of Section 103 of the Internal Revenue Code of 1954, as amended.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 29, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notifed of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6510 Filed 3-9-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23237; (70-6962)]

Middle South Utilities, Inc., et al.; Proposed Issuance and Sale of Common Stock by Subsidaries and Acquisition Thereof by Holding Company

March 5, 1984.

In the matter of Middle South Utilities, Inc., 225 Baronne Street, New Orleans, Louisiana 70112; Arkansas Power & Light Co., First Commercial Building, Little Rock, Arkansas 72203; Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Co., Electric Building, Jackson, Mississippi 39205; New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and four of its electric utility subsidiaries, Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI"), have filed an application-declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 6(b), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

In order to meet their financing requirements for 1984, the subsidiary companies propose to issue and sell for cash from time to time as necessary through December 31, 1984, and Middle South proposes to acquire, common stock as follows:

Company	Number of shares	Par value	Price
AP&L	1,600,000	12.50	$20,000,000
LP&L	18,940,000		125,000,000
MP&L	1,087,000		25,001,000
NOPSI	1,500,000	10.00	15,000,000
Total	185,001,000		

The respective net proceeds derived from the issuance and sale of the AP&L Stock, PL&L Stock, MP&L Stock, and NOPSI Stock will be used by the particular subsidiary for the financing in part of (including the retirement of short-term indebtedness incurred in financing) its construction program and for other corporate purposes. As of December 31, 1983, the respective construction programs of each of the subsidiaries for the calendar year 1984 were estimated to result in the following expenditures (including allowance for funds used during construction): AP&L—$258,700,000; LP&L—$511,500,000; MP&L—$59,800,000; and NOPSI—$16,000,000.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 3, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6509 Filed 3-9-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23239; (70-6945)]

The Southern Co.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan and to Employee Savings Plan; Exception From Competitive Bidding

March 5, 1984.

The Southern Company ("Southern"), Perimeter Center East, P.O. Box 720071, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder.

Southern proposes to issue and sell from time to time through April 30, 1986 up to 10 million shares of its authorized but unissued common stock, par value $5 per share ("Additional Common Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan"). These shares would be in addition to the balance of 2,270,790 shares at December 31, 1983, previously authorized in File No. 70-6693 (HCAR No. 22434, March 30, 1982) and the 15 million shares previously authorized in File No. 70-6841 (HCAR Nos. 23041 and 23224, August 24, 1983 and Febraury 14, 1984). The proceeds from the sale would be applied toward equity investments in the operating subsidiaries and other corporate purposes.

The Additional Common Stock will be offered to all holders of Southern's common stock pursuant to the Dividend Plan whereby shareholders may: (1) Have cash dividends on all or less than all of their shares of Southern common stock automatically reinvested in shares of such common stock at a price equal to 95% of the average of the daily high and low sales prices of Southern's common

stock, as published in *The Wall Street Journal*, for the period of five trading days ending on the dividend payment date, or (2) reinvest all or less than all of their cash dividends as described above and, in addition, make optional cash payments to invest in shares of Southern's common stock at a price equal to 100% of such market price average for the period of five trading days ending on the monthly purchase date, or (3) continue to receive cash dividends on all shares held by them and only make optional cash payments for investment. Cash dividends on shares credited to a participant's account stock at a price determined as set forth in clause (1) above. No shares will be sold under the Dividend Plan at less than the par value of such shares.

The First National Bank of Atlanta currently administers the Dividend Plan and purchases the shares of Southern's common stock under the Dividend Plan as agent for the participants. No service charge or commission is paid by participants in connection with purchases under the Dividend Plan.

Southern also proposes to issue and sell from time to time through April 30, 1986 a maximum of 1.5 million shares of its authorized but unissued common stock, par value $5 per share ("New Stock") pursuant to the Employee Savings Plan for the Southern Company System ("Savings Plan") in addition to the balance of 2,113,444 shares at December 31, 1983 previously authorized (HCAR No. 22434). The proceeds from the sale of the New Stock would be applied to equity investments in its operating subsidiaries and for other corporate purposes.

The New Stock will be offered to employees of Southern's subsidiaries pursuant to the Savings Plan under which such employees may contribute, through payroll deductions, up to 16% of their compensation ("Voluntary Participant Contribution"). In addition, a Savings Plan member may elect to have his compensation reduced by up to 16% of his compensation, such amount to be contributed to his account under the Savings Plan ('Elective Employer Contribution"). The maximum Voluntary Participant Contribution shall be reduced by the percent, if any, which is contributed as an Elective Employer Contribution on behalf of the Savings Plan member. Each employing company will contribute, on behalf of each of the Savings Plan members in its employ, an amount not in excess of 6% of the member's compensation. Each Savings Plan member must direct that his contributions be invested in the Company Stock Fund, The Equity Fund and/or the Fixed Income Fund.

The First National Bank of Atlanta acts as Trustee for the trust which is part of the Savings Plan Committee, the members of which are appointed by the Board of Directors of Southern Company Services, Inc. The Trustee votes the shares of common stock of Southern held by it in accordance with written directions received from the individual members on whose behalf such shares are held and does not vote any such shares for which voting instructions are not received. The Trustee has the authority to vote all other securities in its discretion.

Investment purchases by the Trustee for the funds may be made either on the open market or by private purchase, provided that no private purchase may be made of common stock of Southern at a price greater than the last sale price or current independent bid price, whichever is higher, for such stock on the NYSE, plus an amount equal to the commission payable in a stock exchange transaction if such private purchase is not made from Southern. The Trustee may purchase common stock of Southern directly from Southern under the Dividend Plan or under any other similar plan made available to all holders of record of shares of common stock of Southern. Southern requests an exception pursuant to Rule 50(a)(5) from the competitive bidding requirements of Rule 50(b).

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 30, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6511 Filed 3-9-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12976]

Trans World Airlines, Inc.; Application and Opportunity for Hearing

March 6, 1984.

Notice is hereby given that Trans World Airlines, Inc. ("Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of The Bank of New York (the "Bank") under: (i) A Trust Indenture and Mortgage, dated May 1, 1971 (the "Indenture") among Bankers Trust Company, as Owner-Trustee ("Bankers Trust"), Applicant as Guarantor and the Bank as Indenture Trustee, (ii) an Equipment Trust Agreement, dated October 1, 1979 (the "Equipment Trust") between Applicant and the Bank which provides for the issuance of approximately $100 million aggregate principal amount of Equipment Trust Certificates due May 11, 1990 (the "Equipment Trust"), (iii) an Indenture of Mortgage, dated January 1, 1977 (the "Mortgage") among certain senior lenders, Applicant and the Bank, as Trustee (succeeding the original Trustee Marine Midland Bank) and (iv) a Note Facility Indenture of Mortgage dated as of January 16, 1984 (the "Facility Mortgage") between the Applicant and the Bank as Trustee for the benefit of holders of Promissory Notes to be issued under a certain Note Facility Agreement and a possible future long-term facility arrangement, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the Indenture.

The Application alleges that:

(1) The Commission has previously considered the subject trusteeships, excepting the Facility Mortgage trusteeship, in response to an earlier March 12, 1980 application ("the Previous Application") of the Applicant under Section 310(b)(1), clause (ii), of the 1939 Act. By Order dated May 28, 1980 in File No. 22-10302 the Commission found that the Bank's trusteeships, as well as an agency appointment under a certain Pledge Agreement (which

terminated by full payment of the secured obligation thereunder on August 15, 1983), were not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the Indenture.

(2) The Indenture was qualified under the 1939 Act and filed with the Commission as Exhibit 4(a)–17 to the Registration Statement (Registration No. 2–40077) which Applicant filed to register the 11% Guaranteed Loan Certificates due June 1, 1986 (the "Loan Certificates") under the Securities Act of 1933, as amended (the "1933 Act"). There were outstanding, on December 31, 1983, $17,705,566 aggregate principal amount of Loan Certificates, payment of which is guaranteed by Applicant and is secured by the mortgage of three Boeing 747–131 aircraft which were purchased in part by the proceeds of the sale of the Loan Certificates. Additional funds were provided by certain banking and financial institutions (the "Owners") for whom Bankers Trust acts as Owner-Trustee. The three aircraft have been leased to Applicant by Bankers Trust for terms ending on May 31, 1986. After the Loan Certificates have been paid in full, the three aircraft will remain the property of the Owners subject to certain rights of Applicant to acquire them at the fair market value when the lease expires.

(3) Applicant and the Bank, as trustee, entered into the Equipment Trust in connection with the purchase of three Boeing 747SP–31 aircraft (the "Aircraft") delivered in March and April of 1980. The Equipment Trust covering the Aircraft secures the Equipment Trust Certificates which are guaranteed by Applicant and were issued in private placements on the respective delivery dates of the Aircraft. The Equipment Trust Certificates have not been registered under the 1933 Act since the sales thereof have not involved public offerings and are therefore exempt under Section 4(2) of the 1933 Act. The Aircraft are leased to Applicant by the Bank for terms ending in 1990. At the termination of the lease, the lease payments will be treated as payment in full of the purchase price of the Aircraft and title to all the Aircraft will vest in Applicant. The Equipment Trust is reflected in Exhibit A to Applicant's Previous Application.

(4) The Bank is successor to Marine Midland Bank as Trustee for certain of Applicant's senior lenders under the Mortgage, by which Applicant has mortgaged substantially all aircraft and aircraft engines (together with appliances from time to time installed) owned by Applicant on March 1, 1977, as more particularly described in the granting clauses thereof (as of February 2, 1984, Applicant owned 59 jet aircraft subject to the lien of the Mortgage). The Mortgage is not qualified under the 1939 Act and was filed with the Commission as Exhibit 1 to the March 1, 1977, From 8–K filed by Applicant. The Mortgage secures Applicant's senior indebtedness currently outstanding under, or that may be issued pursuant to, certain senior debt instruments. The Mortgage has been amended by six supplemental indentures, the first five being on file with the Commission as Exhibits 3(c)–2 and 3(c)–3 of Applicant's January 25, 1979 Form 8–B and Exhibit 4(b)–3 to File No. 2–77852 and the sixth reflected by Exhibit B to the current Application.

(5) The Facility Mortgage establishes a new trusteeship for the Bank commencing on February 1, 1984 and secures three-month Promissory Notes of TWA up to a maximum principal amount of $50,000,000 to be issued in London, England, to foreign investors through Merrill Lynch International & Co. (the "Placing Agent") under a Note Facility Agreement, dated as of January 16, 1984 (the "Note Facility"). Because the sale of the Promissory Notes is to foreign investors and is not occurring within the United States, the offering of the Promissory Notes is not required to be registered with the Commission under the 1933 Act and the Facility Mortgage is not to be qualified under the 1939 Act. The equipment initially mortgaged under the Facility Mortgage are three used Boeing Model 727–231 aircraft and five used Lockheed L–1011 aircraft. Each of the aircraft include three engines and each of those engines is also subjected to the lien of the Facility Mortgage. Prior to the establishment of the Facility Mortgage, the equipment was encumbered by the lien of the Mortgage. The equipment was released by the Bank, as Trustee under the Mortgage, from such lien after required written consents for such release were received from Applicant's lenders secured by the Mortgage. Thus, the equipment forms a distinct set of property over which the Bank will exercise its duties as Trustee under the Facility Mortgage and is entirely separate from the collateral under the Indenture, the Equipment Trust and the Mortgage.

(6) The Facility Mortgage may serve in the future as the basic security vehicle for a proposed additional, long-term credit facility to be created between Applicant, the Placing Agent and other financial institutions (not including the Bank). That facility will also involve the issuance of three-month Promissory Notes to foreign investors outside the United States. However, the additional facility will function for a substantially longer timeframe and on a continuous basis. The maximum credit under the additional facility would be $200 million. The Facility Mortgage provides flexibility for the addition or removal of mortgaged property provided that 66⅔% of the appraised value of the mortgaged property plus 100% of the cash included in an Aviation Property Fund (as defined in the Facility Mortgage) of the Facility Mortgage at all times is not less than the amount of facility indebtedness outstanding. Thus, additional aircraft or engines can readily be added to the Facility Mortgage to secure an increase in outstanding credit up to the $200 million maximum. Additional property to be placed under the Facility Mortgage would not be subject to any other mortgage or lien encumbrance for which the Bank has a trusteeship. In submitting this Application, Applicant requests that the Commission issue its Order with respect to the Bank's role as Trustee under the Facility Mortgage recognizing that the Facility Mortgage may in the future secure the second, longer term credit facility as well as the shorter term arrangement reflected in the Note Facility.

(7) Applicant believes that no material conflict of interest will result from the Bank acting as Trustee under the Indenture, the Equipment Trust, the Mortgage and the Facility Mortgage. The Indenture, the Mortgage, the Equipment Trust and the Facility Mortgage each cover wholly separate and distinct collateral consisting of identified aircraft and aircraft engines. In the event that the Bank should have the occasion to proceed against the security of any one or more of these instruments, such action would not affect the security, or the use of any security, under any of the others. As a result, Applicant believes that the Bank, in serving as Trustee under the Indenture, the Equipment Trust, the Mortgage and the Facility Mortgage, and, more importantly, in taking action on behalf of the security holders or the senior lenders with respect to their separate security under the Indenture, the Equipment Trust, the Mortgage, and the Facility Mortgage, will not be placed in a situation in which the potential for a material conflict of interest would arise.

(8) Applicant believes that the Bank's

serving as Trustee under the Indenture, the Equipment Trust, the Mortgage and the Facility Mortgage will be beneficial to the holders of the Loan Certificates, the holders of the Equipment Trust Certificates, the senior lenders, and holders of the Promissory Notes in that the operations of the Equipment Trust, the Mortgage and the Facility Mortgage would be simplified if the Trustee acting under the Indenture can act as the Trustee under those instruments as well. The specialized nature of the Indenture, the Equipment Trust, the Mortgage and the Facility Mortgage is such that Applicant believes that the holders of the Loan Certificates, the holders of the Equipment Trust Certificates, the senior lenders, the holders of the Promissory Notes and Applicant would benefit by having a common trustee familiar with the operation of the Applicant under the Indenture, the Equipment Trust, the Mortgage and the Facility Mortgage.

(9) The Indenture contains the provisions permitted by the proviso of Section 310(b)(1) of the 1939 Act which allow Applicant to make the application under Section 310(b)(1)(ii). Applicant is not in default under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage or any other indenture or equipment trust agreement.

Applicant has waived any hearing as well as notice of any hearing and all rights of specified procedures under the rules of practice of the Commission.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than April 3, 1984 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, pursuant to delegated authority, by the Division of Corporation Finance.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6513 Filed 3-9-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20608; File No. SR-NYSE-84-5]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Proposed Amendment to Section 9, Paragraph 902.02 of New York Stock Exchange Listed Company Manual To Reduce Certain Equity Listing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 11, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing represents an amendment to the New York Stock Exchange Schedule of Listing Fees providing for a one-fourth of the basic initial fee for listing a holding company formed by an existing listed company. This will provide similar treatment as when a listed company changes its state of incorporation or reincorporates. The amended fee will apply to listings after January 1, 1984.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) The purpose of this change is to provide relief, in the form of a reduction, for charges associated with the listing of a holding company formed by an existing listed company. There is no significant difference in the extent of Exchange services to accommodate the listing of a holding company formed by an existing listed company and a change in state of incorporation or reincorporation by a listed company for which a one-fourth of the basic initial fee is presently charged. This reduction will result in an equal fee being charged for substantially similar transactions. This reduced fee will be applicable only if the change in the company's status is technical in nature and providing also that shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position. This amended fee will apply to listings after January 1, 1984.

The basis under the Act for the proposed rule change is Section 6(b)(4) requiring the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges amount its members, issuers and other persons using its services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not formally solicited comments regarding this proposed change, nor has the Exchange received any unsolicited written or verbal comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6512 Filed 3-9-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License Nos. 04/04-0143 and 04/04-0117]

First Small Business Investment Company of Alabama and Coastal Capital Co.; Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1984)), for transfer of control of First Small Business Investment Company of Alabama (FSBIC), 16 Midtown Park East, Mobile, Alabama 36606, and Coastal Capital Company (CCC), 16 Midtown Park East, Mobile, Alabama 36606, each a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations.

FSBIC was licensed on July 20, 1978, and its presents capitalization is $1,436,282. Its common stock is 50 precent owned by The Christopher Company (owned by the De Laney family) and the remaining 50 percent is owned by the De Laney family.

CCC was licensed on July 22, 1977, and its present capitalization is $1,050,000. Its common stock is 100 percent owned by the First Mobile Service Corporation, a wholly owned service company of the First Southern Federal Savings and Loan Association, a Federally chartered savings and loan association.

As proposed, a holding company, Small Business Finance Corporation (SBFC), an Alabama Corporation, located at 16 Midtown Park East, Mobile, Alabama 36606, is to gain control of FSBIC and CCC. The change in control of FSBIC from its current stockholders to SBFC shall be accomplished by an exchange of stock of FSBIC for stock of SBFC with no funds to be involved. However, the stock of CCC will be purchased by SBFC from First Mobile Service Corporation for the sum of $950,250.

The existing stockholders of FSBIC will become the sole stockholders of SBFC.

The stock holders of SBFC are as follows:

The Christopher Company, 16 Midtown Park East, Mobile, Alabama 36606: 15,000 shares of common stock—50 percent
Chris C. De Laney, 16 Midtown Park East, Mobile, Alabama 36606: 10,000 shares of common stock—33.2 percent
David C. De Laney, 16 Midtown Park East, Mobile, Alabama 36606: 1,250 shares of common stock—4.2 percent
Bryan C. De Laney, 16 Midtown Park East, Mobile, Alabama 36606: 1,250 shares of common stock—4.2 percent
Michael C. De Laney, 16 Midtown Park East, Mobile, Alabama 36606: 1,260 shares of common stock—4.2 percent
Robin C. De Laney, 16 Midtown Park East, Mobile, Alabama 36606: 1,250 shares of common stock—4.2 percent

Upon transfer of control, CCC and FSBIC will be merged, with FSBIC being the survifing entity. The capital of FSBIC will total $2,386,532 at that time.

The following will be named officers and directors of FSBIC and SBFC:

David C. De Laney—President, Manager, Director
Chris C. De Laney—Vice President, Treasurer/Secretary, Director
Michael C. De Laney—Vice President, Assistant Secretary, Director
Jacqueline Lathem—Asistant Treasurer
Bryan C. De Laney—Director
Robin C. De Laney—Director

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than fifteen days from the date of publication of this notice, submit written comments on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Mobile, Alabama.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 24, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-6605 Filed 3-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-5144]

Mutual Investment Company, Inc.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Mutual Investment Company, Inc. (MIC), 21415 Civic Center Drive, Mark Plaza Building, Suite 217, Southfield, Michigan 48076, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of Revision 6 of the SBA Regulations (48 FR 45014 (September 30, 1983)) governing small business investment companies for an exemption from the provisions of the Regulation.

The exemption, if granted, will permit MIC to provide financing in an amount up to $25,000 to Mr. Robert Huhn, Jr., d.b.a. Bob's Big Olaf, an individual proprietorship, for the operations and purchase of fixtures, equipment and inventory for an ice-cream store to be located at 4727 Riverside Drive, Chino, Califoria 91710.

Pursuant to Paragraph (e) of the definition of "Associate of a Licensee" in § 107.3 of the SBA Regulations, Mr. Robert Huhn, Jr. is an Associate of MIC. As such, the transaction will require an exemption from the provisions of § 107.903(b)(1) of the Regulations.

Notice is hereby given that any interested persons may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed

transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416..

A copy of this Notice shall be published in a newpaper of general circulation in Southfield, Michigan and Chino, California.

(Catalog of Federal Domestic Assistance Program No: 59.011, Small Business Investment Companies)

Dated: February 24, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-6604 Filed 3-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-5165]

S.L.C. Investment Corp.; Issuance of License To Operate as a Small Business Investment Company

On December 16, 1983, a notice was published in the **Federal Register** (48 FR 55944) stating that an application had been filed by S.L.C. Investment Corporation, 6188 Oxon Hill Road, Oxon Hill, Maryland 20745, with the Small Business Administration (SBA) for a license to operate as a Section 301(d) small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)).

The company has since changed its address to 5904 Hubbard Drive, Rockville, Maryland 20850.

Interested parties were given until the close of business December 31, 1983, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other pertinent information, SBA issued License No. 03/03-5165, on February 8, 1984, to S.L.C. Investment Corporation to operate as an SBIC.

(Catalog Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 1, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-6603 Filed 3-9-84; 8:45 am]

BILLING CODE 8025-01-M

Licenses Surrendered; Central Venture Capital Corp., et al.

Notice is hereby given that the following small business investment companies (SBIC's) have surrendered their licenses to operate as SBIC's under the Small Business Investment Act of 1958, as amended (the Act).

SBIC	Effective date of license surrendered
Central Venture Capital Corporation, New Orleans, Louisiana, License No. 06/05-5110	2-17-84
Central Systems Equity Corporation, Wichita, Kansas, License No. 07/07-5082	2-17-84
Dayton MESBIC, Inc., Dayton, Ohio, License No. 05/05-5092	3-27-81
Dycap, Inc., Columbus, Ohio License No. 05/06-0017	9-12-83
Ferguson Funding Corporation, Oklahoma City, Oklahoma License No. 06/10-0121	9-14-76
Henderson Funding Corporation, Oklahoma City, Oklahoma, License No. 06/10-0117	2- 2-83
Interscan Capital Corporation, Tipton, Indiana, License No. 05/07-0010	6- 6-79
Louisiana Venture Capital Corporation, Natchitoches, Lousisiana, License No. 06/06-5174	11-19-82
Omaha Industrial Capital, Inc., Omaha, Nebraska, License No. 07/09-0010	4-27-83
PRIME, Inc., Detroit, Michigan, Indianapolis, Indiana, License No. 05/05-5025	6-17-83
SBIC of Indiana, Indianapolis, Indiana, License No. 05/07-0051	8-10-82

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrenders were effective on the dates shown above, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: February 29, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-6602 Filed 3-9-84; 8:45 am]

BILLING CODE 8025-01-M

Senior Executive Service Performance Review Board; Addition of a Member

AGENCY: Small Business Administration.

ACTION: Listing of an additional member to serve on this Agency's Senior Executive Service Performance Review Board.

SUMMARY: Your signature is required on the enclosed notification for publication in the **Federal Register.** Pub. L. 95-454 dated October 13, 1978, (Civil Service Reform Act of 1978) requires that Federal Agencies publish notification of the appointment of individuals who serve as members of their Performance Review Board (PRB).

Additional PRB Member: Wiley S. Messick, Deputy Regional Administrator, Atlanta.

For further information, contact Mr. Richard L. Osbourn, Director of Personnel on (202) 653-6780.

Dated: March 2, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-6606 Filed 3-9-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/720]

Advisory Committee on International Intellectual Property; Meeting

The International Industrial Property Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Thursday, April 5, 1984, in Room 1105 in the Department of State. The meeting will begin at 9:30 AM and will conclude by 1:00 PM.

The meeting will be open to the general public. The following topics will be discussed:

1. Revision of the Paris Convention for the Protection of Industrial Property—Fourth Session.

2. Cabinet Council on Commerce and Trade—Working Group on Intellectual Property.

3. Miscellaneous.

The public attending may, as time permits and subject to the instructions of the Chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to, or at the meeting, for later consideration by the Committee.

Members of the public who plan to attend the meeting will be admitted up to the limits of the conference room's capacity. Members of the general public who plan to attend the meeting are requested to provide their name, affiliation, and address to Mrs. Bobbi Tinsley, Office of Business Practices, Department of State, telephone (202) 632-1486, prior to April 5, 1984. All attendees to the meeting should use the *Main Entrance* (2201 C Street, N.W.) of the Department of State.

Dated: February 24, 1984.

Harvey J. Winter,

Executive Secretary.

[FR Doc. 84-6546 Filed 3-9-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/721]

Integrated Services Digital Network (ISDN) Technical Working Group of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Technical Working Group of the U.S. Organization for the International Telegraph and Telephone Consultative Committee will meet April 2–6, 1984 in Room 1107, Radio Building, U.S. Department of Commerce, 325 Broadway, Boulder, Colorado. Meetings will begin at 9:00 a.m.

The purpose of the meetings is to discuss the results of the CCITT Study Group XVIII meeting and proposed contributions for upcoming international meetings dealing with ISDN matters.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. It is requested that prior to March 28, all persons planning to attend the meeting should contract Dr. William Utlaut, Department of Commerce, Boulder, Colorado 80303; telephone 303 497–5216.

Dated: February 27, 1984.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 84-6548 Filed 3-9-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/719]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Stability, Load Lines, and Safety of Fishing Vessels; Meeting

The Working Group on Stability, Load Lines, and Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on March 27, 1984, at 10:00 AM in Room 1303 at U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C.

The purpose of the meeting will be to discuss the action of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety at its 29th session in January 1984 and to discuss United States initiatives for the 30th session in January 1985.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W. A. Cleary, Jr. U.S. Coast Guard Headquarters (G–MTH–5), 2100 Second Street, S.W., Washington, D.C. 20593. Telephone: (202) 426–2187 or 426–2188.

Dated: February 27, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-6547 Filed 3-9-84; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

National Recreation Boating Safety and Facilities Improvement Fund; Availability of Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: National Recreational Boating Safety and Facilities Improvement Fund; Notice of availability of financial assistance to national nonprofit public service organizations.

SUMMARY: Pursuant to Title 46 United States Code Section 13103(e) the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities.

Applicability

The Coast Guard has funds available to provide financial assistance to national nonprofit public service organizations to help them conduct selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level. Innovative approaches are welcome. One area of special interest is the problem of alcohol abuse in boating.

Statement of Funds Availability

Title 46, United States Code, Section 13107 establishes the National Recreational Boating Safety and Facilities Improvement Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $625,000 is available for the fiscal year ending September 30, 1984. However, nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specific amount. Applicants must be responsible, non-governmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. It is anticipated that more than one award will be made by the Chief, Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard.

DATE: All proposals must be submitted within 90 days of the date of this notice. Funds may be awarded as applications are received.

Application, Instructions and Forms

Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF424) may be obtained from Commandant (G-BP/42), U. S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593 or by telephoning Mr. Ladd Hakes at (202) 426–1052.

Federal Domestic Assistance Catalog

The Boating Safety Financial Assistance program is listed in Section 20.005 of the Federal Domestic Assistance Catalog.

Dated: March 7, 1984.

J. A. McDonough, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 84-6574 Filed 3-9-84; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

[Docket S-754]

Moor McCormack Bulk Transport, Inc.; Application for Permission To Carry Preference Cargoes Without Subsidy

Notice is hereby given that by application dated February 15, 1984, as amended, Moore McCormack Bulk Transport, Inc. (MMBT) requested an amendment to its Operating-Differential Subsidy (ODS) Agreement, Contract No. MA/MSB–295 in order to allow its vessels to carry military cargoes and charter its vessels to the Military Sealift Command (MSC) without ODS under the same terms that these ships now participate in the Strategic Petroleum Reserve trade. MMBT stated that it is making this request in light of the Maritime Subsidy Board's order allowing the subsidized Berger Group vessels to carry preference cargo with ODS.

As originally signed on October 5, 1973, Article I–2 of MMBT's ODSA provided that its vessels were to carry exclusively commercial liquid and dry bulk cargoes not subject to the cargo preference statutes of the United States. On August 17, 1977, Article I–2 of MMBT's ODSA (along with all other bulk ODAS's) was amended by Addendum 10 to allow vessels to engage

in the carriage of liquid bulk cargoes specifically to meet the requirements of the Strategic Petroleum Reserve Program of the United States, without ODS.

Effective May 13, 1980, Article I–2 of all bulk ODSA's was further amended by Addendum 17 to permit vessels to be chartered to the MSC, without ODS, subject to prior approval of the United States, in any case where nonsubsidized vessels were unavailable, such unavailability evidenced by the absence of a tender for the cargo. MMBT's current application seeks to remove the stipulation that nonsubsidized vessels be unavailable before chartering its vessels to MSC.

Specifically, MMBT requests that Addendum 17 of its contract be amended to read as follows:

Effective May 17, 1983, vessels listed in Article I–3 of the Agreement are hereby permitted while under charter to the Military Sealift Command, to carry liquid or dry bulk cargoes in the foreign oceangoing commerce of the United States, and between foreign ports, without operating-differential subsidy, and at fair and reasonable rates for United States flag vessels, subject to prior approval of the charter by the Maritime Administration.

MMBT notes that the current Addendum 10 was also promulgated retroactively and requests similar treatment here. It is noted that MMBT is apparently requesting retroactive approval in order to cover the current charter of the *Mormacstar* to MSC. MMBT suspended its contract in order to allow the charter of the *Mormacstar*.

The Maritime Administration invites all other bulk operators with ODS agreements to submit comments if they wish to have their ODS agreements amended likewise. The Maritime Administration is specifically inviting comments on MMBT's request to have its contract amended retroactively to cover the current charter of the *Mormacstar* to MSC.

Any person, firm or corporation having any interest in such application and desiring to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Room 7300A, 400 Seventh Street, S.W., Washington, D.C. 20590 by 5:00 p.m. on March 19, 1984. the Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

Dated: March 6, 1984.

By Order of the Maritime Subsidy Board.

Georgia P. Stamas,

Secretary.

[FR Doc. 84–6479 Filed 3–9–84; 8:45 am]

BILLING CODE 4910–81–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a proposed reinstatement and revision and lists the following information: (1) the department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 2, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Reinstatement and Revision

1. Information and Regulations Staff
2. Request to Correspondent for Identifying Information re Veteran
3. VA Form Letter 00–2
4. On occasion
5. Individuals or households
6. 50,000 responses
7. 8,333 hours
8. Not applicable

[FR Doc. 84–6537 Filed 3–9–84; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, D.C. on April 20, 1984, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202–389–2864) prior to April 13, 1984.

Dated: February 29, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–6538 Filed 3–9–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 49
Monday, March 12, 1984

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).

CONTENTS

1

AFRICAN DEVELOPMENT FOUNDATION

TIME AND DATE: 11 a.m., March 16, 1984.

PLACE: African Development Foundation, 1724 Massachusetts Avenue, NW., Washington, D.C.

SUBJECT: General Business.

STATUS: Open.

PERSON TO CONTACT: Douglas Robbins, ADF Liaison Office, (703) 235–1882.

Dated: March 2, 1984.

Douglas Robertson,

Acting General Counsel of the African Development Foundation.

[FR Doc. 84–6693 Filed 3–8–84; 10:51 am]

BILLING CODE 6116–01–M

2

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 3 p.m., Thursday, March 15, 1984.

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: March 8, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–6691 Filed 3–8–84; 8:45 am]

BILLING CODE 6210–01–M

3

NATIONAL COUNCIL ON THE HANDICAPPED

Executive Committee

TIME AND DATE: 9 a.m.–4 p.m., March 22, 1984.

PLACE: Sanchez Conference Room, 1130–FOB No. 6, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: General Business including:

New responsibilities of the Council
Organizational plan
May meeting agenda
Rehabilitation issues
Legislative issues

PLEASE NOTE: Any person requiring an interpreter or other special services, please contact NCH staff no later than March 16, 1984.

CONTACT PERSON FOR MORE INFORMATION: Harvey C. Hirschi, Executive Director, NCH, 202–245–0752.

Harvey C. Hirschi,

Ex. Director, National Council on the Handicapped.

[FR Doc. 84–6615 Filed 3–8–84; 9:25 am]

BILLING CODE 4000–01–M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–84–8]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 7493, February 29, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, March 6, 1983.

STATUS: Open.

CHANGE IN MEETING: A majority of the Board has 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 agenda as now revised is set forth below:

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Western Helicopters, Inc., Bell UH–1B, N87701, Valencia, California, July 23, 1982.
2. *Recommendation* to Federal Aviation Administration regarding motion picture and television flight operations manual.
3. *Aircraft Accident Report*—Sierra Pacific Airlines, deHavilland DHC–6–300, N361V, Hailey, Idaho, February 15, 1983.
4. *Recommendation* to Federal Aviation Administration regarding surveillance related to the Sierra Pacific Airlines DH–6 accident on February 15, 1983, and the Air Illinois HS–748 accident on October 11, 1983.
5. *Recommendations* to Federal Aviation Administration regarding Federal flight attendant emergency training, lifevest standards, and FAA maintenance surveillance activities from the Eastern Air Line's L–1011 near-ditching on May 3, 1983.
6. *Recommendation* to the Air Transport Association of America to sponsor a passenger education task force.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

March 6, 1984.

[FR Doc. 84–6662 Filed 3–8–84; 12:04 pm]

BILLING CODE 7533–01–M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–84–9]

TIME AND DATE: 10 a.m., Friday, March 9, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A majority of the Board determined by recorded vote that the business of the Board required holding this meeting at this time and that no earlier announcement was possible.

1. *Aircraft Accident Report*—Eastern Air Lines, Inc., Lockheed L–1011, N334EA, Miami, Florida, May 5, 1983.
2. *Recommendations* to Federal Aviation Administration regarding Federal flight attendant emergency training, lifevest standards, and FAA maintenance surveillance activities from the Eastern Air Line's L–1011 near-ditching on May 3, 1983.
3. *Recommendation* to the Air Transport Association of America to sponsor a passenger education task force.
4. *Recommendations* to the Federal Railroad Administration, Association of American Railroads, and Chemical Manufacturers Association regarding excess flow valves on railroad tank cars.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

March 8, 1984.

[FR Doc. 84–6661 Filed 3–8–84; 12:04 pm]

BILLING CODE 7533–01–M

6

POSTAL SERVICE BOARD OF GOVERNORS

Vote to close meeting

At its meeting on March 5, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for April 2, 1984, in Memphis, Tennessee. The meeting will involve: (1) A discussion of possible strategies in anticipated collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984; and (2) consideration of the February 24, 1984, Recommended Decision of the Postal Rate Commission on E–COM rate and classification changes in Docket No. R83–1.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, McKean, Peters, Ryan, Sullivan, Voss and Waldman; Postmaster General Bolger; Deputy Postmaster General Finch; Secretry of the Board Harris; Acting General Counsel Hughes; Senior Assistant Postmasters General Coughlin and Morris; and Counsel to the Governors, Califano.

As to the first of these agenda items, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

As to the second agenda item, the Board is of the opinion that public access to the discussion would be likely to disclose information that could become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b (c)(3), (9)(B) and (10) of title 5 and sections 410(c) (3) and (4) of title 39, United States Code, and sections 7.3 (c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84–6681 Filed 3–8–84; 2:19 pm]

BILLING CODE 7710–12–M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting on Tuesday, March 13, 1984, at 10 a.m. at 450 5th Street, NW., Washington, D.C., in Room 1C30 to consider the following item.

The Commission will consider the recommendations of its Advisory Committee on Tender Offers which were presented to the Commission in the final report of that committee on July 8, 1983. The Advisory Committee examined the tender offer process and other techniques for acquiring control of public issuers. Its report contained 50 recommendations concerning the regulatory scheme governing takeovers. For further information, please contact David Martin at (202) 272–2573.

Commissioner Cox, as duty officer, voted to consider the item listed for the open meeting.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Y. Fowler IV at (202) 272–3077.

George A. Fitzsimmons,

Secretary.

March 7, 1984.

[FR Doc. 84–6594 Filed 3–7–84; 5:00 pm]

BILLING CODE 8010–01–M

federal register

Monday
March 12, 1984

Part II

Department of the Interior

National Park Service

36 CFR Part 67

Historic Preservation Certifications; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 67

Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976; the Revenue Act of 1978; the Tax Treatment Extension Act of 1980; and the Economic Recovery Tax Act of 1981

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule restates and makes amendments to the procedures by which owners desiring tax benefits for rehabilitation of historic buildings or desiring to demolish buidings within registered historic districts apply for certifications pursuant to the Tax Reform Act of 1976; the Revenue Act of 1978; the Tax Treatment Extension Act of 1980; and the Economic Recovery Tax Act of 1981. These tax laws require certifications from the Secretary of the Interior in order for taxpayers to receive tax benefits. This rule establishes procedures whereby taxpayers apply for these certifications. This rule also establishes procedures to qualify historic properties for Federal income and estate tax deductions for charitable contributions of partial interests in real property.

EFFECTIVE DATE: These regulations take effect on April 11, 1984.

FOR FURTHER INFORMATION CONTACT: H. Ward Jandl, Chief, Technical Preservation Services Branch, Preservation Assistance Division, (202) 343–9584, or Carol D. Shull, Chief of Registration, National Register Branch, Interagency Resources Division, (202) 343–9536, U.S. Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: On October 7, 1977, a final rulemaking was published in the **Federal Register** (42 FR 54548) to amend Title 36 of the Code of Federal Regulations by adding a new Part 67 concerning historic preservation certifications pursuant to the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1519) made by the Secretary of the Interior. Between February 1978, and June 1981, this rulemaking was designated and transferred to Title 36 CFR Part 1208.

On November 6, 1978, the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2828) became law, necessitating amendments to the regulations. Sec. 701(f) of this act clarified portions of Section 2124 of the Tax Reform Act of 1976, while Sec. 315 provided an investment tax credit to encourage the rehabilitation of older buildings. Certifications of rehabilitation were required by the Secretary if an owner chose to elect the tax credit when the building was a "certified historic structure." On December 19, 1980, a final rulemaking was published in the **Federal Register** (45 FR 83488) incorporating these changes from the Revenue Act of 1978.

On December 17, 1980, the Tax Treatment Extension Act of 1980 (Pub. L. 96–541, 94 Stat. 3204) became law, providing a three year extension of tax provisions relating to historic preservation and revising and making permanent rules allowing deductions for charitable contributions of qualified interests in real property for conservation purposes. On August 13, 1981, the Economic Recovery Tax Act of 1981 (Pub. L. 97–34, 95 Stat. 172) became law, replacing existing tax incentives for historic buildings with a new 25 percent investment tax credit and repealing and replacing certain tax provisions contained within the Tax Reform Act of 1976 and the Revenue Act of 1978. Additional modifications to the tax credits were made in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), signed into law September 3, 1982. The certification requirements, however, generally remain the same as those under earlier, above-cited laws.

On July 5, 1983, proposed rulemaking was published in the **Federal Register** (48 FR 30686) to incorporate changes brought about by the legislation described above and to modify the certification process, including the establishment of a fee system for the processing and review of rehabilitation certification requests.

To permit a public understanding of the tax-related certification made by the Secretary of the Interior, the following general description is given of the tax provisions contained in Section 2124 of the Tax Reform Act of 1976, as amended by the Revenue Act of 1978, the Tax Treatment Extension Act of 1980; and the Economic Recovery Tax Act of 1981:

1. Section 2124(a). (Section 191 of the Internal Revenue Code of 1954, as amended; hereinafter referred to as the Code.) Permits a 60-month amortization of certain rehabilitation expenses made in connection with qualified depreciable properties. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

2. Section 2124(b). (Section 280B of the Code.) Disallows a deduction for demolition expenses of qualified depreciable properties. This provision applies to demolitions beginning after June 30, 1976, and before January 1, 1984;

3. Section 2124(c). (Section 167(n) of the Code.) Generally precludes accelerated depreciation for buildings built on the site of qualified depreciable properties. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

4. Section 2124(d). (Section 167(o) of the Code.) Provides special depreciation rules for qualified rehabilitated property. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

5. Section 2124(e). (Sections 170(f)(3) and 170(h), 2055(e)(2) and 2522(c)(2) of the Code.) Amends charitable contribution deductions on income, estate, and gift taxes to liberalize deductions for conservation purposes including the preservation of historically important land areas or certified historic structures.

The following general description is given of the tax provisions contained in Section 315 of the Revenue Act of 1978:

1. Section 315 (Sections 38 and 48 of the Code). Permits an investment tax credit for expenses incurred in rehabilitating certain depreciable properties. This provision was replaced effective January 1, 1982, with a 25 percent investment tax credit described below.

The following general description is given of the tax provision contained in Section 6 of Tax Treatment Extension Act of 1980:

1. Section 6 (Section 170 (f)(3) and (h) of the Code). Permits charitable contribution deductions for income, estate, and gift taxes for qualified conservation contributions including contributions of a qualified real property interest in a historically important land area or certified historic structure.

The following general description is given of the tax provisions contained in Sections 212 and 214 of the Economic Recovery Tax Act of 1981:

1. Section 212(a). (Sections 46 and 48 of the Code.) Permits a 25 percent investment tax credit on rehabilitation expenses incurred in connection with certified rehabilitation of a certified historic structure.

2. Section 212(b). Precludes use of a 15 percent (buildings 30–39 years old) or 20 percent (buildings 40 years or older) investment tax credit for a rehabilitation of a building within a registered historic district unless the National Park Service certifies that the building is not of historic significance to the district.

3. Section 212(d). Repeals Sections 167(n), 167(o), and 191 effective January 1, 1982.

4. Section 214 (Section 48(a) of the Code). Permits use of investment tax credit for certain rehabilitated buildings leased to tax-exempt organizations or

government units. The term "depreciable property" as used above generally means those properties subject to the allowance for depreciation under Section 167 of the Code and generally excludes owner-occupied homes.

The provisions described above require the Secretary of the Interior to make one or more of the following classes of certifications:

a. Certified Historic Structures. All the tax provisions described above are related to so-called certified historic structures, which, generally, are defined as qualified depreciable buildings which are either listed in the National Register or are located within a registered historic district and certified by the Secretary as contributing to the significance of the district. For purposes of the charitable contribution provisions, structures need not be depreciable to qualify as certified historic structures. For purposes of the demolition provision, any building located in a registered historic district is considered a certified historic structure unless the Secretary of the Interior has determined, prior to the demolition of the building, that it is not of historic significance to the district. For purposes of the 15 percent and 20 percent investment tax credits under the Economic Recovery Tax Act of 1981, the same presumption of significance is made unless the owner specifically receives a determination otherwise by the Secretary.

b. Certified Rehabilitations. In order for the tax consequences relating to rehabilitation to accrue, the Secretary must determine not only that the rehabilitation was undertaken on a certified historic structure but also that it meets certain standards with respect to the preservation of its historic character.

c. Certified Statutes and Certified State or Local Historic Districts. Qualified historic buildings located in historic districts designated under a statute of an appropriate State or local government are subject to the tax consequences discussed above if the statute is certified by the Secretary as containing criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district and if the district is certified by the Secretary as meeting substantially all the requirements for the listing of districts in the National Register.

Section 6 of the Tax Treatment Extension Act of 1980 (Sec. 170(h)(4) of the Code) which explains which properties may qualify for the allowance of deductions for contributions of partial interests in property lists four definitions for the term "conservation purpose." The last of these is "the preservation of a historically important land area or a certified historic structure." For the purposes of this provision, the term "certified historic structure" encompasses non-depreciable structures such as owner-occupied residences as well as depreciable structures and includes the parcels of land on which structures stand.

Historic structures within registered historic districts may qualify for charitable contributions through the certification of historic significance process (Sec. 67.4). This requirement is consistent with the provisions of the law.

Comments and Response to Comments on the July 5, 1983, Publication of Proposed Rules

One hundred and seven comments were received in response to the proposed regulations. Many of these comments focused on three broad issues: the provision no longer requiring mandatory participation by States in the review process; the proposed elimination of preliminary certifications for buildings in proposed historic districts; and the imposition of a user fee for owners seeking certification of rehabilitation work. These comments and the Secretary's position are discussed under the most appropriate sections.

A number of editorial suggestions were received on the regulations. Many of these revisions have been incorporated into the final rule. Particularly, the term "building" has generally been substituted for "structure" throughout except where "certified historic structure" is intended.

Subsection 67.1(b): A National Park Service (NPS) regional office suggested that 67.1(b) be revised to state also that the Washington Office sets national policy and program direction. The subsection was revised to state that the Washington office establishes program direction.

One comment expressed concern that "sufficient documentation" is broad, and suggested cross-referencing those sections of the regulations that set forth documentation requirements. Because the documentation requirements for each type of certification are specifically outlined under the appropriate subsections, the Department does not believe it necessary to cross reference.

Section 67.2 Definitions.

One comment urged that definitions should conform to definitional provisions of the Internal Revenue Code. The Department of the Interior and the Department of Treasury have consulted concerning consistency between the Interior and the Internal Revenue Service ("IRS") regulations. The definitions in these regulations may not be identical with the language in IRS regulations but they are consistent in meaning.

The addition of two new definitions, "Historic Property" and "Project," was recommended. Revisions to the definition of "Certified Historic Structure" have been made to clarify which properties qualify and the scope of the projects which will be reviewed for certification. Subsection 67.6(b)(1) has been amended to clarify the scope of projects, as they will be reviewed for certification.

"Certified Historic Structure"

Several comments were received which suggested that the references to portions or remnants of buildings and to separate ownership or control should be clarified, especially in regard to condominiums and other buildings with multiple ownership and in regard to rowhouses and how these will be treated for certification. The definition has been revised to clarify that single condominium units in a larger building and remaining facades in a demolished building (except for easement purposes) are not considered certified historic structures.

For certification of significance purposes, the Secretary will not certify portions of a building (e.g., one condominium in a building), but will only certify the whole building. A single condominium owner within a certified historic structure could receive certification of a rehabilitation provided the overall rehabilitation project meets the "Standards for Rehabilitation." The definition has also been revised in response to comments to make clear that rowhouses are considered as separate certified historic structures.

One comment suggested that historical and architectural importance should not be based on feasibility of rehabilitation; another urged that the regulations clarify "not feasible to rehabilitate." Another comment stated that determining whether or not a building is feasible to rehabilitate should be up to the owner, not the Department of Interior; if the property owner is willing to undertake a rehabilitation, the Department should encourage such actions. Another comment suggested omitting reference to whether or not a building is reasonably feasible to rehabilitate. The Secretary will certify buildings as significant unless the features which give them their historical or

architectural significance are either lost or so deteriorated that the overall integrity of the property has been irretrievably lost. The Standards for Evaluating Significance within Registered Historic Districts in § 67.5 have been revised to clarify this position.

One comment questioned how a building can be considered a certified historic structure for certain purposes and not for other purposes (easements vs. tax credit). Since the Internal Revenue Code specifies different requirements for "certified historic structures" for easements and tax credits for rehabilitation, the definition of "certified historic structure" treats each somewhat differently.

One comment questioned the statement in the definition that for purposes of the demolition expense provisions and the 15 percent and 20 percent credits *any* building located in a registered historic district is considered a certified historic structure *unless* the Secretary has determined that it is not of historic significance to the district. This presumption of significance is required by law.

Another comment stated that the definition of "certified historic structure" as it regards land areas needs clarification. Does it mean any vacant property in a historic district, even if the property was not originally open space? Section 6 of the Tax Treatment Extension Act of 1980 specifies in Sec. 6(b)(4)(A)(iv) that historically important land areas and certified historic structures both qualify for the deductions for conservation purposes. However, in subsection (B) land areas are included within the definition of "certified historic structure." The Secretary considers that the only land areas that should fall within the definition of "certified historic structure" are those which are part of the setting of a structure or building for which an applicant is requesting certified historic structure status. Therefore, these land areas are the only land areas which the Secretary will certify. Land areas with no structures are covered by subsection (A). In the opinion of the Secretary, any land area which is listed in the National Register or which meets the National Register criteria for evaluation should be considered to be a historically important land area.

One comment urged that the definition of "certified historic structure" for donation of easements should be limited to the entire structure and that if necessary procedures should be established for granting limited exceptions to this rule. The Secretary will certify a whole structure, rather than a portion, where the whole structure remains but has no control over whether, for example, an owner donates only an easement on the exterior. Conversely, if only a portion of a structure remains but is still significant, the Secretary may certify it so that a taxpayer can donate the easement.

"Certified Rehabilitation"

A comment requested that the definition be revised to take economic feasibility into account to handle situations where buildings once certified as "significant" are found structurally unsound during rehabilitation. If a building is found to be so deteriorated that the overall integrity of the building has been irretrievably lost, the building will be certified as not contributing to the significance of the district. In the opinion of the Secretary, technical and economic feasibility are taken into account in the review process to the extent that the completed rehabilitation meets the requirements of the law, e.g., that the rehabilitation is consistent with the historic character of the building and, where appropriate, the district in which it is located. Accordingly, the definition has not been modified.

"Historic District"

One comment suggested that the definition for "historic district" be modified to be consistent with the one for "historic district" in the National Register regulations in 36 CFR 60. The definition has been so modified.

"Owner"

Comments suggested that the definition be expanded to include "option holder," including property owners in the few areas where ground rents exist and that the definition consider condominiums, post-completion addition of qualified lessees, transferring the investment tax credit to subsequent purchasers and sale and leaseback transactions. The concern was that certifications should be issued to all taxpayers eligible for the tax credits as defined by the Internal Revenue Code.

The definition has been expanded to include partnerships, corporations and the public agencies. While it is not possible for the definition to include every possible example, it is broad enough so as not to exclude any owner who would qualify under the Internal Revenue Code.

"Qualified State"

Two comments suggested that the definition should be any State which is asked not to participate (sic) because each State is currently asked to participate by completing a Historic Preservation Fund grant application, and has to meet professional review standards already established in the grant application.

The definition has not been modified but an entire new subsection, 67.1(c), has been added to clarify the options now available to States in the review of certification applications. The status as "qualified State" refers to a State which meets the standards necessary for expedited review participation which are higher than those for regular participation as defined in § 67.1(c).

"Registered Historic District"

It was suggested that the definition be reworded to clarify that it applies (a) to statutes and (b) to districts; this has been done in the final regulations.

"Rehabilitation"

One comment suggested that the definition be expanded to make clear that significant portions and features of a building are identified on the basis of professional evaluation rather than owner opinion, and that a sentence be added such as "For purposes of this program, it is the responsibility of the Secretary to determine which portions and features of the building(s) are significant." While this statement is true, it was not determined necessary to modify the definition.

"Substantial Alteration"

Two comments urged substituting "historic" qualities for "original qualities," since original qualities might already have been destroyed and to take into account nonoriginal features that may have acquired significance. This definition was deleted because it is a term that must be defined by the Internal Revenue Service.

"State Official"

A number of comments urged that the definition dictate "State Historic Preservation Officer" as "State official" since the State Historic Preservation Officer is the individual now responsible for the review of certification applications in all States. Since the State Historic Preservation Officer is not required by law to be the individual appointed by the Governor to participate in the certification process for the State, it is not appropriate for the Department to so dictate in the regulations.

Section 67.3 Role of the States.

Many of the comments focused on the provision no longer requiring mandatory participation by States in the review process. Most commenting felt that State participation was critical to the success of the program.

Regarding the role of the State in the certification review process, the Department of the Interior has taken the position that it cannot impose a requirement upon States to review and comment upon certification requests. This position is consistent with law and the Administration policy as expressed in Executive Order 12372. Accordingly the provision making State review optional has been retained. To clarify the options now available to States in the review process, a new subsection, 67.1(c) has been added. At the request of a number of commenters subsection 67.3(b)(3) has been revised to state that certification requests shall be sent to the State first for review, rather than to the National Park Service, unless a State has notified the Secretary in writing that it does not wish to participate in the program. State Historic Preservation Officers have been referenced in §§ 67.4 and 67.6 as sources of additional guidance.

The inclusion of the new section on State participation and the revision specifying that certification applications are to be sent to the State unless the State has notified the Secretary that it does not intend to participate are also intended to respond to the comments that this section was confusing as written in the proposed regulations.

Subsection 67.3(a)(2). One comment asked that the Secretary clarify as to whether owner consent is required and who notifies the owner if so. Another suggested adding that "the notification and comment period may be waived if the request is made with the consent of the owner as provided in § 67.3(a)(1)." Still another comment requested the Secretary to clarify the intentions of this subsection. This subsection has been revised to state that the comment period may be waived by the owner.

Subsection 67.3(a)(3). Three different letters of comment urged that the State Historic Preservation Officer as well as the fee simple owner be notified. This subsection has been revised to state that the Secretary will notify the appropriate State official as well as the fee simple owner.

Subsection 67.3(a)(4). Thirty-three comments were received opposing the proposal to eliminate preliminary certifications of significance for buildings in proposed historic districts. Many of these comments expressed the opinion that the lack of preliminary certifications would delay worthwhile projects unnecessarily. Although preliminary certifications are not required by law and require considerable staff time to process, the Department believes that there is validity to this argument. Accordingly, preliminary certifications have been reinstated; a new subsection, 67.4(d), detailing the documentation required for such determinations, however, has been added to minimize staff time in processing these requests.

One comment suggested that buildings determined eligible for listing in the National Register should be exempt from the review process. Since these buildings may have been altered after they were determined eligible, they will be reviewed upon request for certification.

Another comment asked that further guidance be given to clarify the role of the Secretary where the State official recommends preliminary certification and the Secretary has denied it. If the Secretary denies a preliminary certification to an individual property, the State should consider how this would affect the Secretary's decision to list a building or district. It is recommended that preliminary certification decisions be reflected in State nominations.

Subsection 67.3(b)(3). Several letters complained that the routing of applications was confusing. This subsection has been revised to make clearer to applicants that all requests should be sent to the appropriate State official in participating States unless the application is for a building in a nonparticipating State.

Subsection 67.3(b)(4). Several comments were concerned that the time periods should start only after complete, adequately documented certification applications are received. In response to the comments, this subsection has been revised to make clear that the review will be concluded within 60 days only if the application is complete and adequately documented and to specify what procedures will be followed when the application is not adequately documented.

One comment urged that the State Historic Preservation Officer be notified of the certification as well as the owner. Notification of the "State official" has been added throughout the regulations as appropriate.

Subsection 67.3(b)(5): Several comments expressed concern over the shortened time periods and asked that the regulations make clear that the time periods apply to adequately documented requests. This has been clarified.

One comment urged longer time periods to allow sufficient time to obtain necessary documentation and to process preliminary certification requests. The time periods have not been extended but the documentation requirements have been upgraded in subsection 67.4(d).

Three comments urged that the subsection be rephrased to state that "the recommendations of qualified States are followed unless new evidence or procedural error is found." Since the Secretary is responsible for making certification decisions under Federal law, it is consistent with the law that the Secretary independently review certification applications and, if necessary, differ in its certification decisions from State recommendations. As stated in the subsection, however, the recommendations of qualified States are generally followed.

Another comment asked that the regulations specify what constitutes "professional or procedural error." The basis for differing with the State is a difference of opinion on whether a building meets the Secretary's "Standards for Evaluating Significance in Historic Districts" or deviation from the procedural requirements of the regulations.

Section 67.4 Certifications of historic significance.

Comments were submitted disagreeing with the elimination of conditional certifications of significance, saying this will have a severely depressing effect on investor interest in the category of buildings in registered historic districts whose historic features have been obscured or compromised by alterations or deterioration. The Secretary has deleted the procedures for conditional certifications because they are administratively difficult to process and cause confusion and inconsistency to occur in the certification process.

Subsection 67.4(b)(3): A number of comments were concerned about how properties containing more than one building are treated for certification. Several comments urged that all properties with more than one building be treated as historic districts. While this is generally the case under the regulations, the regulations retain the provision that "a property containing more than one building where the buildings are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or an industrial plant, will be treated as a single certified historic structure, when rehabilitated as an overall project." This

provision is in the regulations because the law requires that certified rehabilitation work must be consistent with the historic character of the entire historic resource. Treating such complexes as a single historic resource assures that certification decisions will consider the entire resource.

Subsection 67.4(c)(4): Several comments suggested deleting the provision requiring photographs only of "significant" interior features. The subsection was revised accordingly.

Subsection 67.4(d): Many comments suggested that NPS continue to issue preliminary determinations for buildings in proposed historic districts. One comment suggested that for preliminary certifications of significance it would be better if the regulations called for documentation to National Register standards, just as if the request were for a nomination. The subsection was added incorporating these suggestions.

Subsection 67.4(e) (now 67.4(f)): One comment suggested that information on the need to move the building and the method to be used for moving it should be documented. The subsection was revised to require documentation on the method to be used for moving (but information on the need to move the building is not required since the reasons for the move do not affect the significance of the building).

Subsection 67.4(g) (now 67.4(h)): One comment urged that the State Historic Preservation Officer be notified along with the owner concerning the significance or non-significance of a building within a registered historic district or a potential historic district. The subsection was revised to state that the State official will be so notified in writing.

Subsection 67.5: Standards for Evaluating Significance within Registered Historic Districts.

Subsection 67.5(a)(2): Several of the comments objected to the revision to Standard (a)(2) from "A building not contributing to the historic significance of a district is one which detracts from the district's sense of time and place" to "one which does not add." The language in this Standard was revised to make clearer that to contribute a building must be of historic significance and that a building is not presumed to contribute to the significance of a district simply because it is not visually obtrusive. For example, a 20th century revival style house which reproduces characteristics of historic buildings in a district significant for its 19th century domestic architecture is not an historic structure and does not contribute to the significance of the district simply because it is compatible in style and scale and does not visually detract from the district.

Subsection 67.5(a)(2): Several comments urged that the language referring to "where physical deterioration and/or structural damage has made it not reasonably feasible to rehabilitate the building" should be removed from the Standard. The subsection was revised accordingly. Buildings are only certified as not significant where physical deterioration and/or structural damage is such that the "overall integrity of the property has been irretrievably lost." This last language remains in the Standard and adequately addresses this concern.

Subsection 67.5(c): Several comments urged that provision be made for certifications of significance which would not be consistent with documentation on file with the National Park Service, if the State is making efforts to compile the necessary information (i.e., if the National Register historic district nomination needs amending). Without such provision, program flexibility is limited. It was further stated that developers may complete or abandon projects before receiving guidance and limited assurance of certification. One comment suggested that this lack of flexibility is at odds with IRS flexibility in allowing 30 months to obtain certification under Section 191 of the Internal Revenue Code.

In response to these comments, the final regulations have been amended to provide for preliminary determinations for buildings in districts where the documentation on file is not complete. The certification would become final once the district documentation has been officially amended.

Subsection 67.5(d): One comment suggested that the regulations should make clear whether certifications of significance would be issued on the appearance of a building before, during, or after a rehabilitation. Accordingly, this subsection was added to make clear that certifications of significance will be made on the appearance and condition of a building before rehabilitation was begun.

Subsection 67.5(d) (now 67.5(e)): Several comments expressed concern about how much nonhistoric surface material obscuring a facade needs to be removed before a determination of significance can be made. The Department recognizes that it is generally not necessary to remove the entire nonhistoric surface material to determine if a building can be certified and has revised the subsection to clarify the conditions under which it may be necessary for an owner to remove nonhistoric surface material, and the extent to which removal might be required. This provision will allow for definitive certifications, rather than the conditional certifications issued in the past.

Section 67.6 Certification of rehabilitation.

Subsection 67.6(a): One comment suggested that the text should be made to be consistent with the definition of "Certified Rehabilitation" and with 67.6(b)(2). The subsection was revised accordingly.

Another comment suggested that the Secretary should provide final certification within 60 days of taxpayers' notification of the completion of construction and that for projects where portions of a rehabilitation have been placed in service during an intervening taxable year of the taxpayer, the Secretary should provide final certification for that portion of the building placed in service. To be consistent with the Department's position on what constitutes a rehabilitation project in Section 67.6(b)(1), no change was made to the regulations in response to this comment.

Subsection 67.6(a)(1): One comment noted that the statement that applicants must supply existing and proposed plans, and possibly elevation drawings, has been deleted, and recommended that the statement be restored to the text. In response to this comment, the subsection was revised to make clear that the Historic Preservation Certification Application instructions explain in detail the documentation required for certification of rehabilitation work.

Several comments noted that photographs of a building prior to rehabilitation are not always available, and that the requirement for documentation should state that "photographs or other documents" are acceptable. The Department takes the position that photographs of a building prior to rehabilitation are essential to evaluating the effect of the rehabilitation on the building.

One comment suggested that the role of adjacent new construction is inadequately explained and appears to contradict 67.6(b). No change was made to the regulations in response to this comment. The Secretary believes that there is no contradiction between these subsections. Attached or adjacent new construction can affect "the significant features of historic structures" and therefore should be reviewed for its conformance to the Standards for Rehabilitation.

Subsection 67.6(b): One comment suggested that the text specify that both exterior and interior photographs must be submitted. The subsection was revised accordingly.

Another comment suggested that the application of this provision be limited to the situation where some relationship exists between the taxpayer seeking certification and the owner who took actions that were inappropriate. Subsection 67.6(b)(1) has been revised to address this concern.

Subsection 67.6(b)(1): Several comments questioned what is considered an overall rehabilitation project for purposes of the Secretary's review and evaluation. Concern was also expressed that Interior's position on what constitutes an overall project may not be consistent with the Department of the Treasury's position. Accordingly, with Treasury's concurrence, section 67.6(b)(1) has been substantially rewritten to clarify Interior's position. The law requires that certified rehabilitation work must be consistent with the historic character of the entire historic resource. Because ownership can be readily reconfigured to exclude portions of a historic property that were either demolished or substantially altered in the course of a rehabilitation, the Department takes the position that its review extends to work on the entire historic resource and to portions of the resource that may not have been designated a certified historic structure at the time rehabilitation was undertaken. Section 67.6(b)(1) clarifies that in general, however, an owner undertaking a new rehabilitation project of a certified historic structure will not be held responsible for previous rehabilitations undertaken by previous owners. A provision has been added permitting the Secretary to refer issues concerning the scope of the rehabilitation project to the Internal Revenue Service.

Several comments stated that this subsection was unclear as to how requests for certification of rehabilitation of portions of certified historic structures, such as single condominium units, would be treated. Accordingly, a new subsection, 67.6(b)(5), was added.

Subsection 67.6(b)(3): Several comments suggested that this subsection will discourage renovation of complexes or sites containing several related buildings and should be deleted. To the contrary, the provision is intended to make more flexible review of projects involving historic complexes. Accordingly, subsection 67.6(b)(1) has been revised to clarify the Secretary's position.

Subsection 67.6(c): One comment suggested that the subsection be clarified to state that the Secretary's decisions will be made in writing. This change has been made in the wording of the subsection.

Subsection 67.6(d): One comment suggested that changes in approved work should come through the State, unless the State elects not to participate. The Department believes that changes in other subsections of the regulations obviate this concern. The same commenter noted that changes to projects should be accompanied by photographs, plans and other materials needed to explain the changes. The subsection was revised to reflect that the Continuation Sheet to the Historic Preservation Certification Application can be used to request approval of amended work. Another comment urged that the State Historic Preservation Office receive notice concurrently with the owner of determinations by the Secretary as to whether an amended project meets the "Standards for Rehabilitation." The subsection was revised to state that the State official will also be notified in writing.

Subsection 67.6(e): Several comments objected to the five year period during which an authorized representative of the Secretary may inspect a completed project to determine if it meets the "Standards for Rehabilitation." Certification will be issued within 60 days of receipt of a complete, adequately documented request and will only be rescinded if an owner undertakes additional work on the building as part of the certified rehabilitation project that violates the Standards. Accordingly, no change was determined necessary in response to these comments. Another comment recommended that the subsection offer a clear definition of those changes that will nullify previously issued certifications. The changes that will nullify previously issued certifications are changes that render a project no longer in conformance with the "Standards for Rehabilitation." Therefore, no change was determined necessary to the regulations in response to this comment.

Subsection 67.6(f): One comment suggested that this subsection should be rewritten because it appeared to allow appeals only for certification denial of completed work. The subsection was revised to include denials of proposed and ongoing projects.

Section 67.7 Standards for Rehabilitation.

Subsection 67.7(a): One comment suggested that the "Standards for Rehabilitation" as applied by the Secretary too often require restoration rather than rehabilitation, and that the Secretary should have no review authority over the interior rehabilitation of buildings within historic districts. No change was made to the regulations in response to this comment. The "Standards for Rehabilitation" pertain to the rehabilitation of buildings for reuse rather than the "restoration" to a particular historical period. The Department believes that its definition of "rehabilitation" and its interpretation of the "Standards for Rehabilitation" is sufficiently flexible. The Department also believes that the interiors of buildings within a historic district are in many cases important elements in defining the overall historic character of these buildings and the district in which they are located. In such cases, the rehabilitation should preserve these features to the maximum extent possible.

Subsection 67.7(a)(6): One comment suggested that this Standard be revised to clarify conditions under which replacement could compromise the integrity of a building; what must be replaced if features are missing; and when restoration is mandatory for certification. The "Standards for Rehabilitation," however, cannot define every instance to which they might be applied. The guidance requested by the commenter is provided in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" available from the State officials and the NPS regional offices.

Subsection 67.7(a)(9): One comment stated that Standard 9 is inconsistent with the "Guidelines for Rehabilitating Historic Buildings" because Standard 9 does not specify that imitation of original design is usually not acceptable. Accordingly, to clarify this matter, subsection 67.7(b) has been revised to indicate that additions that duplicate the form, material, style and detailing of a building to the extent that they compromise the historic character of the structure will result in certification denial. New additions to historic structures, therefore, are evaluated for their effect on the historic character of the historic structure to which they are appended; considerations of the "style" of alterations and new additions are secondary to the overriding concern with the impact of such alterations and additions to the historic character of the structure.

Section 67.8 Certifications of statutes.

One comment urged that the expedited review system apply to the certification of statutes and districts as well as to the certification of significance and rehabilitation. Expedited review is not provided because the statutes and districts generally require more time to review than individual structure certification applications. Also, since the expedited review status is based on a review of State decisions, it would be difficult to rate the States on the consistency of their decisions with those of the Secretary since there are so few certifications for statutes and districts in many States.

Subsection 67.8(a): One comment suggested deleting the requirement that the review board or commission be required to have power to review proposed alterations to all structures within the boundaries of the district or districts designated under the statute to be certified. The comment letter recommended that the section be changed so as to not prohibit such States from having certified statutes and, that as National Register historic districts do not require this review, there is no reason to impose it on the local level.

The comment also stated that some local review boards make recommendations that violate the Standards, and it seems unnecessary to require them to review all alterations. Another comment urged deleting "all" from "all buildings." In some States some buildings are exempted from zoning, including historic district zoning. The commenter recommended that the section be changed so as to no prohibit such States from having certified statutes.

The purpose of requiring the statute to set up a review board or commission with power to review proposed alterations to structures within the districts is to assure that there is some oversight to maintain the overall integrity of the district. For National Register districts, the State Historic Preservation Officer provides this oversight and is responsible for requesting removal from the National Register of any district which has lost its historic integrity because of the demolition or alteration of structures. The final regulations have been revised to delete the requirement that the review board or commission be required to review proposed alterations to *all* structures to provide more flexibility, and have been revised to require that the review board or commission be empowered to review proposed alterations to structures of historic significance. This language is consistent with the provisions of the Tax Reform Act of 1976, which requires that the Secretary certify that the statute contains criteria that will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district.

Subsection 67.8(c): Several comments suggested that the regulations should define and clarify the meaning of "State statute" and "State enabling legislation" and explain the relation between the two terms. The regulations have been clarified in this regard. Another comment suggested that the regulations should clarify the relationship between by-laws or procedures by local review boards and State or local statutes. As specified in section 67.8(a), the by-laws which should be submitted with certification requests are any by-laws or ordinances that contain information necessary for the certification of the statutes. In some cases, such by-laws interpret and explain the intent of the statute.

Subsection 67.8(d): Several letters asked that "chief elected official" be substituted for "duly authorized representative." Rather than changing the regulations to remove the flexibility of allowing the chief elected official to delegate the ability to request certifications to a duly authorized representative, a new definition for "Duly Authorized Representative" referencing the chief elected official has been added to the definitions section, 67.2.

One commenter recommended that the section should contain a specific process for revoking certification. Revocation procedures have accordingly been added for both statutes and districts.

Section 67.9 Certifications of State and local historic districts.

One comment suggested that this section should contain a subsection defining conditions for owner objection within certifiable local ordinances to insure that local processes are no more stringent than National Register requirements. The Secretary has no authority under the law to refuse to certify a local historic district based on local procedures for deciding whether or not to designate a local district based on the number of owners who object. Once the district is designated, the Secretary is only authorized to certify if the district substantially meets the requirements for listing in the National Register.

Subsection 67.9(g): One comment suggested that "substantially" be deleted from this subsection. However, the term "substantially" is required by law.

Subsection 67.9(g): One comment noted that this subsection still calls for simultaneous certification and determination of eligibility. It further stated that this provision has not been followed under existing regulations and asked whether it would be implemented. The determination of eligibility process for certified districts will be implemented concurrently with these final regulations.

Subsection 67.9(j) (now (k)): Several comments questioned the inclusion of this subsection or its wording. The Department believes that it is helpful in ensuring high quality rehabilitation to urge State and local review boards and commissions to use the Secretary's Standards.

Section 67.10 Appeals.

Subsection 67.10(a): Two comments suggested that the Secretary continue the practice of allowing "administrative reviews" for buildings which have obtained a preliminary determination of significance but where rehabilitation work has been found not to meet the "Standards for Rehabilitation." Although such administrative reviews have been undertaken since inception of the program, they have never been specifically identified in regulation before. Accordingly, subsection 67.10(b) has been amended to state the conditions under which administrative reviews will be heard.

Subsection 67.10(c): One comment suggested that "alleged prejudicial procedure errors" be clarified. No change was made to the regulations in response to this comment. The Department believes that the phrase is legally sufficient.

Section 67.11 Expedited review system for qualified States.

Subsection 67.11(b): One comment suggested that the expedited review time be available for all applications. Since the more expeditious processing of applications from qualified States is predicted on the Secretary not needing to do in-depth review of applications from qualified States, it is not possible to process in 15 days applications from States where applications require an in-depth review by NPS personnel.

Another comment asked that a provision be added to this section: "NPS will notify *all* States at least 45 days prior to the initiation of any new policies, procedures, requirements . . . ." The Department notifies all States in advance concerning

initiation of new policies, procedures and requirements affecting programs in which they participate; accordingly, the regulations have not been modified in response to this comment.

One letter suggested that the regulations make clear that the recommendations of qualified States will be followed, to be backed up with a monitoring system. The new subsection 67.1(c)(1) states that recommendations of qualified States are generally followed, but the Secretary has a legal responsibility to review all certification applications, and where necessary, will disagree with a State's review if he determines the mandate of the law has not been met.

Subsection 67.11(b)(1): Most comments strongly supported the expedited review process, but one comment questioned why States are to be evaluated on the certification of State and local statutes when subsection 67.11(a) excludes them from the expedited review system. The evaluation of States on their certification decisions on State and local statutes and districts has been deleted from this subsection.

Several comments expressed concerns about the shortened time periods for review. The Department has considered these comments but believes the time frames reflected in the proposed regulations are reasonable ones. Accordingly, they have not been modified.

Subsection 67.11(b)(2): One comment said that guidelines for evaluating State qualifications are regulatory material and should be incorporated into these regulations. The comment also stated that comment should be solicited from all affected parties. However, since they are, in fact, guidelines, they are not included in the regulations.

Subsection 67.11(d): Another comment suggested that the regulations should specify what kind of "errors" will be the basis for revoking qualified status. This will be explained in the guidelines.

Subsection 67.11(f): One letter commented that the regulations were unclear concerning what role certified local governments are to play and that it is unrealistic to expect worthwhile participation within 30 days. In response to this comment the regulations have been revised to delete the recommendation to provide certified local governments an opportunity to comment on each application, which is unrealistic within the timeframes. The Department urges States to provide certified local governments information on the tax certification program and to encourage its use and adoption of the Secretary's "Standards for Rehabilitation."

Section 67.12 Fees for processing rehabilitation certification requests.

Section 67.12: Regarding the proposed imposition of fees for processing applications for certification of rehabilitation, 96 comments were received opposing this change in the certification process. Most of the comments cited the reduction of the differential between the 25 percent investment tax credit for certified rehabilitations and the 20 percent investment tax credit for 40-year old buildings; the statutory necessity for deposit of the monies into the General Fund instead of into the Historic Preservation Fund; and the disincentives of fees on small rehabilitation projects and early requests for certification as reasons to eliminate the fee system. Generally, buildings which are potentially eligible for the 25 percent investment tax credit (certified historic structures) are not also eligible for the 20 percent investment tax credit; therefore, imposition of a processing fee for certified rehabilitations has little, if any, impact on the differential between these two categories of investment tax credits. With regard to use of the monies collected, it is immaterial how funds are deposited in the U.S. Treasury until they are Congressionally appropriated for specific purposes. With respect to disincentives to small projects or early submissions if a fee is charged, the smallest projects (under $20,000) are already exempt from the fee system and, regardless of a fee system, owners are cautioned in 67.6(a)(1) that undertaking a rehabilitation project without prior certification by the Secretary is done at their own risk.

One comment suggested that fees were inappropriate because the certification process primarily benefits the general public since it ensures high quality preservation of historic buildings and that any special benefit to an individual taxpayer is purely incidental. It is the position of the Department that a 25 percent investment tax credit is a very specific benefit accruing to an individual that is well in excess of general benefits accruing to the public through historic preservation activities.

One comment proposed an alternative fee schedule because it was believed that the Department's fee schedule was regressive to lower value projects; that there were anomalies in the increases between fee classes; and that as a percentage of rehabilitation value, the fees for large projects were a relatively low cost item. The Department has rejected this alternative because it believes that while there may be some correlation between project and fee size, a fee which is completely based on dollar of fee per dollar of rehabilitation borders on becoming a tax rather than a fee and does not necessarily reflect actual processing costs. The Department's fee system meets the requirements established by Office of Management and Budget Circular No. A–25 that user charges be reasonable and limited to the total costs of providing the services for which the fee is charged.

Finally, there were a number of comments which questioned the relationship of project review time to the size of the fee. While it is recognized that there are small projects which consume a longer review time and large projects which can be reviewed quickly, on balance the fee system imposed reflects average review times which have been calculated by examining a variety of data and by using several methods of calculation. Additionally, these calculations were refined by including new data as it became available, i.e., actual rather than projected numbers of projects and actual rather than projected review times. Additionally,the estimated workload of 4,000 requests for certification of rehabilitation in fiscal year 1984 will only result in a total projected revenue of $1.6 million which will not exceed the estimated aggregate Departmental cost of $1.9 million in fiscal year 1984 for providing the service for which the fees are being charged.

Revisions

After consideration of comments and careful review, the National Park Service has made the following revisions to 36 CFR 67. Editorial and technical changes have also been made.

Subsection 67.1(b): This subsection was revised to state that the Washington Office of the National Park Service establishes program direction.

Subsection 67.1(c): A new subsection has been added explaining the three levels of participation open to States: Regular Participation, Expedited Review Participation and No Participation. The former subsection (c) has been changed to subsection (d).

Section 67.2: The definition of "certified historic structure" has been revised to make clear how portions of buildings are treated and that rowhouses are separate certified historic structures. The phrase "not feasible to rehabilitate" has also been deleted. The definition has also been revised to clarify how "certified historic structure"

will be interpreted for purposes of the charitable contributions provision.

Section 67.2: A definition of "Duly Authorized Representative" has been added.

Section 67.2: The definition of "Historic District" has been revised to bring the definition of that term into conformance with the definition given in 36 CFR 60.

Section 67.2: The definition of "Inspection" has been revised to make clear that an authorized representative of the Secretary may inspect ongoing rehabilitation work as well as completed rehabilitation work.

Section 67.2: The definition of "Owner" has been revised to include partnerships, corporations or public agencies and to make clear that it includes any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefit.

Section 67.2: The definition of "Substantial Alteration" has been deleted. This change is necessary because it is a term which must be defined by the Internal Revenue Service.

Section 67.2: The definition of "State official" was revised to recognize that this official could be designated by State statute.

Subsection 67.3(a)(2): This subsection was revised to state that the comment period may be waived by the fee simple owner.

Subsection 67.3(a)(3): This subsection was revised to state that the Secretary will notify the appropriate State official as well as the fee simple owner.

Subsection 67.3(a)(4): This subsection was revised to indicate that preliminary determinations may also be requested for buildings that are located within potential historic districts and for buildings that are outside the period or area of significance of registered historic districts. Reference to the Secretary's Standards for Evaluating Significance within Registered Historic Districts was also added. The subsection also makes clear that changes to a building after issuance of a preliminary determination may affect the final certification.

Subsection 67.3(a)(5): This subsection was revised to make clear the sequence of review of rehabilitation in relation to certifications of significance.

Subsection 67.3(b)(1): The OMB approval number for the "Historic Preservation Certification Application" was added to the first sentence. The third sentence was revised to indicate that this application should also be used for requests for preliminary determinations.

Subsection 67.3(b)(3): This subsection was revised to make clearer to applicants that all requests should be sent to the appropriate State official in participating States and that applications in nonparticipating States should be sent to the appropriate NPS regional office.

Subsection 67.3(b)(4): This subsection was revised to give the public a clearer understanding of the time periods involved in review of certification requests and to specify that these time periods pertain only to complete, adequately documented applications.

Subsection 67.3(b)(5): This subsection was revised to reflect the possibility that some States may choose not to participate. Language has been added allowing the Secretary to process certification requests in the absence of State recommendations within the time periods set forth in 67.3(a)(4). The phrase "unless evidence of professional or procedural error is found or new information is presented" has been deleted.

Subsection 67.3(b)(6): This second sentence has been added to make clear that Part 2 of the application will not be processed until an adequately documented Part 1 is on file and acted upon unless the property is already a certified historic structure. A sentence has been added stating that reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the building in the National Register.

Subsection 67.4(a)(4): This subsection was added to indicate that preliminary determinations may be requested for buildings located within potential historic districts.

Subsection 67.4(b)(1): The reference to "State official" was replaced by "State Historic Preservation Officer" since that official is the appropriate contact for information concerning National Register listings within a given State.

Subsection 67.4(c): The term "property" has been replaced by "building" since the use of the term "property" has caused confusion in the regulations.

Subsection 67.4(c)(4): This subsection was revised to indicate that photographs submitted with applications must be adequate to document the significance of the interior features and spaces.

Subsection 67.4(d): This subsection was added to permit requests for preliminary determinations for buildings located in potential historic districts, to specify requirements for applications for preliminary determinations, and to note that preliminary determinations are not binding. The subsection has also been revised to explain what documentation is necessary for preliminary determinations for a building in a registered historic district which is outside the documented period or area of significance for the district.

Subsection 67.4(e): This subsection was relettered to reflect the insertion of the new subsection 67.4(d).

Subsection 67.4(f): This subsection was relettered to reflect the insertion of the new subsection 67.4(d). In addition, documentation requirements for moved buildings have been expanded to include the method to be used for moving the building and the subsections appropriately renumbered.

Subsection 67.4(g): This subsection was relettered to reflect the insertion of the new subsection 67.4(d). The subsection was also revised to note that the Secretary will notify both the State official and the owner in writing as to the significance or non-significance of a building located within a registered historic district or a potential historic district.

Subsection 67.4(h): This subsection was relettered to reflect the insertion of the new subsection 67.4(d), and revised to provide for notification to the State official as well as to the owner. The phrase "or a potential historic district" has been added.

Subsection 67.5: These Standards have been retitled to reflect their purpose better: the evaluation of significance of buildings within historic districts.

Subsection 67.5(a)(2): the phrase "or have so deteriorated" was added to reflect the fact that physical deterioration can also be a reason for determining that a building does not contribute to the historic significance of a district. The last clause of the sentence was deemed redundant in light of the language in the rest of the Standard and was therefore deleted.

Subsection 67.5(c): A new second sentence has been inserted to allow certification requests for buildings outside a district's period or area of significance and to provide that preliminary certifications will be issued in response to such requests which will become final certifications when the district documentation is officially amended unless the significance of the building has been lost as a result of alterations. "State Historic Preservation Officer" was added to the last sentence since that official is an appropriate contact for information concerning National Register listings.

Subsection 67.5(d): This subsection has been added to make clear that the appearance and condition of a building before the current rehabilitation work has begun will be the basis for certifications of significance.

Subsection 67.5(e): This subsection was relettered to reflect the insertion of the new subsection 67.5(d), and revised to clarify the conditions under which it may be necessary for an owner to remove nonhistoric surface material, and the extent to which removal might be required.

Subsection 67.5(f): This subsection was relettered to reflect the insertion of the new subsection 67.5(d). "State official" was added since that official is an appropriate contact for information concerning certifications of historic significance.

Subsection 67.6(a): The first sentence was reworded; "the historic character of the structure and/or district" was changed to "and, where applicable, the district" in order to make the text consistent with the definition of "Certified Rehabilitation" and with 67.6(b)(2). The last sentence was rephrased to indicate that the processing of applications will begin before remittance is received, but that final action will not be taken until remittance has been received.

Subsection 67.6(a)(1): A new second sentence has been inserted noting that the instructions accompanying the Historic Preservation Certification Application explain in detail the documentation required for certification of rehabilitation work. The fourth (formerly third) sentence has been revised to indicate that photographs submitted with applications must be adequate to document the appearance of the building prior to rehabilitation, both on the exterior and on the interior.

Subsection 67.6(a)(2): The second sentence has been rephrased to indicate that adequate photgraphs must be submitted with requests for certification of completed rehabilitation work. A third sentence has been added to note that a certification of rehabilitation is not final until a building is designated a certified historic structure.

Subsection 67.6(b): The first sentence has been revised to indicate that rehabilitation work is reviewed for its effect on interior and exterior features. A sentence has been added to note that such features may also include the site and environment of a certified historic structure.

Subsection 67.6(b)(1): This subsection was substantially rewritten to clarify what constitutes a project for purposes of the Secretary's review and evaluation. The law requires that certified rehabilitation work must be consistent with the historic character of the entire historic resource. The subsection indicates that the Secretary's review extends to work done on the entire historic resource and to portions of the resource that may not have been designated a certified historic structure at the time rehabilitation was undertaken. This subsection clarifies that in general, however, an owner undertaking a new rehabilitation project of a certified historic structure will not be held responsible for previous rehabilitations undertaken by previous owners. A provision has been added permitting the Secretary to refer issues as to the scope of the rehabilitation project to the Internal Revenue Service.

Subsection 67.6(b)(2): This subsection was revised to make clear that conformance to the Secretary of the Interior's "Standards for Rehabilitation" will be determined by evaluating the effect of the rehabilitation project on the building, regardless of when the building becomes a certified historic structure.

Subsection 67.6(b)(5): This subsection was added to explain how requests for certification of rehabilitation of portions of certified historic structures, such as single condominium units, will be treated.

Subsection 67.6(c): This subsection was revised to make clear that the Secretary shall advise owners where possible of changes necessary to bring projects into conformance with the Secretary's Standards.

Subsection 67.6(d): The procedure to be followed when owners wish to make changes in proposed or ongoing projects has been revised to reflect the addition of continuation and amendment sheets to the Historic Preservation Certification Application. This subsection has also been revised to note that the Secretary will notify both the State official and the owner in writing as to whether the revised project meets the Standards, and to note that oral approvals of revisions are not authorized or valid.

Subsection 67.6(e): This subsection has been revised to provide the owner with an opportunity to comment prior to revocation of a certification.

Subsection 67.6(f): The first sentence has been revised to state that an explanatory letter will be sent to the owner and the State official in cases where proposed or ongoing projects have been determined not to meet the "Standards for Rehabilitation," in addition to those cases where completed projects have been determined not to meet the Standards.

Subsection 67.7(b): The discussion of inappropriate physical treatments has been edited to reflect the fact that some exterior masonry cleaning methods and some waterproof coatings in some situations are acceptable, and to note that exterior additions that duplicate the form, material, style and detailing of the building may result in certification denials.

Subsection 67.8(a): The last sentence has been revised to state that the review board or commission must be empowered to review proposed alterations to structures of historic significance within the boundaries of the district or districts designated under the statute, except for State owned properties.

Subsection 67.8(c): This subsection has been revised to differentiate between State enabling legislation and State statutes which designate specific historic districts.

Subsection 67.8(e)(2): This subsection was amended to make clear that requests shall be directed to the appropriate State official in participating States. In non-participating States, requests shall be directed to the NPS.

Subsection 67.8(e)(3): The phrase "and any by-laws or ordinances which interpret the statute that contain information necessary for the certification of the statute" has been added to clarify why such by-laws or ordinances are reviewed.

Subsection 67.8(e)(4): Notification of the State official was added.

Subsection 67.8(f): This subsection was revised to make clear that in the event certified statutes are repealed, the certification of any historic districts designated thereunder will be withdrawn by the Secretary as well as the certification of the statute. Notification of the State official was also added.

Subsection 67.8(g): This subsection was added to describe the conditions under which the Secretary may revoke certification of a statute and any districts designated thereunder.

Subsection 67.9(b): The first sentence of this subsection has been deleted as duplicative.

Subsection 67.9(d): This subsection was amended to make clear that requests shall be directed to the appropriate State official in participating States. In non-participating States, requests shall be directed to the NPS.

Subsection 67.9(e): This subsection was revised to indicate that written notification of the Secretary's decision will also be sent to the appropriate State official.

Subsection 67.9(j): This subsection was added to make clear that the Secretary may revoke certification of a district under the conditions specified.

Subsection 67.9(k): This subsection was relettered to reflect the addition of subsection 67.9(j).

Subsection 67.10: Throughout this section "Chief Appeals Officer" was inserted in place of "Associate Director" and "Director." The "Chief Appeals Officer" has been duly designated as the recipient of all correspondence concerning appeals of denials of rehabilitation certificates.

Subsection 67.10(b): Language has been added describing the conditions under which the Chief Appeals Officer will conduct Administrative Reviews for buildings that have been denied a preliminary determination of significance or have obtained a preliminary determination of significance but where rehabilitation work has been found not to meet the Standards.

Subsection 67.10(c): Language has been added stating that the Chief Appeals Officer may withhold a decision until a ruling is issued by the Internal Revenue Service pursuant to subsection 67.6(b)(1).

Subsection 67.11(d): The last sentence of this subsection has been revised to state that "qualified State" status may be revoked at any time with 30 days notice if it is determined by the Secretary that the State is not meeting the guidelines for qualified status.

Subsection 67.11(e): This subsection has been revised to state that all certification requests will generally be processed within 15 days by the Secretary, although these time frames are not binding on the Secretary.

Subsection 67.11(f): The requirement that qualified States provide local governments an opportunity to comment on certification requests has been deleted.

Subsection 67.11(g): The second sentence was deleted and language was added to bring this subsection into conformance with subsection 67.1(c), which describes the levels of State participation.

Subsection 67.12(a): This subsection was revised to state that the fee schedule will apply to requests for certification of rehabilitation received by the State official or NPS regional office after the effective date of this rulemaking. The fee schedule was deleted from this subsection and inserted in subsection 67.12(c).

Subsection 67.12(b): This subsection was revised to make clear that application processing will commence before fees are received, but that final action must await receipt of the proper remittance.

Subsection 67.12(c): This subsection was revised to include the fee schedule and to make clear that fees for review of completed rehabilitation work will be based on the costs attributed solely to the rehabilitation of a historic building as furnished in the Historic Preservation Certification Application Request for Certification of Completed Work. The subsection was further revised to indicate explicitly that no fee will be charged for rehabilitations under $20,000.

Subsection 67.12(d): This subsection was added to clarify instructions for computing the size of the fee: (1) in the case of a property that includes more than one certified historic structure where the structures are functionally related historically and (2) in the case of multiple building projects. The maximum size of the total fee for most multi-building projects has been limited to $2,500.

Additional Considerations

These regulations are needed in order to provide guidance to the public as well as to government employees responsible for the implementation of Section 2124 of the Tax Reform Act of 1976, as amended by Section 701(f) of the Revenue Act of 1978, and Section 6 of the Tax Treatment Extension Act of 1980; Section 315 of the Revenue Act of 1978; and Section 212 of the Economic Recovery Tax Act of 1981. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Department of the Interior, the Internal Revenue Service and Treasury Department, other government agencies, and the public.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291. These revisions do not result in an impact on the economy of $100 million or any of the other effects listed in the Executive Order. The Department 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 information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009.

Environmental Impact Statement

This rulemaking is developed under the authority of Section 101(a)(1) of the National Historic Preservation Act of 1966 U.S.C. 470a–1(a) (170 ed.), as amended; Section 2124 of the Tax Reform Act of 1976, 90 Stat. 1519; Sections 701(f) and 315 of the Revenue Act of 1978, 92 Stat. 2828; Section 6 of the Tax Treatment Extension Act of 1980, 94 Stat. 3204; and Sections 212 and 214 of the Economic Recovery Tax Act of 1981, 95 Stat. 172. Such procedures have no potential for significant environmental impact and are categorically excluded from the requirement for compliance with the National Environmental Policy Act. Therefore, it is hereby determined that this rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Drafting Information

The originators of these procedures are H. Ward Jandl, Preservation Assistance Division; Carol D. Shull, Interagency Resources Division; and Lars A. Hanslin, Office of the Solicitor.

List of Subjects in 36 CFR Part 67

Administrative practice and procedure, Historic preservation, Income taxes.

Dated: January 8, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

In consideration of the foregoing comments, 36 CFR 67 is revised as follows:

PART 67—HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO THE TAX REFORM ACT OF 1976, THE REVENUE ACT OF 1978, THE TAX TREATMENT EXTENSION ACT OF 1980, AND THE ECONOMIC RECOVERY TAX ACT OF 1981

Sec.

Authority: Sec. 101(a)(1), National Historic Preservation Act of 1966 U.S.C. 470a–1(a)(170 ed.), as amended; sec. 2124, Tax Reform Act

of 1976, 90 Stat. 1519; secs. 701(f) and 315, Revenue Act of 1978, 92 Stat. 2828; sec. 6, Tax Treatment Extension Act of 1980, 94 Stat. 3204; and secs. 212 and 214, Economic Recovery Tax Act of 1981, 95 Stat. 172.

§ 67.1 The Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, and the Economic Recovery Tax Act of 1981.

(a) The Tax Reform Act of 1976, 90 Stat. 1519, the Revenue Act of 1978, 92 Stat. 2828, the Tax Treatment Extension Act of 1980, 94 Stat. 3204, and the Economic Recovery Tax Act of 1981, 95 Stat. 172, require the Secretary to make certifications of historic district statutes and of State and local districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service ("NPS"); the following five regional offices issue certifications for the States listed below them:

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503:
Alaska

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106:

Connecticut	New Jersey
Delaware	New York
District of Columbia	Ohio
Indiana	Pennsylvania
Maine	Rhode Island
Maryland	Vermont
Massachusetts	Virginia
Michigan	West Virginia
New Hampshire	

Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225:

Colorado	New Mexico
Illinois	North Dakota
Iowa	Oklahoma
Kansas	South Dakota
Minnesota	Texas
Missouri	Utah
Montana	Wisconsin
Nebraska	Wyoming

Southeast Regional Office, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303:

Alabama	Mississippi
Arkansas	North Carolina
Florida	Puerto Rico
Georgia	South Carolina
Kentucky	Tennessee
Louisiana	Virgin Islands

Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102:

Arizona	Nevada
California	Oregon
Hawaii	Washington
Idaho	

(b) The Washington office of the National Park Service establishes program direction and considers appeals of certification denials. The procedures for obtaining certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to the Secretary to make certification decisions. These procedures, upon their effective date, are applicable to future and pending certification requests, except as otherwise noted herein.

(c) Most States participate in the review of requests for certification, through recommendations to the Secretary, although this participation is voluntary and by law all certification decisions are made by the Secretary. Three levels of participation are available to all States:

(1) Regular Participation. States wishing to participate in the review process are given a 30-day opportunity to comment on all certification requests upon receipt of a complete, adequately documented application. In these situations, requests for certification and approvals of proposed rehabilitation work are sent first to the appropriate State official. State comments are carefully considered by the Secretary before a certification decision is made. Certification requests channeled through "regular participation" States are normally processed within 30 days by the Secretary.

(2) Expedited Review Participation. States wishing to participate in the review of Part 1 and Part 2 certification requests, and which meet qualifications in sec. 67.11, are also given a 30-day opportunity to comment on these requests. Like the "regular participation" explained above, certification requests are first sent to the appropriate State official. Because qualified States assume greater responsibility for making certification recommendations, certification requests channeled through "expedited review" States are normally processed within 15 days by the Secretary. The recommendations of qualified States are generally followed, but by law, all certification decisions are made by the Secretary, based upon his review of the application and related information. Expedited review does not apply to the review of State or local statutes or districts.

(3) No Participation. A State may choose not to participate in the review and comment of certification requests. States not wishing to participate in the commenting process are requested to notify the Secretary in writing of this fact. Owners requesting certification from these States may send their applications directly to the appropriate NPS office listed above. In all other situations certification requests are sent first to the appropriate State official.

(d) The Internal Revenue Service is responsible for all procedures, legal determinations and rules and regulations concerning the tax consequences of the historic preservation provisions described above. Any certifications made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to tax consequences under the Internal Revenue Code. For example, certifications made by the Secretary do not constitute determinations that a structure is of the type subject to the allowance for depreciation under Section 167 of the Code.

§ 67.2 Definitions.

As used in these regulations:

"Certified Historic Structure" means a building (and its structural components) which is of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954 which is either (a) individually listed in the National Register; or (b) located in a registered historic district and certified by the Secretary as being of historic significance to the district. Portions of larger buildings, such as single condominium apartment units, are not independently considered certified historic structures. Rowhouses, even with abutting or party walls, are considered as separate buildings.

For purposes of the charitable contribution provisions only, a certified historic structure need not be depreciable to qualify, may be a structure other than a building and may also be a remnant of a building such as a facade, if that is all that remains, and may include the land area on which it is located. For purposes of the demolition expense provisions and the 15 percent and 20 percent tax investment credits under the Economic Recovery Tax Act of 1981, any building located in a registered historic district is considered a certified historic structure; exemption from this provision can generally occur only if the Secretary has determined, prior to the demolition or rehabilitation of the building, that it is not of historic significance to the district.

"Certified Rehabilitation" means any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of such structure and, where applicable, with the district in which such structure is located.

"Duly Authorized Representative" means a State or locality's Chief Elected

Official or his or her representative who is authorized to apply for certification of State/local statutes and historic districts.

"Historic District" means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

"Inspection" means a visit by an authorized representative of the Secretary to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

"National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

"National Register Program" means the survey, planning, and registration program that is administered by the Secretary pursuant to 101(a)(1) of the National Historic Preservation Act of 1966, as amended. The procedures of the National Register program appear in 36 CFR part 60, *et seq.*

"Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a building or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits.

"Qualified State" means a State which has agreed to participate in the certification program and which the Secretary has determined to meet established professional and review standards.

"Registered Historic District" means any district listed in the National Register or any district (a) which is designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district; and, (b) which is certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the building(s) which are significant to its historic, architectural and cultural values.

"Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

"Standards for Rehabilitation" mean the Secretary's "Standards for Rehabilitation" set forth in § 67.7 hereof.

"State or Local Statute" means a law of a State or local government designating, or providing a method for the designation of, a historic district or districts.

"State official" means an official within each State, designated by the Governor or by State statute, to act as liaison for purposes of reviewing and commenting upon historic preservation certification applications. In most cases this will be the State Historic Preservation Officer (SHOP). In the event the Governor or a state statute has not designated such an official, the term "State official" shall refer to the Governor.

§ 67.3 Introduction to certifications of significance and rehabilitation and information collection.

(a) Who may apply:

(1) Ordinarily, only the fee simple owner of the building in question may apply for the certification described in §§ 67.4 and 67.6 hereof. If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(2) Upon request of a State official the Secretary may determine whether or not a particular building located within a registered historic district qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the fee simple owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30 day time period to submit written comments to the Secretary prior to decision. Such time period for comment may be waived by the fee simple owner.

(3) The Secretary may undertake the certifications described in §§ 67.4 and 67.6 on his own initiative after notifying the fee simple owner and the appropriate State official and allowing a comment period as specified in § 67.3(a)(2).

(4) Owners of buildings which appear to meet National Register criteria but are not yet listed in the National Register or which are located within potential historic districts may request preliminary determinations from the Secretary as to whether such buildings may qualify as certified historic structures when and if the buildings or the potential historic districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for buildings outside the period or area of significance of registered historic districts as specified in § 67.5(c). Procedures for obtaining these determinations shall be the same as those described in § 67.4. Such determinations are preliminary only and are not binding upon the Secretary. Preliminary determinations will be made final as of the date of the listing of the individual building or district in the National Register. For buildings outside the period or area of significance of a registered historic district, preliminary determinations will be made final, except as provided below, when the district documentation on file with NPS is formally amended. If during review of a Request for Certification of Rehabilitation, it is determined that the building does not contribute to the significance of the district because of changes made after the preliminary determination was made, certified historic structure designation will be denied.

(5) Owners of buildings not yet designated certified historic structures may obtain determinations from the Secretary on whether or not rehabilitation proposals meet the Secretary of the Interior's "Standards for Rehabilitation." Such determinations will be made only when the owner has requested a preliminary determination of the significance of the building as described in paragraph (a)(4) of this section and such determination has been acted upon by the NPS. Final certifications of rehabilitation will be issued only to owners of certified historic structures. Procedures for obtaining these determinations shall be the same as those described in § 67.6.

(b) How to apply:

(1) Requests for certifications of historic significance and/or of rehabilitation shall be made on "Historic Preservation Certification Applications" (approved OMB form No. 1024–0009). The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009. Part 1 of the application shall be used in

requesting a certification of historic significance or non-significance and preliminary determinations, while Part 2 shall be used in requesting an evaluation of a proposed rehabilitation project or a certification of a completed rehabilitation project. Information contained in the application is required to obtain a benefit.

(2) Application forms are available from National Park Service regional offices or the appropriate State official.

(3) Requests for certifications, preliminary determinations, and approvals of proposed rehabilitation projects shall be sent to the appropriate State official in participating States. Requests in nonparticipating States should be sent to the appropriate NPS regional office.

(4) Generally review of certification requests shall be concluded within 60 days of receipt of a complete, adequately documented application, as defined in §§ 67.4 and 67.6 (30 days at the State level and 30 days at the Federal level). Where certification requests come from qualified States, review shall be concluded within 45 days (30 days at the State level and 15 days at the Federal level; see § 67.11 for procedures regarding qualified States). Where a State has chosen not to participate in the review process, review by the NPS shall be concluded within 60 days of receipt of a complete, adequately documented application. Where adequate documentation is not provided, the owner will be notified of the additional information needed to undertake or complete review. The time periods in this part are based on the receipt of a complete application; they will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(5) State comments received within the time period will be considered by the Secretary in the review process. Reviews of complete certification requests taking longer than 30 days at the State level may be brought to the attention of the Secretary. The Secretary in turn will consult with the appropriate State to ensure that a review is completed in a timely manner. If necessary the Secretary may process a certification request without the recommendations of the State. The recommendations of qualified States are generally followed, but by law, all certification decisions are made by the Secretary based on his review of the application and related information.

(6) Although certifications of significance and rehabilitation are discussed separately below, owners are encouraged to submit Part 1 of the "Historic Preservation Certification Application" prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented Part 1 is on file and acted upon unless the building is already a certified historic structure. Reviews of rehabilitation projects will also not be undertaken if the owner has objected to the listing of the building in the National Register.

§ 67.4 Certifications of historic significance.

(a) Requests for certifications of historic significance should be made by the owner to determine—

(1) That a building within a registered historic district is of historic significance to such district; or

(2) That a building located within a registered historic district is not of historic significance to such district; or

(3) That a building not yet on the National Register appears to meet National Register criteria; or

(4) That a building located within a potential historic district appears to contribute to the significance of such district.

(b) If the building is individually listed in the National Register it automatically is considered a certified historic structure, except as provided below.

(1) To determine whether or not a building is individually listed or is part of a district in the National Register, the owner may consult the listing of National Register properties in the "Federal Register" (found in most large libraries), or contact the appropriate SHPO for current information.

(2) If the building is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should refer to the delisting procedures outlined in 36 CFR Part 60.

(3) Many individual listings in National Register include more than one building. In such cases, the Secretary will utilize the Standards for Evaluating Significance within Registered Historic Districts for the purpose of determining which of the buildings included within the listing are of historic significance to the property. An individual listing containing more than one building where the buildings are judged by the Secretary to have been functionally related to serve an overall purpose, such as a mill complex or an industrial plant, will be treated as a single certified historic structure, when rehabilitated as part of an overall project. For questions concerning demolition of separate structures as part of an overall rehabilitation project, see § 67.6.

(4) If it is proposed that a building individually listed in the National Register be moved as a part of a request for certification of rehabilitation, the owner must follow the procedures outlined in 36 CFR 60. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(c) If the building is located within the boundaries of a registered historic district and the owner wishes the Secretary to certify as to whether the building contributes or does not contribute to the historic significance of the district or if the owner is requesting a preliminary determination in accordance with subsection 67.3(a)(4), the owner must complete Part 1 of the "Historic Preservation Certification Application" according to instructions accompanying the application. Such documentation includes but is not limited to:

(1) Name and mailing address of owner;

(2) Name and address of building;

(3) Name of historic district;

(4) Current photographs of building; photographs of the building prior to alteration if rehabilitation has been completed; photograph(s) showing the building along with adjacent buildings and structures on the street; and photographs of interior features and/or spaces adequate to document significance;

(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(6) Brief statement of significance summarizing how the building reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the building itself (i.e. unusual building techniques, important events that took place there, etc.);

(7) Sketch map clearly delineating building's location within the district; and

(8) Signature of fee simple owner requesting or concurring in a request for evaluation.

(d) Applications for preliminary determinations for individual listing must show how the building individually meets the National Register Criteria for Evaluation. An application for a building located in a potential historic district must document how the district meets

the criteria and how the building contributes to the significance of that district. An application for a preliminary determination for a building in a registered historic district which is outside the period or area of significance in the district documentation on file with the NPS must document and justify the expanded significance of the district and how the building contributes to the significance of the district or document the individual significance of the building. Applications must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR Part 60 and "How to Complete National Register Forms." Applications must also include written assurance from the State that the district nomination is being revised to expand its significance or, for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand its significance. Owners should understand that confirmation of intent to nominate by a State does not constitute listing in the National Register, nor does it constitute a certification of significance as required by law for Federal tax incentives. Owners should further understand that they are proceeding at their own risk. In the event that: (1) the building or district is not listed in the National Register for procedural, substantive or other reasons, (2) district documentation is not formally amended, or (3) the significance of the building has been lost as a result of alterations, final certifications will not be issued. The SHPO for National Register districts and the duly authorized representative for certified districts must submit documentation and have it approved by the NPS to amend the National Register nomination or certified district before the preliminary certification can become final.

(e) For purposes of the 15 and 20 percent tax credits under the Economic Recovery Tax Act of 1981, buildings within registered historic districts are presumed to contribute to the significance of such districts unless certified as non-significant by the Secretary. Owners of non-historic buildings within registered historic districts, therefore, must obtain certification of non-significance in order to qualify for either the 15 percent (buildings 30–39 years old) or the 20 percent (buildings 40 years or older) investment tax credit. If an owner begins or completes demolition or substantial alteration (within the meaning of Section 167(n) of the Internal Revenue Code) of a building in a registered historic district without knowledge of requirements for certification of non-significance, he or she may request certification that the building was not of historic significance to the district prior to substantial alteration or demolition in the same manner as stated in (c). The owner should be aware, however, of the requirements under section 701(f)(2)(B)(iii) and 701(f)(5)(b) of the Revenue Act of 1978 and section 212(b) of the Economic Recovery Tax Act of 1981 that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such demolition or substantial alteration, he or she in good faith was not aware of the certification requirement by the Secretary of the Interior.

(f) If an owner wishes to obtain certification of a building which has been moved (or is proposed to be moved) into a registered historic district or which is within a registered historic district and which has been moved (or will be moved) elsewhere in the district, he must complete Part 1 of the Historic Preservation Certification Application and should submit additional documentation which demonstrates:

(1) The effect of the move on the building's appearance (and proposed demolition, proposed changes in foundations, etc.);

(2) The new setting and general environment of the proposed site;

(3) The effect of the move on the distinctive historical and visual character of the district;

(4) The method to be used for moving the building.

Photographs showing the proposed location must be sent with the documentation. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(g) Buildings within registered historic districts will be evaluated to determine if they contribute to the significance of the district by application of the Secretary's "Standards for Evaluating Significance within Registered Historic Districts" as set forth in § 67.5.

(h) Once the significance of a building located within a registered historic district or a potential historic district has been determined by the Secretary, written notification will be sent to the owner and the State official in the form of a certification of significance or non-significance.

§ 67.5 Standards for evaluating significance within registered historic districts.

(a) Buildings located within registered historic districts are reviewed by the Secretary to determine if they contribute to the significance of the district by applying the following "Standards for Evaluating Significance within Registered Historic Districts."

(1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(b) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of non-significance for loss of integrity. In certain cases it may be necessary for the owner to submit a structural engineer's report to help substantiate physical deterioration and/or structural damage.

(c) Certifications of significance and non-significance must be consistent with documentation on official file for registered historic districts and individually listed properties. In the event that a certification request is received for a building which is outside a district's established period or area of significance, a preliminary determination of significance will only be issued if the request includes adequate documentation to support the revision and if there is written assurance from the State that the district nomination in question is being revised to expand its significance or for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand the significance. Final certifications will be issued when the district documentation is officially amended unless the significance of the

building has been lost as a result of alterations. For procedures on amending listings to the National Register, consult the appropriate SHPO or NPS regional office.

(d) Where rehabilitation credits are sought, certifications of significance will be made on the appearance and condition of the building before rehabilitation was begun.

(e) In cases where a nonhistoric surface material obscures a facade so that it is impossible to discern whether the building contributes to the significance of the historic district, it may be necessary for the owner to remove a portion of the surface material prior to requesting certification so that a determination of significance can be made.

(f) Additional guidance on certifications of historic significance is available from State officials and NPS regional offices.

§ 67.6 Certifications of rehabilitation.

(a) Owners wanting rehabilitation projects for certified historic structures to be certified by the Secretary as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as "certified rehabilitations," shall comply with the procedures listed below. A fee, as described in § 67.12, for reviewing all proposed, ongoing or completed rehabilitation work is charged by the Secretary. Final action will not be taken on any application until the appropriate remittance is received.

(1) To initiate review of a rehabilitation project for certification purposes, an owner must complete Part 2 of the Historic Preservation Certification Application according to instructions accompanying the application. These instructions explain in detail the documentation required for certification of a rehabilitation project. The application may describe a proposed rehabilitation project, a project in progress, or a completed project. In all cases, documentation, including photographs adequate to document the appearance of the building(s) prior to rehabilitation, both on the exterior and on the interior, must accompany the application as well as the social security or taxpayer identification number(s) of the owner(s). Other documentation may be required by reviewing officials to evaluate certain rehabilitation projects. Plans for any attached or adjacent new construction also must accompany the application. Where such documentation is not provided, review and evaluation may not be completed. Owners are encouraged to submit Part 2 of the application prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior approval from the Secretary do so at their own risk.

(2) If requesting certification of a completed rehabilitation project, the owner shall also provide the project completion date and a signed statement indicating that, in the owner's opinion, the completed rehabilitation project meets the Secretary's "Standards for Rehabilitation" and is consistent with the work described in Part 2 of the Historic Preservation Certification Application. Also required in requesting certification of a completed rehabilitation project are: costs attributed to the rehabilitation and photographs adequate to document the completed rehabilitation. A determination that the completed rehabilitation of a building not yet designated a certified historic structure meets the Secretary's "Standards for Rehabilitation" does not constitute a certification of rehabilitation.

(b) A rehabilitation project for certification purposes encompasses all work on the significant interior and exterior features of the certified historic structure(s) and its setting and environment, as determined by the Secretary, and, related demolition, construction or rehabilitation work which may affect the historic qualities, integrity or setting of the certified historic structure(s). More specific considerations in this regard are as follows:

(1) All elements of the rehabilitation project must meet the Secretary's ten "Standards for Rehabilitation" (§ 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted. In general, an owner undertaking a rehabilitation project will not be held responsible for rehabilitation work undertaken by previous owners or third parties. However, if the Secretary considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project undertaken by the owner, or beneficial owner, the Secretary may choose to deny a rehabilitation certification or to withhold a decision on such a certification until such time as the Internal Revenue Service, through a private letter ruling, has determined, pursuant to these regulations and applicable provisions of the Internal Revenue Code and income tax regulations, the proper scope of the rehabilitation project to be reviewed by the Secretary. Factors to be taken into account by the Secretary and the Internal Revenue Service in this regard include, but are not limited to, the facts and circumstances of each application and (i) whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certificaiton is sought, and (ii) whether property conveyances, reconfigurations, ostensible ownership transfers or other transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the Secretary without substantially altering beneficial ownership or control of the property. The fact that a building may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction or demolition work does not preclude the Secretary or the Internal Revenue Service from determining that such inappropriate work is part of the rehabilitation project to be reviewed by the Secretary.

(2) Conformance to the Standards will be determined by evaluating the building as it existed prior to the commencement of the rehabilitation project, regardless of when the building becomes or became a certified historic structure.

(3) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or an industrial plant, rehabilitation certification will be issued on the merits of the overall project rather than on individual components.

(4) In situations involving rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project both as it affects the certified historic structure and its district and make a certification decision accordingly.

(5) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion, but there is or was a larger related rehabilitation project(s) occurring with respect to the certified historic structure, the Secretary's decision on the requested certification will be based on review of the overall rehabilitation project(s) for the certified historic structure.

(c) Upon receipt of the complete application describing the rehabilitation project, the Secretary shall determine if the project is consistent with the

"Standards for Rehabilitation." If the project does not meet the "Standards for Rehabilitation," the owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such standards. For additional procedures regarding rehabilitation projects determined not to meet the "Standards for Rehabilitation," see § 67.6(f).

(d) Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application shall be promptly brought to the attention of the Secretary by written statement, with a copy to the appropriate State official, to ensure continued conformance to the Standards; such changes should be made using a Historic Preservation Certification Application Continuation Sheet. The Secretary will notify the owner and the State official in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by an authorized representative of the Secretary to determine if the work meets the "Standards for Rehabilitation." The Secretary reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as presented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook unapproved further alterations as part of the rehabilitation project inconsistent with the Secretary's "Standards for Rehabilitation." The tax consequences of a revocation of certification will be determined by the Secretary of the Treasury.

(f) In the event that a proposed, ongoing, or completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter will be sent to the owner with a copy to the State official. A rehabilitated building not in conformance with the "Standards for Rehabilitation" and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the National Register in accord with Department of the Interior regulations 36 CFR Part 60. Similarly, if a building has lost those qualities which caused it to be designated a certified historic structure, it will be certified as non-contributing (see §§ 67.4 and 67.5). In either case, the delisting or certification of non-significance is considered effective as of the date of issue and is not considered to be retroactive. In these situations, the Internal Revenue Service will be notified of the substantial alteration. The tax consequences of a denial of certification will be determined by the Secretary of the Treasury.

§ 67.7 Standards for rehabilitation.

(a) The following "Standards for Rehabilitation," a section of the Secretary's "Standard for Historic Preservation Projects" (see 36 CFR Part 68), are the guidelines used to determine if a rehabilitation project of a certified historic structure qualifies as a certified rehabilitation. The Standards shall be applied taking into consideration the economic and technical feasibility of each project; in the final analysis, however, to be certified, the rehabilitation project must be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

(1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

(2) The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

(3) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

(6) Deteriorated architecture features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.

(9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

(10) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(b) Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repointing techniques and improper exterior masonry cleaning methods; and the introduction of insulation into cavity walls of historic woodframe buildings where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in certification denial. Similarly, exterior additions that duplicate the form, material, style and detailing of the structure to the extent that they compromise the historic character of the structure will result in certification denial. For specific information on appropriate and inappropriate rehabilitation treatments, owners should consult the "Preservation Briefs" series published by the National Park Service. Additional guidelines and other technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's "Standards for Rehabilitation" are available from the appropriate SHPO or NPS regional office.

(c) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme interventions as part of a certified rehabilitation if (1) the necessity for dismantling is justified in supporting documentation; (2) significant architectural features and overall design are retained; and (3) adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. Substantial alterations undertaken between June 30, 1976, and December 31, 1981, may be subject to the provisions of section 167(n) of the Internal Revenue Code. The Economic Recovery Tax Act of 1981 requires that 75 percent or more of the existing external walls remain as external walls in the rehabilitation process to qualify for the investment tax credit.

(d) Prior approval of a project by Federal, State and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the building and/or the district in which it is located.

§ 67.8 Certification of statutes.

(a) State or local statutes which will be certified by the Secretary. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any by-laws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district. To be certified by the Secretary, the statute generally must provide for a duly designaged review body, such as a review board or commission, with power to review proposed alterations to structures of historic significance within the boundaries of the district or districts designated under the statute except those owned by the State.

(b) When the certification of State statutes will have an impact on districts in specific localities, the Secretary encourages State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute.

(c) State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purpose of the State law. Adequate State statutes which designate specific historic districts and do not require specific implementing local statutes will be certified. If the State enabling legislation contains provisions which do not meet the intent of the law, local statutes designated under the authority of the enabling legislation will not be certified. When State enabling legislation exists, it must be certified before any local statutes enacted under its authority can be certified.

(d) *Who may apply.* Requests for certification of State of local statutes may be made only by the Chief Elected Official of the government which enacted the statute or his or her duly authorized representative. The applicant shall certify in writing that he or she is authorized by the appropriate State of local governing body to apply for certification.

(e) *Statute certification process.* Requests for certification of State of local statutes shall be made as follows:

(1) The request shall be made in writing from the duly authorized representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification of significance in a district unless another responsible person is indicated including his or her address and telephone number. The request shall also include a copy of the statute(s) for which certification is requested, including any bylaws or ordinances that contain information necessary for the certification of the statute. Local governments shall also submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(2) The address to which requests should be sent may be obtained by contacting the appropriate NPS regional office or State official. These requests shall be sent to the appropriate State official in participating States. Requests from owners in non-participating States should be sent to the appropriate NPS regional office.

(3) The Secretary shall review the statute(s) and assess whether the statute(s) and any bylaws or ordinances that contain information necessary for the certification of the statute contain criteria which will substantially achieve the purposes of preserving and rehabilitating building of historic significance to the district(s) based upon the standards set out above in § 67.8(a). The State shall be given a 30-day opportunity to comment upon the request. State comments received within this time period will be considered by the Secretary in the review process. If the statute(s) contain such provisions and if this and other provisions in the statute will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the Secretary will certify the statute(s).

(4) The Secretary shall provide written notification within 60 days to the duly authorized representative and the State official when certification of the statute is given or denied. If certification is denied, the notification will provide an explanation of the reason(s) for such denial.

(f) Amendment or Repeal of statute(s). State or local governments, as appropriate, must notify the Secretary in the event that certified statutes are repealed, whereupon the certification of the statute (and any districts designated thereunder) will be withdrawn by the Secretary. If a certified statute is amended, the duly authorized representative shall submit the amendment(s) to the Secretary, with a copy to the State, for review in accordance with procedures outlined above. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative and the State official within 60 days of receipt.

(g) The Secretary may withdraw certification of a statute (and any districts designated thereunder) on his own initiative if it is repealed or amended to be inconsistent with certification requirements after providing the duly authorized representative and the State official 30 days in which to comment prior to the withdrawal of certification.

§ 67.9 Certifications of State or local historic districts.

(a) The particular State or local historic district must also be certified by the Secretary as substantially meeting National Register criteria, thereby qualifying it as a "registered historic district," before the Secretary will process requests for certification of individual buildings within a district or districts established under a certified statute.

(b) The provisions described herein will not apply to buildings within a State or local district until the district has been certified, even if the statute creating the district has been certified by the Secretary.

(c) The Secretary considers the duly authorized representative requesting certification of a statute to be the official responsible for submitting district documentation for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address and telephone number. The Secretary considers the authorizing statement of the duly authorized representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated.

(d) The address to which requests should be sent may be obtained by contacting the appropriate NPS regional office or State official. These requests shall be sent to the appropriate State official in participating States. Requests from duly authorized representatives in non-participating States should be sent to the appropriate NPS regional office. The State shall be given a 30 day opportunity to comment upon an adequately documented request. State comments received within this time period will be considered by the Secretary in the review process. Each request should include the following documentation:

(1) A concise description of the general physical or historical qualities which make this a district; an explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of buildings in the district.

(2) A concise statment of why the district has significance and why it substantially meets National Register criteria for listing (see 36 CFR 60); the relevant criteria should be identified (A, B, C, or D).

(3) A definition of what types of buildings do not contribute to the significance of the district as well as an estimate of the percentage of buildings within the district that do not contribute to its significance.

(4) A map showing all district buildings with, if possible, identification of contributing and non-contributing buildings; the map should clearly show the district's boundaries.

(5) Photographs of typical areas in the district as well as major types of contributing and non-contributing buildings (all photos should be keyed to the map).

(e) Districts designated by certified State or local statutes shall be evaluated using the National Register criteria (36 CFR 60) within 60 days of the receipt of the required documentation. Written notification of the Secretary's decision will be sent to the duly authorized representative or to the person designated as responsible for the district documentation.

(f) Certification of statutes and districts does not constitute certification of significance of individual buildings within the district or of rehabilitation projects by the Secretary.

(g) Districts certified by the Secretary as substantially meeting the requirements for listing will be determined eligible for listing in the National Register at the time of certification and will be published as such in the Federal Register.

(h) Documentation on additional districts designated under a State or local statute that has been certified by the Secretary should be submitted to the Secretary for certification following the same procedure and including the same information outlined in the section above.

(i) State or local governments, as appropriate, shall notify the Secretary if a certified district designation is amended (including boundary changes) or repealed. If a certified district designation is amended, the duly authorized representative shall submit documentation describing the change(s) and, if the district has been increased in size, information on the new areas as outlined in § 67.9. A revised statement of significance for the district as a whole shall also be included to reflect any changes in overall significance as a result of the addition or deletion of areas. Review procedures shall follow those outlined in § 67.9 (d) and (e). The Secretary will withdraw certification of repealed or inappropriately amended certified district designations, thereby disqualifying them as registered historic districts.

(j) The Secretary may withdraw certification of a district on his own initiative if it ceases to meet the National Register Criteria for Evaluation after providing the duly authorized representative and the State official 30 days in which to comment prior to withdrawal of certification.

(k) The Secretary urges State and local review boards or commissions to become familiar with the standards used by the Secretary of the Interior for certifying the rehabilitation of historic buildings and to consider their adoption for local design review.

§ 67.10 Appeals.

(a) An appeal by the owner or duly authorized representative as appropriate may be made from any of the certifications or denials of certification made pursuant to this part or any decisions made pursuant to § 67.6(e). Such appeals must be in writing and received by the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal. The State official will be notified that an appeal is pending. The Chief Appeals Officer will review such appeals and the written record of the decision in question, and shall notify the appellant of his decision within 30 days of its receipt if circumstances permit.

(b) The denial of a preliminary determination of significance for an individual building may not be appealed by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR Part 60). Similarly, the denial of preliminary certification for a rehabilitation project for a building that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. Administrative reviews in these circumstances may be performed at the discretion of the Chief Appeals Officer. The decision to undertake an administrative review will be made on a case-by-case basis, depending on particular facts and circumstances and the Chief Appeals Officer's schedule, the expected date for nomination, and the nature of the rehabilitation project (proposed, ongoing or completed). Administrative reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the building in the National Register.

(c) In such appeals or administrative reviews: (1) The Chief Appeals Officer shall consider: (i) alleged errors in professional judgment; (ii) alleged prejudicial procedural errors; and (iii) any additional information provided. (2) The Chief Appeals Officer's decision may: (i) reverse the appealed decision; (ii) affirm the appealed decision, (iii) resubmit the matter to the appropriate Regional Director for further consideration; or (iv) where appropriate, withhold a decision until issuance of a ruling from the Internal Revenue Service

pursuant to Section 67.6(b)(1). The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the guidelines set forth herein or prejudicial procedural error legally compels issuance of the request certification.

(d) The decision of the Chief Appeals Officer shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Chief Appeals Officer has issued a final administrative decision pursuant to this section.

§ 67.11 Expedited review system for qualified States.

(a) Expedited review of certification requests is an objective of the Secretary. Qualified States wishing to participate in the review and processing of Part 1 and Part 2 certification requests can greatly assist in expediting the process. The procedures detailed below will eliminate duplication of effort and enable qualified States to assume greater responsibility for making certification recommendations. The procedures will enable the Secretary to make certification decisions in 15 days, shortening the total review time for applications from 60 to 45 days. This system does not apply to the review of State or local statutes or districts.

(b) States wishing to obtain "qualified State" status will be evaluated by the Secretary prior to receiving such status to ensure that:

(1) Each certification request, for evaluations of significance and rehabilitation, is reviewed by professionally qualified staff in accordance with procedures set forth herein.

(2) The State is able to document that it has reviewed, and is reviewing, certification requests and has made, and is making certification recommendations consistent with established standards, within the specified 30-day time frame, and other guidelines established by the Secretary.

Guidelines for evaluating whether or not a State is qualified shall be established by the Secretary.

(c) A request for "qualified State" status may be made in writing at any time by the State official to the appropriate National Park Service regional office. The Secretary shall evaluate each request and notify the State in writing of his determination.

(d) The performance of a qualified State in administering the certification program shall be reviewed on an ongoing basis. "Qualified" status, however, may be revoked at any time, with 30 days notice, if it is determined by the Secretary that the State is not meeting the guidelines for qualified State status.

(e) All certification requests from qualified States will generally be processed within 15 days by the Secretary. These time frames, however, are not binding upon the Secretary.

(f) Qualified States are encouraged to provide local governments certified in accordance with the National Historic Preservation Act and Department of the Interior guidelines an opportunity to participate in the certification program, within the time periods established in § 67.3.

(g) States not wishing "qualified State" status may continue to comment on any or all certification requests within their jurisdiction, as described in § 67.1(c).

§ 67.12 Fees for processing rehabilitation certification requests.

(a) Fees are charged for reviewing rehabilitation certification requests in accordance with the schedule below. The fee schedule described in this part shall apply to all requests for certification of rehabilitation received by the State official or the NPS regional office after the effective date of this regulation.

(b) Payment shall not be made until requested by the NPS Regional Office according to instructions accompanying the Historic Preservation Certification Application. All checks shall be made payable to: NATIONAL PARK SERVICE. Final action will not be taken on an application until the appropriate remittance is received. Fees are nonrefundable.

(c) The fee for review of proposed or ongoing rehabilitation projects for projects over $20,000 is $250. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, as follows:

Fee	Size of rehabilitation
$500	$20,000 to $99,999.
$800	$100,000 to $499,999.
$1,500	$500,000 to $999,999.
$2,500	$1,000,000 or more.

If review of a proposed or ongoing rehabilitation project had been undertaken by the Secretary prior to submission of a Request for Certification of Completed Work, the initial fee of $250 will be deducted from these fees. No fee will be charged for rehabilitations under $20,000.

(d) In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

(1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, the fee for preliminary review is $250 and the fee for final review is computed on the basis of the total rehabilitation costs.

(2) In the case of multiple building projects which are under the same ownership; are located in the same historic district; are adjacent or contiguous; are of the same architectural type (e.g., rowhouses, loft buildings, etc.), and are submitted for review at the same time, the maximum total fee is $2,500. In this situation, the fee for preliminary review is $250 per building to a maximum of $2,500 and the fee for final review is computed on the basis of the total rehabilitation costs of the entire multiple building project to a maximum of $2,500. If the $2,500 maximum fee was paid at the time of review of the proposed or ongoing rehabilitation project, no further fee will be charged for a Request for Certification of Completed Work.

[FR Doc. 84-6452 Filed 3-11-84; 8:45 am]

BILLING CODE 4310-70-M

federal register

Monday
March 12, 1984

Part III

Department of Education

34 CFR Parts 350, 351, 352, 353, 354, 355, and 357

Handicapped Research Programs; Evaluation of Applications for Financial Assistance; Final Rule

Handicapped Research Funding Priorities and Transmittal of Applications; Notices

DEPARTMENT OF EDUCATION

34 CFR Parts 350, 351, 352, 353, 354, 355, and 357

National Institute of Handicapped Research; Research Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adopts final regulations governing some programs of the National Institute of Handicapped Research (NIHR).

These amendments revise the criteria for the evaluation of applications for financial assistance and assign new weights to those criteria and also establish regulations for a program of Field-Initiated Research. These amendments improve and clarify existing regulations by detailing the component elements in each evaluation criterion, by placing greater emphasis on critical factors of project design and key personnel, and by applying the same criteria to all research grant programs funded by NIHR.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, SW., Room 3070, Switzer Building, Washington, D.C. 20202, Telephone (202) 732–1139. For general information on the research programs of the National Institute of Handicapped Research contact the Director of the Institute at the following address: Director, National Institute of Handicapped Research, 400 Maryland Avenue, SW., Room 3068, Switzer Office Building, Washington, D.C. 20202, Telephone (202) 732–1139 or TTY (202) 732–1198.

SUPPLEMENTARY INFORMATION: On October 6, 1983 the Secretary published a Notice of Proposed Rulemaking in the **Federal Register** (48 FR 45568) covering the grant selection criteria of the National Institute of Handicapped Research.

On September 10, 1981, NIHR published final regulations governing all of its programs. After two years of experience with reviewing grant applications, and on the basis of advice from peer reviewers and applicants, NIHR concluded that the evaluation criteria were unclear and did not give appropriate weight to the various criteria which NIHR believes are key to conducting successful research.

These amendments also establish a program of Field Initiated Research whereby NIHR will encourage potential investigators to generate research ideas based on needs and opportunities as perceived in the field.

This new program provides NIHR with a mechanism to fund proposals from the field which fall within the broad scope of statutorily authorized research activities but outside established funding priorities, and which give evidence of high quality, timeliness, and relevance to the problems of disabled individuals.

The Department received comments from the public on the proposed amendments to the regulations. A discussion of those comments, and the Department's responses to them, are attached as Appendix A to this document. The basic change in the amendments as originally proposed is the application of the same weights to the evaluation criteria for all research programs, including Field-Initiated Research (34 CFR Part 357).

Applicability of These Final Regulations

These regulations, including selection criteria, will apply to all grant awards made in Fiscal Year 1984 and succeeding years.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations are more flexible and less prescriptive than the existing regulations and it is expected that more small entities will apply to participate in the program.

List of Subjects

34 CFR Part 350

Administrative practice and procedure; Education, Educational research, Grant programs—education, Handicapped.

34 CFR Part 351

Education, Educational research, Grant programs—education, Handicapped, Intergovernmental relations, Vocational rehabilitation.

34 CFR Part 352

Education, Educational research, Grant programs—education, Handicapped, Manpower training programs, Vocational rehabilitation.

34 CFR Part 353

Education, Educational research, Grant programs—education, Handicapped, Intergovernmental relations, Rehabilitation engineering research, Technical assistance, Vocational rehabilitation.

34 CFR Part 354

Education, Educational research, Grant programs—education, Handicapped, Vocational rehabilitation.

34 CFR Part 355

Education, Education of handicapped, Grant programs—education.

34 CFR Part 357

Education, Educational research, Fellowships.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking published in the **Federal Register** on October 6, 1983, the Department requested comments on whether the proposed regulations required information that is already being gathered or is available from any other agency or authority of the United States. Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority appears in parentheses on the line following each section of these regulations.

Dated: March 5, 1984.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute of Handicapped Research)

The Secretary amends Title 34 of the Code of Federal Regulations by amending Parts 350, 351, 352, 353, 354, and 355 and adding a new Part 357 as follows:

PART 350—HANDICAPPED RESEARCH: GENERAL PROVISIONS

1. Section 350.1 is amended by revising paragraph (b) to read as follows:

§ 350.1 Handicapped research.

* * * * *

(b) The Secretary awards financial assistance through seven types of programs:

(1) Research and demonstration projects (34 CFR Part 351);

(2) Research grants for establishment and operation of rehabilitation research and training centers (34 CFR Part 352);

(3) Research grants for establishment and operation rehabilitation engineering centers (34 CFR Part 353);

(4) Research grants for establishment and operation of model training centers (34 CFR Part 354);

(5) Knowledge dissemination and research utilization projects (34 CFR Part 355);

(6) Research fellowships (34 CFR Part 356); and

(7) Field-initiated research projects (34 CFR Part 357).

(Secs. 200 and 204 (29 U.S.C. 760 and 762))

2. Section 350.3 is amended by revising paragraph (c) to read as follows:

§ 350.3 What regulations apply to these programs?

* * * * *

(c) The regulations in 34 CFR Parts 351, 352, 353, 354, 355, or 357, as appropriate; and

* * * * *

§ 350.4 [Amended]

3. Section 350.4(b) is amended by removing the definition of "Core area."

4. Section 350.20 is revised to read as follows:

§ 350.20 What are the application procedures for these programs?

An applicant for assistance under 34 CFR Parts 351, 352, 353, 354, 355, or 357 shall submit a copy of the application to the State rehabilitation agency for comment in accordance with the procedures in EDGAR 34 CFR 75.155–75.159.

(Secs. 204(c), 306(i); (29 U.S.C. 762(c), 766(a))

5. Section 350.30 is revised as follows:

§ 350.30 To whom does the Secretary refer an application?

The Secretary refers each application for a grant under the Handicapped Research Programs to a peer review panel established by the Secretary. Peer review panels review applications for the Secretary on the basis of selection criteria described in § 350.34.

(Sec. 202(e) (29 U.S.C. 761(a)(e))

6. Section 350.33 is revised as follows:

§ 350.33 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under 34 CFR Parts 351, 352, 353, 354, 355, or 357 on the basis of the selection criteria in § 350.34.

(b) Each criterion applies to all types of NIHR-supported Centers and projects; the elements within each criterion also apply to all types of activities within such Centers and projects unless the regulations specifically state that their application is limited to certain types of activities.

(c) The Secretary awards up to 5 possible points for each criterion to applications under 34 CFR Parts 351, 352, 353, 354, 355, or 357. These points are awarded as follows based on how well the applicant addresses each criterion: Outstanding (5); superior (4); satisfactory (3); marginal (2); or poor (1).

(d) The Secretary computes a final score by multiplying the points awarded on each criterion by the weight assigned each criterion as indicated in parentheses after the descriptive title of the criterion.

(e) The maximum possible score for applications under 34 CFR Part 351, 352, 353, 354, 355, or 357 is 100 points.

(Sec. 202(e); (29 U.S.C. 761a(e))

7. Section 350.34 is revised to read as follows:

§ 350.34 What selection criteria does the Secretary use in reviewing grant applications?

(a) *Potential Impact of Outcomes: Importance of Program* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority (does not apply to applications under 34 CFR Part 357);

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adquate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

PART 351—HANDICAPPED RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

8. Section 351.31 is revised to read as follows:

§ 351.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

PART 352—HANDICAPPED RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

9. Section 352.31 is revised to read as follows:

§ 352.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

PART 353—HANDICAPPED RESEARCH: REHABILITATION ENGINEERING PROGRAM

10. Section 353.31 is revised to read as follows:

§ 353.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

PART 354—HANDICAPPED RESEARCH: MODEL RESEARCH AND TRAINING PROGRAM

11.Section 354.31 is revised to read as follows:

§ 354.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761(i)(1)))

PART 355—HANDICAPPED RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION

12. Section 355.31 is revised to read as follows:

§ 355.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761(i)(1)))

13. The Secretary adds a new Part 357 to Title 34 of the Code of Federal Regulations as follows:

PART 357—HANDICAPPED RESEARCH: FIELD-INITIATED RESEARCH PROJECTS

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

Authority: Title II of the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended by Pub. L. 95–602 (29 U.S.C 760–762; 92 Stat. 2962–2966), unless otherwise noted.

Subpart A—General

§ 357.1 What is the field-initiated research projects program?

This program is designed—

(a) To encourage eligible parties to originate valuable ideas for research projects to further the purposes specified in 34 CFR 351.1;

(b) To support research projects which address important activities not contained within announced NIHR priorities; and

(c) To support research projects which address an NIHR priority in a more

promising way than already planned work.

(Secs. 200(1); 202(i)(1); 204; (29 U.S.C. 760(1), 761a(i)(1), 762))

§ 357.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Sec. 204; (29 U.S.C. 762))

§ 357.3. What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Secs. 202 and 204; 29 U.S.C 761a, 762)

§ 357.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Sec. 202(i) (1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 357.10 What types of projects are authorized under this program?

The Field-Initiated Research Projects program provides financial assistance for the types of projects authorized under 34 CFR 351.10 (Research and Demonstration Projects Program).

(Secs. 202(i)(1), 204(a), 204(b)(3–5), 204(b)(7–9), 204(b)(11); 29 U.S.C. 761a(i) (1); 762(a), 762(b)(3–5), 762(b)(7–9), 762(b)(11))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 357.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Sec. 202(e); (29 U.S.C 761a(e)))

§ 357.31 How does the Secretary evaluate an application under this program?

The Secretary evaluates an application under this program for scientific merit on the basis of the selection criteria in § 357.32, and according to the procedures in § 350.33.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1))) (OMB # 1820–0027; expires 11/84)

§ 357.32 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

§ 357.33 What are the priorities for funding under this program?

(a) The Secretary reserves funds to support some or all of the proposals which have been awarded a rating of 80 points or more under the procedures described in § 357.31.

(b) In making a final selection of proposals to support under this program, the Secretary will consider the extent to which proposals that have been awarded a rating of 80 points or more meet one or more of the following conditions:

(1) The proposal represents a unique opportunity to conduct research which has the potential for effecting a major advancement in knowledge;

(2) the proposal addresses an important research problem in a singular or innovative way;

(3) the proposal complements already planned research and will increase the potential value of that research in a significant way.

(Secs. 202(g) and 202(i)(1); (29 U.S.C. 761a(g) and 761a(i)(1))

Appendix A—Analysis of Public Comments and Changes in the Final Regulations

Note.—This appendix will not appear in the Code of Federal Regulations.

The following is a summary of public comments concerning the National Institute of Handicapped Research (NIHR) Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on October 6, 1983 (48 FR 45568).

This summary is divided into two sections; one parallels the order of the evaluation criteria on which comments were received; the second section discusses comments on issues other than the evaluation criteria.

Evaluation Criteria

Section 350.20

Comment: Some respondents stated that it would be inappropriate to have all applications, especially those for field-initiated research, submitted to the State rehabilitation agency for comment because many will deal with subjects pertinent to NIHR but of no particular interest to State agencies.

Response: No change has been made. The statute requires that State rehabilitation agencies must be provided the opportunity to comment on applications for financial assistance awarded by NIHR. (Sections 204(c) and 306(i) of the Rehabilitation Act of 1973, as amended). Potential applicants should submit copies of grant applications to the appropriate State Vocational Rehabilitation agency simultaneously with submission to NIHR. State agency approval is not required; the only requirement is that these agencies be provided an opportunity to comment.

Section 350.33

Comment: Some commenters thought it should be made clear whether all criteria apply to all programs unless explicitly stated otherwise.

Response: A change has been made. Section 350.33 now states explicitly that the criteria and component elements apply to all research grant programs and all activities conducted under those programs unless stated otherwise.

Section 350.34

Comment: Several commenters stated the opinion that the soundness of the hypothesis (paragraph (2) under § 350.34(a)) is an element of project design rather than a measure of program importance.

Response: A change has been made. The factor rating soundness of hypothesis has been shifted to an element in project design (now paragraph (2) under § 350.34(c)).

Comment: Some commenters stated that adequate definition of "need" and "target population" and likelihood of benefiting the target population (paragraphs (4) and (5) under §350.34(a)) should apply to research activities as well as to demonstration and utilization activities.

Response: A change has been made. In § 350.34(a), these two elements (paragraphs (3) and (4)) now apply to all programs.

Comment: One commenter stated that the elements of each criterion should be described in greater detail.

Response: No change has been made. While this might be desirable, the difficulties of specifying more detailed elements, and the added paperwork involved, would more than offset any benefit. The Secretary believes that there will be a general consensus on the meaning of these elements among qualified peer reviewers.

Comment: Two commenters stated that the requirement that devices or model systems be "developed in a relevant environment" (paragraph (7) under § 350.34(c)) should apply to research activities as well.

Response: A change has been made. This element now applies to all programs and is now stated as "an appropriate environment." (§ 350.34(c)(8))

Comment: Several commenters suggested that the "means to disseminate and promote utilization by

others" should apply to research activities as well. (§ 350.34(b)(2))

Response: A change has been made. This element now applies to all activities.

Comment: A number of commenters stated that the Evaluation Plan should be weighted more heavily relative to other criteria.

Response: No change has been made. While the Secretary agrees that this is an extremely important element of a proposal he does not believe its relative weight should be increased because of the critical importance of other criteria.

Comment: One commenter also suggested that the relative weight assigned to Project Design be increased by 40 percent by devaluating other criteria.

Response: No change has been made. Project Design is presently the most heavily weighted of the criteria, which reflects the belief that it is of primary importance. However, the Secretary believes that "Project Design" is narrowly defined here in terms of a few discrete elements applicable to each type of program. Many of the other criteria and component elements also contribute to the overall project design in a broader sense and they should not be devaluated.

Comment: Several commenters expressed a concern that the weight given to "Key Personnel" would tend to favor well-known researchers over newer or younger investigators and urged that objectivity be communicated to the peer review teams.

Response: A change has been made. The Secretary believes that the elements which comprise this criterion are important and recognize appropriate factors. However, § 350.34(d)(1) has been amended to read "The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity."

Section 352

Comment: One commenter suggested that an additional criterion should be added in evaluating applications for Research and Training Centers (RTC)—that each center should develop a coherent body of knowledge.

Response: No change has been made. The Secretary agrees that RTCs are expected to develop such knowledge in their respective fields, but believes this is best accomplished by assuring that the RTC application is responsive to the priority, and through advisory guidelines to applicants.

Section 357

Comment: Many commenters argued that the purpose of the new criteria would be circumvented by having each criterion equally weighted when applied to field-initiated research. For instance, they pointed out that such an arrangement would give criteria such as "management plan" and "adequacy of resources" equivalent weight with "project design" and other more significant criteria. Commenters suggested that evaluation criteria should be weighted the same for all programs.

Response: A change has been made. The Secretary concurs with this point and the regulations have been modified to weight criteria equally for all programs. Under this system the Secretary will reserve funds in the Field-Initiated Research program for those applications receiving 80 or more points, selected on how well they meet the criteria in § 357.33.

General and Additional Comments

Comment: Several commenters questioned the qualifications for and the method of selecting peer reviewers.

Response: No change has been made. The regulations state only that peer review according to an accepted plan and the standards of EDGAR will be used to evaluate applications. The regulations are not the appropriate medium to detail peer review. However, an annual Technical Review Plan is prepared by NIHR; NIHR has been expanding its Registry of Field Readers; and NIHR welcomes discussion and comments on its peer review process at any time.

Comment: A few commenters stated that peer review ratings should be the only criteria used to determine funding, or that there should be less discretion to deviate from strict reliance on peer review scores.

Response: No change has been made. The Secretary retains the final responsibility for determining the most approporiate award of Departmental resources. The Education Department General Administrative Regulations and the NIHR annual Technical Review Plan stipulate the factors which must be considered in making funding decisions, and stipulate peer review ratings are critical but not sole factors.

Comment: On commenter suggested that NIHR require a concept paper to determine which proposed field-initiated research projects should be developed into full proposals.

Response: No change has been made. Although the Secretary recognizes this method has some merits, the Secretary wants to keep the burden on both applicants and reviewers at a minimum, and to limit the cost of the review process. Thus, applicants will be encouraged to submit brief applications.

Comment: One commenter suggested that NIHR staff screen field-initiated research proposals for soundness of hypothesis and methodology before submitting them to peer review.

Response: No change has been made. The Secretary believes that such judgments should more appropriately be made by peer reviewers. NIHR staff screen applications only to assure that they are complete and, where appropriate, are responsive to the announced funding priorities or other program requirements.

Comment: One commenter suggested that RTCs or Rehabilitation Engineering Centers be permitted to use up to 5% of their budgets for pilot projects consistent with their mission.

Response: No change has been made. Center applicants now have the freedom to propose such projects in areas related to the stated priority or other related priorities.

Comment: A few commenters advised that NIHR should continue its priority-setting process and should not neglect major programmatic thrusts in order to fund field-initiated research.

Response: No change has been made. NIHR will continue its priority-setting process for all of the programs in Parts 351, 352, 353, 354, and 355, and these programs constitute the bulk of NIHR's financial assistance.

Comment: One commenter objected to the use of a single set of criteria, stating that separate criteria should be used for NIHR's different programs.

Response: No change has been made. The Secreatary believes the use of different criteria for each of NIHR's different programs has proved confusing to applicants and peer reviewers and that the new regulations wil be clearer and easier to apply uniformly.

[FR Doc. 84-8442 Filed 3-9-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Final Funding Priorities, FY 1984

AGENCY: Department of Education.

ACTION: Final Funding Priorities for the National Institute of Handicapped Research for Fiscal Year 1984.

SUMMARY: The Secretary announces final priorities for research to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1984. NIHR program regulations authorize the Secretary to establish priorities by reserving funds to support particular research activities. A notice of proposed priorities were published in the **Federal Register** on November 25, 1983. These final priorities inform potential grant applicants and others of the research areas in which NIHR intends to hold grant competitions during fiscal year 1984.

EFFECTIVE DATE: These priorities will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective dates of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732–1139, TTY for Deaf and Hearing Impaired Individuals, (202) 245–0779. NIHR is having a new telephone system installed. If there is no answer on the TTY number, try the new number, (202) 732–1198 for TTY only.

SUPPLEMENTARY INFORMATION: A total of 5 priorities were proposed in the **Federal Register** on November 25, 1983 (48 FR 53152) for public comment.

In that Notice, interested parties were asked to comment on both the merits of the proposed priorities, including suggested modifications to the priorities, and on the program authority considered most appropriate for funding research in each of the priority areas. In that Notice, it was also made clear that the final funding priorities would be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. Five priorities are being announced for funding.

In response to public comment, some changes were made in these priorities; these changes are discussed in detail in the "Summary of Comments and Responses" section of this Notice.

PROGRAM INFORMATION: NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities identified in this Notice cover research and related activities to be conducted through Research and Training Centers and Knowledge Dissemination and Utilization Projects. Following are brief overview descriptions of these programs.

Research and Training Centers (RTCs) conduct coordinated and advanced programs of rehabilitation research, and provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally each Center conducts a program of research, scientific evaluation, and training activities in an area which contributes substantially to the solution of problems in that area, advances the state-of-the-art, and becomes a recognized Center of excellence in a given subject area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, and continuing education.

Knowledge Dissemination and Utilization Projects are supported to insure that rehabilitation knowledge generated from projects and Centers funded by NIHR and other sources is fully utilized to improve the lives of handicapped persons.

The following priorities are grouped by research program. Following each identified research area is a brief statement of national need and a description of the specific research activities that must be conducted.

Funding Priorities: The Secretary announces that the following research areas are funding priorities for NIHR for fiscal year 1984:

Funding Priorities for Research and Training Centers

Research and Training Centers will be funded for periods up to 60 months.

• Improved Rehabilitation of Psychiatrically Disabled Individuals.

There are approximately 2,000,000 severely psychiatrically disabled persons living in communities and 900,000 in institutions. Nearly 200,000 severely psychiatrically disabled persons are discharged into the care of their families each year. The rate of recidivism for psychiatric institutions is over 60 percent. Less than 10 percent of this population is employed and the employment prospects for this group are very poor.

There is a major need for additional knowledge and techniques to improve the vocational and independent outcomes for these individuals, and to assist their families to contribute to successful adjustment outcomes. Studies have indicated the relation between vocational/independent living success and the specific skills of the disabled individual. Recent research has revealed a positive impact from the direct teaching of coping and vocational skills.

Community living is further complicated for this group by uncertainties concerning eligibility for SSDI benefits, the criteria for assessing that eligibility, and alternatives for economic security.

A Research and Training Center is proposed which would:

• Identify the client and treatment variables which predict vocational outcomes.

• Design and test rehabilitation intervention strategies and models capable of improving employment outcomes for this population.

• Identify coping strategies for families and design a program to aid families to utilize those strategies. Development of more effective roles for professional staff and lay persons should be part of this program.

• Assess alternative criteria, and implementation measures for those criteria, for determining the eligibility of psychiatrically disabled individuals for income maintenance programs such as SSDI.

• Assess the relationship between employment, income security, and recidivism.

• Assess the residential service needs of the chronically mentally ill for successful reentry into the community, and develop model programs to meet those needs.

• Develop programs to disseminate new knowledge on community support systems and psychosocial rehabilitation services for the chronically mentally ill, and provide for dissemination of those materials, training of community level staff, and provision of technical assistance to community programs.

The Secretary intends to fund at least one RTC in this area, for a period up to 60 months, in an amount up to $700,000.

• Improved Services for Seriously Emotionally Disturbed Children.

Seriously emotionally disturbed children and youth are one of the most underserved disabled populations. No locus of responsibility has been set for the timely delivery of needed services to this group within the community. Identification of this population and assessment of the needs of these youth are likely to be in the context of their conflicts with other service delivery systems such as education or corrections. Thus youth whose behavior is not a problem in these systems are likely to have their serious emotional problems overlooked. Community mental health resources are focused on chronically mentally ill persons, almost by definition adults. Community-based residential care for youth or services to support continued care in the family are lacking.

"The development of mental health resources for children in the United States has not been exemplary. While services for children in the community mental health centers have been mandated, few centers have provided the volume and continuum of programs necessary to meet children's mental health needs. In many centers, identifiable children's programs are not evident; and children and adolescents with serious mental health problems are being inadequately serviced." (Source: Task Panal Reports Submitted to President's Commission on Mental Health, Volume III, 1978.) Thus it is believed that institutionalization in either mental health or correctional settings is likely to be overused for this population.

For that part of the population remaining in school, mandated services provided under Pub. L. 94–142 are likely to be the only available resource. In 1980–81, over 300,000 children aged 3–21 with a primary diagnosis of emotional disturbance were served under Pub. L. 94–142. Of these, less than half were served in regular classes and over 20 percent were served in special schools or in other environments outside the school system.

As the youth age beyond the limits of that law, there is no generally accepted system for delivery of services to meet their needs within the community setting. As reported by the Task Force, "Adolescence is a distinct and extremely vulnerable developmental stage. Yet, in terms of their mental health needs, adolescents are one of the most underserved population groups in the United States. Serious deficiencies exist in most areas, ranging from the availability of services to the state of research . . . The problem is further complicated by a lack of coordination between agencies at Federal, State, and local levels. Communication between welfare agencies, juvenile courts, and schools is frequently lacking, with little or no planning for the young person's immediate and longer term needs." (Source: *Ibid*) The need to plan for the transition of this group out of the educational system and into employment and community living situations is particularly acute.

Again, according to the Task Force, "In the area of applied research, emphasis should be given to evaluating the effectiveness of both traditional and innovative approaches to treatment and combinations of treatment." However, at present not enough is known about the location, characteristics, and unmet needs of this population to plan and implement an adequate treatment and service delivery system.

Thus, a Research and Training Center in this area is proposed which would:

• Analyze existing data on this population, supplemented as necessary, to define the population in terms of: numbers, ages, characteristics, residential status, school status, source of identification as emotionally disturbed, age of onset, point of intake into the service system, types of services received, unmet needs, and other relevant factors.

• Determine any variation in how seriously emotionally disturbed children fare in our system as they age, with particular attention to adolescence and to the time when they are no longer under the aegis of Pub. L. 94–142, with emphasis on vocational programs within special education and the transition to training and employment, including potential for early vocational rehabilitation service intervention.

• Determine what services are received at present from various sources.

• Identify exemplary service delivery models, including information on funding strategies and approaches to achieving linkages and coordinated services among various agencies, and "package" these models for demonstration and implementation.

• Develop new strategies for utilizing treatment modalities and delivering other services for those problems or groups for which suitable prototypes do not exist. Include specific focus on adolescence, school to work transitions, and services which support community living and maintenance of family care.

• Develop protocols and disseminate service models for use in other communities, train service providers, and provide technical assistance on program implementation.

The Secretary intends to fund at least one RTC in this priority area, for a period up to 60 months, in an amount up to $500,000.

Funding Priorities for Knowledge Dissemination and Utilization Projects

• International Research Utilization.

There is a need for the United States and other nations to be aware of advancements in new knowledge and methods for rehabilitation of handicapped individuals. The exchange of experts and the dissemination of knowledge obtained through research and practice in many nations are proven methods of enhancing use of knowledge.

A Utilization and Dissemination Project is proposed which would:

• Compile, produce, and distribute a significant publication covering exemplary programs and research results internationally.

• Compile and maintain a film library of films concerning noteworthy rehabilitation practices and programs, and promote the effective use of that library.

• The Secretary intends to fund at least one project in this priority area, for a period of up to 12 months in an amount up to $175,000.

• International Exchange of Experts and Information.

To enhance the knowledge base of rehabilitation programs in the United States, it is vital to take advantage of whatever is known in other countries around the world. It is important to capitalize on new discoveries.

A Utilization and Dissemination Project is proposed which would:

• Provide opportunities for United States experts to study policies, practices, programs and research results in other nations.

• Provide for the preparation by foreign experts of monographs on rehabilitation research topics.

• The Secretary intends to fund at least one project in this priority area, for a period up to 36 months in an amount up to $250,000.

• Resource Information for the Blind.

Blind persons and their families, as well as rehabilitation professionals working with them, need timely information about currently available, low-cost devices and techniques for use in daily living, vocational, or educational activities.

A Utilization and Dissemination Project is proposed which would:

• Provide information on resources available nationally and internationally and on devices and techniques which have some consumer validation. The materials should be published, should

be disseminated internationally, and should include cost, uses, advantages and disadvantages, evaluation of the device or technique, and availability of resources.

The Secretary intends to fund at least one project in this priority area, for a period up to 36 months in an amount up to $75,000.

Summary of Comments and Responses

On November 25, 1983, the Secretary published these five priorities in proposed form in the **Federal Register** for public comment. The comments on the proposed priorities were generally favorable, and a number of additional priorities were suggested. Some changes were made to two of the priorities as a result of these comments. No additional priorities are being established. Summaries of the comments received and the Secretary's responses to these comments are printed below.

Comment: Five commenters suggested that the priority for rehabilitation of psychiatrically disabled individuals should be deleted in order that various other priority areas could be substituted.

Response: No change has been made. The response to this priority were overwhelmingly favorable. Research is needed to approach severe problems of unemployment and underemployment among persons with psychiatric disabilities. The priority is supported by and will be funded jointly with the National Institute of Mental Health (NIMHJ).

Comment: A number of commenters objected to the priority for research on seriously emotionally disturbed children on the grounds that this priority was not sufficiently oriented to vocational rehabilitation and that such activities could be funded by NIMH or Special Education Programs (SEP).

Response: A change has been made. NIHR will solicit applications for a Research and Training Center (RTC) in the general area of rehabilitation of psychiatrically disturbed children and youth. However, the work of the Center will reflect a greater emphasis on the issues of transition into work for seriously emotionally disturbed youth, including issues of vocational preparation. Under the law, NIHR has both authority and responsibility to fund research related to problems of disability for all age groups and all categories of disability; while there is an emphasis on employment issues, these are by no means the only concern of NIHR. This priority is consistent with important goals of the Office of Special Education and Rehabilitative Services. It should be noted that both NIMH and SEP support NIHR's priority in this area and will continue to consult on future activity in this priority area and that NIMH will provide some of the funding for the proposed Center.

Comment: Some commenters opposed the priority on international research utilization on the grounds that the resources should be allocated to new priority areas more closely related to vocational rehabilitation agency concerns, and some of these argued that the priority should be funded for only one year.

Response: No change has been made in the priority itself. The Secretary believes information developed abroad has been of great value in advancing rehabilitation in the United States. However, the Secretary agrees that this priority should be funded for only one year.

Comment: Many commenters urged that NIHR should have as a priority additional research in problems of deafness, many specifically suggesting a Rehabilitation Engineering Center (REC) in that area.

Response: No change has been made. The Secretary agrees that these are important problems, but must decide on an optimum overall allocation of NIHR's total resources. NIHR is currently funding five Centers and projects dealing exclusively with deafness and hearing disorders. NIHR expects to fund additional research in this area through projects, either in the field-initiated category or through future Research and Demonstration priorities.

Comment: A number of commenters affiliated with State rehabilitation agencies suggested a number of additional priorities which they believed were more pertinent than some of the announced priorities. These commenters often made specific reference to the priorities suggested by the Council of State Administrators of Vocational Rehabilitation (CSAVR).

Response: No change has been made. NIHR's annual priorities are derived from the Long-Range Plan. Many of the topics proposed by CSAVR are important, but the intended scope of the topic is often unclear and relevance to the Plan is also not clear. The Secretary urges CSAVR and others to provide NIHR with more detailed explication of the suggested topics for use in future planning and priority setting. The Secretary also reminds interested parties that NIHR is announcing a Field-Initiated Research Program under which potential investigators could propose research in any of these areas.

Comment: One commenter suggested that the requirement for a definitive epidemiological study of seriously emotionally disturbed children was impractical, and could dilute resources from the service research aspects of the Center.

Response: A change has been made. The priority has been reworded to require the Center to compile useful data at a less costly level.

Comment: Some commenters suggested that research on residential service needs was important to rehabilitation of psychiatrically disabled individuals and also that there was a lag in the transfer of new knowledge into practice in this area, and that the priority should consider these issues.

Response: A change has been made. These concerns have been added to the list of issues with which a Center in this priority area must deal.

Comment: Various commenters suggested that NIHR add or substitute priorities in diverse areas such as: development of standards for rehabilitation personnel dealing with the deaf; brain injury; Native Americans; parent training; and sheltered workshops.

Response: No change has been made. While the Secretary agrees that these are important areas, it is also important to note there is other ongoing work in these areas, and that the allocation of NIHR's 1984 resources must take this into account. For example, NIHR currently funds four RTCs in brain injury rehabilitation; NIHR also funds six projects in family adjustment which, along with components of two other projects, include focus on parents of disabled children; NIHR funds two RTCs on disabled Native Americans; and in Fiscal Year 1983, NIHR added a number of vocationally-oriented centers and projects, including one specifically on sheltered workshops. The Secretary also reminds commenters of the NIHR Field-Initiated Research Program, which allows potential applicants to apply for assistance to conduct Research and Demonstration projects in any area eligible under the law.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: March 5, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-6439 Filed 3-9-84; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Transmittal of Applications for Research and Training Centers and Knowledge Dissemination and Utilization Projects, FY 1984

AGENCY: Department of Education.

ACTION: Application Notice for Transmittal of Applications for Research and Training Centers and Knowledge Dissemination and Utilization Projects for Fiscal Year 1984.

Applications are invited for new Rehabilitation Research and Training Centers and New Knowledge Dissemination and Utilization Projects described below.

Authority for these programs is contained in Sections 204(a), 204(b)(1) and 204(b)(5) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 (29 U.S.C. 761(a), 762(b)(1) and 762(b)(5)).

Closing date for transmittal of applications: Applications for grant awards must be mailed or hand delivered by Apr. 30, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing, consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: NIHR is authorized to support research and related activities under several program authorities. The priorities identified in this Notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers (RTC's) and Knowledge Dissemination and Utilization Projects. A description of the RTC program and the Dissemination and Utilization Projects program is contained in the Notice of Final Funding Priorities for Fiscal Year 1984 published in this issue of the **Federal Register.** Awards are made under these programs to States and public or private agencies and organizations including institutions of higher education.

NIHR is permitted to make awards for periods up to 60 months. It is the intention of NIHR to provide financial assistance to successful applicants through grants or cooperative agreements. If, at the time of the award, NIHR determines that substantial Federal programmatic involvement is warranted, it will negotiate cooperative agreements with the successful applicants.

The purpose of the awards is for planning and conducting research, demonstrations and related activities. These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

Available funds: NIHR expects to fund new Research and Training Centers in each of these priority areas:

- Improved Rehabilitation of Psychiatrically Disabled Individuals.
- Improved Services for Seriously Emotionally Disturbed Children.

NIHR expects to fund new Knowledge Dissemination and Utilization Projects in each of these priority areas:

- International Research Utilization.
- International Exchange of Experts and Information.
- Resource Information for the Blind.

A full description of each priority area is contained in the Notice of Final Funding Priorities for Fiscal Year 1984 which is published in this issue of the **Federal Register.**

The Secretary intends to fund one grant or cooperative agreement in each priority area, assuming satisfactory applications and continued availability of funds. The Secretary has reserved funds in the following amounts for each of these priorities: Improved Rehabilitation of Psychiatrically Disabled Individuals, $700,000, up to 60 months; Improved Services for Seriously Emotionally Disturbed Children, $500,000, up to 60 months; International Research Utilization, $175,000, up to 12 months; International Exchange of Experts and Information, $250,000, up to 36 months; Resource Information for the Blind, $75,000, up to 36 months.

However, this Notice does not bind the U.S. Department of Education to fund Centers or projects in any or all of these areas, or to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Application forms: Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit), Telephone (202) 732–1138. TTY for deaf and hearing impaired (202) 732–1198.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

(OMB #1820–0027; Expires 11/84)

Applicable regulations: Regulations governing these programs include the following:

(a) Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78; and

(b) Applicable NIHR regulations in 34 CFR Parts 350, 352, and 355 as amended in this issue of the **Federal Register.**

Further information: For further information, contact Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, 330 C Street SW., Switzer Building, Room 3070, Washington, D.C. 20202. Telephone: (202) 732–1138, TTY for deaf individuals (202) 732–1198.

(29 U.S.C. 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: March 5, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84-6440 Filed 3-9-84; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Transmittal of Applications for Field—Initiated Research Projects, FY 1984

AGENCY: Department of Education.

ACTION: Application Notice for Transmittal of Applications for Field-Initated Research Projects for Fiscal Year 1984.

Applications are invited for new Field-Initiated Research Projects for Fiscal Year 1984.

Authority for this program is contained in Sections 204(a), 204(b) (3–5), 204(b) (7–9), and 204(b)(11) of the Rehabilitation Act of 1973, as amended by Pub L. 95–602 (29 U.S.C. 762(a), 762(b) (3–5), 726(b) (7–9) and 726(b)(11)).

Closing date for transmittal of applications: Applications for grant awards must be mailed or hand delivered by May 21, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention; 84.133, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing, consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered. Applications received after the closing date also will not be considered in the review of the application.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: The National Institute of Handicapped Research (NIHR) is authorized to support research and related activities under several program authorities.

This notice requests applications under the Field-Initiated Research program, a new program designed to encourage eligible parties to originate valuable ideas for research projects to further the purposes specified in the Act.

The final regulations for this program are published in this issue of the **Federal Register.** Awards are made under this program to State and public or private agencies and organizations including institutions of higher education.

NIHR is permitted to make awards for project periods of up to 60 months. It is the intention of NIHR to provide financial assistance to successful applicants through grants.

The purpose of the awards is for planning and conducting research, demonstrations and related activities. These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

Available funds: NIHR expects to fund approximately 40 grants with an average amount of $75,000 under this program in Fiscal Year 1984, assuming a sufficient number of eligible applications and continued availability of funds.

However, this notice does not bind the U.S. Department of Education to fund projects in any or all of these areas, or to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, D.C. 20202. (Attention: Peer Review Unit; (202) 732–1138).

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

(OMB #1820–0027; Expires 11/84)

Applicable regulations: Regulations governing the program include the following:

(a) Education Department General Administrative Regulations (EDGAR) CFR Parts 74, 75, 77, and 78, and

(b) Regulations governing NIHR in 34 CFR Parts 350 and 357, including the revisions published in his issue of the **Federal Register.**

Further information: For further information, contact, Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, 330 C Street, SW., Switzer Building, Room 3070, Washington, D.C. 20202. Telephone: (202) 732–1138, TTY for deaf individuals (202) 732–1198.

(29 U.S.C. 762)

(Calalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: March 5, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84-6441 Filed 3-9-84; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
March 12, 1984

Part IV

Department of Transportation

Coast Guard

Guidelines for Bringing Existing Foreign Flag Vessels Under United States Flag; Notice Inviting Public Comment

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-013]

Guidelines for Bringing Existing Foreign Flag Vessels Under United States Flag

AGENCY: Coast Guard, DOT.

ACTION: Notice inviting public comment.

SUMMARY: The Coast Guard is reviewing present guidelines for certification and inspection of foreign flag vessels to be brought under U.S. flag. As part of the process the Coast Guard is soliciting public comment on present guidelines contained in Navigation and Vessel Inspection Circular (NVIC) number 10–81 which is reproduced in this notice. Although these guidelines are also used for other categories of vessels seeking U.S. Coast Guard certification and inspection (as listed in the application section of NVIC 10–81), we are inviting public comment on the guidelines as they apply to foreign vessels being brought under U.S. flag.

These guidelines are being reviewed to determine if they need to be revised, expanded, or completely rewritten. In addition, comment is requested on publishing present Coast Guard guidelines as regulations. The Coast Guard chose this means of public notification in lieu of a Notice of Proposed Rule Making since it is not clear that codification of present guidelines is necessary.

DATES: Comments may be submitted on or before May 11, 1984.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/44) (CGD) U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas H. Gilmour, Office of Merchant Marine Safety (G–MTH–2/12), Room 1214, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202) 426–2160.

SUPPLEMENTARY INFORMATION: In addition to commenting on specific sections of the guidelines, it is requested that the following general information on Coast Guard reflagging of existing foreign vessels be addressed:

1. Currently foreign flag vessels brought under Coast Guard certification must meet the level of safety provided by the applicable Coast Guard regulations. NVIC 10–81 gives guidelines regarding the application of Coast Guard rules and regulations to existing foreign flag vessels at least two but not more than ten years old. This takes into account an established history of satisfactory performance of specific systems and components in making determinations of general equivalence to Coast Guard regulations.

2. For foreign flag vessels over ten years old, the Coast Guard has been using the guidelines in NVIC 10–81 as a minimum and imposing additional requirements based on the condition of the vessel and the standards to which it was constructed. The modifications required for a particular vessel are determined during plan review and inspection.

3. Reflagging of foreign flag vessels overseas is complicated due to delays in communication, establishment of equivalencies, the availability of Coast Guard inspectors, and different procedures followed by foreign shipyards. How can overseas reflaggings be improved?

4. Common modifications required on foreign vessels in order to be brought under U.S. flag are listed below. Originally these modifications were needed to bring foreign flag vessels in line with U.S. regulations. However, more recently other flag state requirements have changed as international standards have improved and now approach U.S. standards. As a result, many of the modifications listed below would also be needed for these vessels to meet the current requirements of many foreign flag states.

a. Fire zone insulation materials have failed U.L. fire tests, necessitating replacement in accommodation areas.

b. CO_2 systems altered to increase discharge rate.

c. Firemain and fire pumps altered to increase capacity, and auxiliary services eliminated from the firemain.

d. Ventilation system modified to separate fire zones.

e. Non-fire retardant plastic pipe replaced.

f. Non-fire retardant lifeboats replaced.

g. Sea valves renewed to provide ductile housing.

h. Fuel tank valves replaced to provide positive closure valves.

i. Fire resistant fuel and lube oil hoses provided.

j. General alarm system segregated.

k. Steering gear control system upgraded.

l. Solid core electrical wire replaced with stranded wire.

m. Emergency loads reduced on generator to avoid overloading.

n. Porcelain electrical fixtures were shock mounted.

o. Automation sensors, alarms and interlocks upgraded.

p. U.S. Coast Guard approved fire extinguishers and lifesaving appliances required.

In commenting on any portion of the guidelines, be specific as to what section is causing problems, why it is causing problems, and how the guidelines could be changed while ensuring that they retain the same level of safety currently provided.

Dated: March 3, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

Navigation and Vessel Inspection Circular No. 10–81

Subject: Coast Guard Certification and Inspection of Certain Categories of Existing Vessels

1. *Purpose.* The purpose of this Circular is to provide the marine industry and Coast Guard personnel with uniform guidance regarding the application of Coast Guard rules and regulations to certain categories of existing vessels.

2. *Directive affected.* This Circular and enclosed guide supersedes the previously issued NVC 12–65.

3. *Application.* This guidance applies to the following categories of existing vessels:

a. Foreign flag vessels brought under U.S. flag and Coast Guard certification and inspection, that are at least two but not more than ten years old.

b. U.S. flag vessels that are Coast Guard certificated and inspected and undergoing major alteration or modification.

c. U.S. flag vessels that are brought under Coast Guard certification and inspection.

d. Wrecked vessels that are eligible to register under the provisions of 46 U.S.C. 14.

4. *Discussion.* Enclosure (1) is a guide for determining the extent to which current Coast Guard regulations should be applied to the above categories of existing vessels. The guide was developed for vessels that are Coast Guard certificated and inspected as Cargo and Miscellaneous Vessels, Tank Vessels and Oceanographic Vessels. Passenger Vessels, Offshore Supply Vessels and Mobile Offshore Drilling Units are not included in the guide. Other alternatives to those in the guide may be equally acceptable based on a specific application. Nothing contained in this guide shall be taken as amending the applicable requirements set forth in the Code of Federal Regulations, nor as limiting the authority of the Officer in Charge, Marine Inspection in his

determination of acceptable materials, construction and testing.

5. *Action.* Enclosure (1) is for use by the marine industry and Coast Guard personnel in determining the extent to which current Coast Guard rules and regulations should be applied to certain categories of existing vessels.

Clyde T. Lusk, Jr.,

Chief, Office of Merchant Marine Safety.

Guide for Coast Guard Certification and Inspection of Certain Categories of Existing Vessels

Note.—Certain references to the electrical engineering regulations (46 CFR Parts 110–113), the U.S. Code, and U.S. Coast Guard organizational designations have changed since the issuance of this NVC.

Introduction

Recently, there has been an increased interest in bringing existing foreign flag cargo and tank vessels under U.S. flag. Also there is renewed interest in jumboizing, lengthening and repowering existing U.S. flag vessels, some of which were previously uninspected vessels. In response to this interest, the Coast Guard has reviewed the requirements that apply to these vessels. It was apparent that a consistent and uniform set of guidelines was needed for Coast Guard inspection and certification. Also, there is a need to take into account an established history of satisfactory performance for specific systems and components.

To develop a timely guide, the applicability was limited to cargo and miscellaneous vessels, tank vessels and oceanographic vessels. Passenger vessels, mobile offshore drilling units and offshore supply vessels are not included.

Existing foreign flag vessels may be brought under U.S. flag in a manner consistent with the principles and levels of safety in current Coast Guard regulations. At the time of application for inspection, the vessels should be at least two years but not more than ten years old. A vessel with at least two years of operation should have a service history that will assist in making determinations of general equivalence for specific systems. Also, if the same vessel is less than ten years old it should meet many of the more recent international standards. As a result, Coast Guard certification and inspection should normally be economically and technically feasible. Except as noted in the guide, the Coast Guard rules and regulations that were effective at the time of the vessel's keel laying may be applied. Installed equipment should be generally equivalent to that on other U.S. flag vessels under Coast Guard certification and inspection. Some specific systems and components may be accepted on the basis of performance standards.

From time to time, it becomes necessary to make a major alteration or modification to an existing U.S. flag vessel that is Coast Guard certificated and inspected. This includes jumboizing, lengthening, repowering and conversions for a change in service. In many cases, only a relatively small part of the vessel can be identified as existing at the time work started. As safety standards are implemented or revised, they are not made retroactive. The reasons for this are that with the passage of time existing vessels will be retired from service and only those built to newer standards will continue in service. Also, it would be costly and impractical to require existing vessels to be modified each time a safety standard is changed. However, when a major alteration or modification of an existing vessel is planned, there is a definite intent to extend the service life of the vessel. When this is the case, it is appropriate to bring the vessel into compliance with the new or revised safety standards. Major repairs, regardless of extent, are not normally considered a major alteration or modification. Repairs must be made to the satisfaction of the cognizant Officer in Charge, Marine Inspection (OCMI). The OCMI will make the final determination of whether a planned major project will be treated as a repair, an alteration, or a combination of both. The guide should be used to determine the extent to which a vessel must be upgraded when undergoing a major alteration or modification.

The number of uninspected U.S. flag vessels that are required to be brought under Coast Guard certification and inspection is relatively small. One example is a diesel powered towing vessel or tug that is repowered with a steam plant. this guide, in conjunction with the current Coast Guard rules and regulations, should be used to determine the extent to which such vessels must be modified for Coast Guard certification.

Applicable Regulations

The regulations cited in this guide are found in:

CFR Title	Subchapter	Name
46	D	Tank Vessels.
46	E	Load Line.
46	F	Marine Engineering.
46	I	Cargo and Miscellaneous Vessels.
46	J	Electrical Engineering.
46	Q	Specifications.
46	U	Oceanographic Vessels.
33	O	Pollution.

Inspection in the United States

Inspection for certification within the United States follows the standard procedures described in the Marine Safety Manual.

Foreign Inspection

The Coast Guard is not able to conduct inspections in every shipyard outside the United States. The Coast Guard will conduct foreign inspection only in those cases in which inspection personnel are available and, in the judgment of the Commandant, the magnitude of the project and its importance to the maritime industry justify the travel of Coast Guard personnel. When personnel are so assigned, travel and other expenses for conducting Coast Guard inspections will be reimbursed to the Coast Guard by the owner.

The responsibility for demonstrating compliance with the regulations to the Coast Guard rests solely with the owner. Prior to assigning inspectors or initiating plan review, the owner who must be a U.S. citizen eligible to document the vessel under U.S. law must make an application for inspection to the Coast Guard (Commandant (G–MVI)). Arrangements must be made to permit Coast Guard inspection; limited availability of Coast Guard marine inspectors may become a factor to consider in scheduling shipyard work on the vessel. Inspections should be expected to be carried out on less than a full time basis. However, the ultimate aim is a degree of inspection equivalent to that obtained if the vessel was being inspected in the United States. When foreign inspection is authorized, the Commandant (G–MMT) will assign the plan approval function to one of the field merchant marine technical offices listed in 46 CFR 91.55–15(a)(3).

Admeasurement

Generally, since the tonnages of a foreign flag vessel which is intended to be brought under U.S. flag were calculated under a system different from the U.S. admeasurement system in 46 U.S.C. 71, 75, 77, 83/83k, the vessel will be required to be admeasured by the Coast Guard prior to its documentation as a Vessel of the United States.

A U.S. vessel which is substantially altered in a foreign shipyard may, on application of the owner or agent, be readmeasured at the construction site. A Certificate of Admeasurement or

Readmeasurement may be issued for the vessel prior to its first arrival at or return to the first United States port, thereby enabling the owner or agent to avoid delay in documenting or redocumenting the vessel.

The facilitate the admeasurement of such vessels, Commandant (G–MMT) will coordinate the admeasurement by arranging admeasurement personnel for on-site duties, and by requiring the submittal of the necessary tonnage plans and blueprints.

The owner or his agent must submit an application for admeasurement to Commandant (G–MMT) sufficiently in advance of the vessel's completion to permit a substantial part of the work, including development of necessary tonnage plans, and preliminary admeasurement and computation, to be accomplished prior to on-site examination. The application must also include a statement that the vessel owner or agent agrees to reimburse the U.S. Coast Guard, pursuant to the provisions of Title 46 USC 331, for the compensation and necessary travel and subsistence expenses of the personnel measuring or certifying the tonnages of the vessel from the time the personnel leave their official duty station until they return thereto.

For U.S. vessels coming under certification or undergoing major alterations in U.S. shipyards, application for admeasurement will be as provided in 46 CFR 69.01–17.

Documentation

The Second Proviso of 46 U.S.C. 883 may affect the coastwise trading privileges of vessels which undergo major alterations abroad. The vessel documentation regulations are in 46 CFR Part 67. Specific requirements to be met and information concerning vessel documentation should be addressed to the Commandant (G–MVD).

Plans, Correspondence, and Shipboard Information

Plans and correspondence should be submitted using the following guidelines: all plans, information, and technical data should be submitted using the recommendations in NVC 6–79, "Coast Guard Review of Merchant Vessel Plans and Specifications".

All correspondence should be in English. All plans, technical data, copies of standards and specifications should be in English or be accompanied by English translations. English translations of references may be required.

Dimensions on drawings may be in English or Metric units.

A listing of the required plans is found in the applicable regulations for the type of vessel being certificated. However, since plan titles may not always be descriptive of the information depicted, a complete list of the construction plans should be submitted for review to determine if other drawings will be needed.

Signs, labels, placards, operating manuals and similar material aboard the vessels must be written in English.

Hull Structure

Generally, acceptance of a vessel's hull structure will be based on classification by the American Bureau of Shipping (ABS). If currently classed by ABS, the vessel will be considered structurally acceptable for U.S. certification. If the vessel is classed by a classification society other than ABS, the rules upon which classification is based will be examined for suitability. The portion of a vessel receiving a major alteration, and other portions of the vessel where design may be affected by the alteration, must conform to the requirements for new vessels built in the United States. Repairs, regardless of extent, will not be considered as major alterations as long as sizes, configurations, and materials basically conform to acceptable original scantlings. Repairs must be made to the satisfaction of the cognizant OCMI.

Since complete guidance cannot be provided in this document to cover the acceptance of the hull structure of existing vessels, acceptance of the hull structure by the Coast Guard should be obtained in advance of other preparations for Coast Guard certification; the results will enable the owner to better assess the economic impact of making the conversion before substantial investment is made to comply with other Coast Guard requirements.

For approval of the existing vessel structure, the following information must be submitted:

- English version of the rules, if other than those of the American Bureau of Shipping, to which the vessel hull structure was built or modified, along with documentation showing the vessel was actually built to these rules.
- English translation of the applicable structural plans including:

Midship section
Scantling profile and decks
Bottom construction, floors, girders, etc.
Framing plan
Inner bottom plating
Shell expansion
Deck plans
Pillars and girders
Watertight and deep-tank bulkheads
Miscellaneous non-tight bulkheads used as structural supports
Shaft tunnels
Bow and stern framing
Stem
Rudder
Shaft struts
Framing details
Superstructures and deck houses
Hatches and hatch closures
Loading Manual (if applicable)

Plans and calculations must be submitted as appropriate for major alterations.

Loading Information

Loading manuals must be submitted for approval to the Commandant, or must have been approved by a recognized classification society acceptable to the Commandant, for the following types of vessels:

- Ore or bulk carriers over 400 feet in length.
- Specialized carriers over 400 feet in length such as chemical carriers and container or barge carriers in which cargo is designed to be stowed into specific cells or location.
- Liquefied gas carriers.
- Tank vessels over 400 feet in length.
- Tank vessels over 300 feet in length, and on which construction began on or after September 6, 1977.

The manuals must show the effects of various loaded and ballasted conditions on the longitudinal bending and shear. The approved information must be supplied to the master of the vessel, or to the person in charge of handling loading or off-loading of a barge. Alternative methods of obtaining information on vessel stresses, such as computer devices, must be verified by the Coast Guard to give the same results as the approved loading manual.

Fire Protection

Both active and passive fire protection systems must meet the current requirements for new United States flag vessels, or be proven equivalent. It is the responsibility of the owners to demonstrate equivalence to the satisfaction of the Coast Guard.

All firefighting systems storage and discharge capacities, location of controls, type and location of media storage, operating instructions, and all other fire protection system details not discussed below, must be satisfactory to the cognizant OCMI.

Structural Fire Protection

Structural fire protection must comply with applicable Coast Guard regulations. Noncombustible materials, bulkhead panels, structural insulation, deck coverings and interior finishes where required shall be Coast Guard

type-approved in accordance with 46 CFR Subchapter Q. The Coast Guard will consider acceptance of non-approved structural fire protection materials which have not been granted type-approval provided these materials are tested and found to be in compliance with the criteria in Subchapter Q. The owner must forward samples, taken from the vessel in the presence of a Coast Guard marine inspector, to an independent testing laboratory recognized by the Coast Guard.

Details of construction and arrangement shall be as follows (references per 46 CFR):

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Lamp, paint, and oil locker construction (secs. 32.57-10(b), 92.07-10(b), and 190.05-10).	Steel A-Class. 11 gage USSG/3mm will generally meet A-0	
Hull, superstructure, structural bulkheads, decks, and deckhouse construction (secs. 32.57-10(a), 92.07-10(b), and 190.07-10(b)).	Steel A-Class	
Construction of boundaries separating accommodations and control stations from cargo spaces, machinery spaces, galleys, main pantries, and storerooms (secs. 32.57-10(c), 92.07-10(c), and 190.07-10(c)).	do	
Corridor bulkhead construction (secs. 32.57-10(d)(1), 92.07-10(d)(1), and 190.05-10(d)(1)).	A- or B-Class intact from deck to deck	Joiner details should be checked to insure compliance with good marine practice. NVC 6-80 should be used for guidance. It should be verified that materials used on the vessel for panels and doors are actually those indicated on drawings.
Stairtower, dumbwaiter, elevator, and other trunk construction (secs. 32.57-10(d)(2), 92.07-10(d)(2), and 190.07-10(d)(2)).	Steel, A-class	
Stateroom boundary construction (not corridor side) (secs. 32.57-10(d)(3), 92.07-10(d)(3), and 190.07-10(b)(3)).	Noncombustible A-, B-, or C-Class	
Stairway construction (secs. 32.57-10(d)(4), 92.07-10(d)(4), and 190.07-10(d)(4)).	A-or B-Class bulkheads and doors at 1 level only. Stairways may not be stacked and may not serve as primary exit route.	
Stairtower doors (secs. 32.57-10(d)(4), 92.07-10(d)(4), and 190.07-10(d)(4)).	A-Class doors at all levels	
Interior stairs construction (stringers and treads) (secs. 32.57-10(d)(5), 92.07-10(d)(5), and 190.07-10(d)(5)).	Steel	
Deck coverings (except toilet and washroom spaces) (secs. 32.57-10(d)(6), 92.07-10(d)(6), and 190.07-10(d)(6)).	Must meet 164.006 or 164.009 except unapproved overlays for leveling or finishing may be used up to 3/8-in total thickness.	
Rugs and carpets in corridors, stairways, and stairtowers	All carpets made or sold in the U.S. must meet Dept. of Commerce standard FF-1-70.	
Ceilings, linings, insulations, pipe, and duct laggings (secs. 32.57-10(d)(7), 92.07-10(d)(7), and 190.07-10(d)(7)).	Approved noncombustible materials	
Sheathing, furring, or holding pieces incidental to securing of bulkheads linings, ceilings, and insulations (secs. 32.57-10(d)(8), 92.07-10(d)(8), and 190.07-10(d)(8)).	do	
Interior finish requirements (not corridors, stairways, stairtowers, or hidden spaces (secs. 32.56-50, 92.07-10(d)(9), and 190.07-10(d)(9)).	Tank vessels up to 7 mm. Cargo and miscellaneous vessels up to 2/28 in. Oceanographic vessels up to 2/28 in. any interior finish material or paint under 164.012 is acceptable for all vessels. ASTM E-84 may be accepted in lieu of 164.012 on a case by case basis.	
Interior finish requirements for corridors stairways, stairtowers, and concealed spaces (secs. 32.56-10(d)(9), 92.07-10(d)(9), and 190.07-10(d)(9)).	An approved interior finish material or paint under 164.012	
Draft stops behind ceilings and linings if bulkheads are terminated at ceiling. (sec. 32.56-45).	Draft stop every 14 meters (45 ft) or less. Cargo and oceanographic vessels—no requirements. Draft stops must be 22 gage USSC steel or equal noncombustible material.	
Fire loading	Not normally evaluated except where extreme amounts are present. Upper limit is generally 10 lb/ft^2.	The addition of fiberglass shower and toilet modules may cause limits to be exceeded.

Fire Extinguishing Systems

Fire Main

Design shall be in accordance with applicable regulations. Piping, pumps and valves may be of foreign manufacture if equivalency is established. Fire hose, and hose fittings shall meet the applicable regulations. Combination nozzles and applicators shall be Coast Guard approved. International shore connections will be accepted if they comply with Regulation 5(h) of Chapter II-2 of SOLAS 1974.

Carbon Dioxide

Design shall in accordance with applicable regulations. Normally, Coast Guard approved systems will be required; however, on a case by case basis, other systems may be accepted if shown to be equivalent. Components such as cable pulleys, cable, etc., which form part of the remote control system but are not essential to the carbon dioxide distribution must be acceptable to the OCMI for the service intended. Acceptance of components of foreign manufacture which are listed by Underwriter's Laboratories or Factory Mutual, Inc. will be considered on a case by case basis.

Foam

Design shall be in accordance with applicable regulations. Proportioning equipment, foam outlets, nozzles, foam liquid, hose fittings and other devices unique to foam systems shall be Coast Guard approved.

Water Spray

Design shall be in accordance with applicable regulations. Nozzles and strainers shall be Coast Guard approved.

Inert Gas

Design shall be in accordance with applicable regulations. Inert gas systems may be of foreign manufacture, providing equivalence is shown, but alarms, controls, and instrumentation must meet Coast Guard requirements. Piping and valves may be of foreign manufacturing providing equivalence is shown.

Halon

Halogenated hydrocarbon extinguishing systems may be installed only upon Coast Guard approval of the complete system. Other systems must be shown fully equivalent to those approved by the Coast Guard before they will be accepted. All components, except piping, must be Coast Guard approved. Components such as cable

pulley, cable, etc., which form part of the remote system but are not essential to the Halon distribution must be acceptable to the OCMI for the service intended.

Fire Detection

Fire detecting systems must be installed as required by applicable regulations. Any installed system must be Coast Guard type-approved.

Portable and Semiportable Fire Extinguishers

Fire extinguishers shall be of a type required by the applicable regulations and shall be Coast Guard approved.

Fixed Fire Protection (References per 46 CFR).

Basic new vessels requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Machinery Space Fire Protection:		
Oil fired boilers and associated equipment (secs. 34.05-5(a)(5), 95.05-10(d), and 193.05-10(e)).	Tank and Oceanographic vessels—carbon dioxide or foam systems. Cargo vessels—carbon dioxide, foam, or water spray. See comments on system requirements.	Foam and water spray systems must cover all flats as well as bilges.
Space containing 1000 Bhp or more of internal combustion engines or gas turbines. (secs. 34.05-5(a)(7), 95.05-10(e)(2), and 193.05-10(c)(3)).	Carbon dioxide or Halon 1301. See comments on system requirements.	
Enclosed ventilation system for motor—generators and electrical propulsion machinery (secs. 34.05-5(a)(8), 95.05-10(f)).	Carbon dioxide. See comment on system requirements	
Fire Protection Systems for Other Spaces:		
Lamp and paint lockers and other similar spaces (secs. 34.05-5(a)(3), 95.05-10(c), and 193.05-10(d)).	Cargo and Oceanographic vessels—carbon dioxide only. Tank vessels—carbon dioxide or waterspray.	
Spaces specially suitable for vehicles. (secs. 95.05-1(c), 95.05-10(b)(4)).	Carbon dioxide or Halon 1301 in enclosed spaces, water spray or sprinklers if not enclosed. Fire detection systems as required in 76.27 through 76.35. See Comments on system requirements.	
Cargo compartments. (secs. 34.05-5(a)(1), 95.05-10(b), and 193.05-10(d)).	Carbon dioxide. See comments on system requirements	
Cargo tanks. (secs. 34.05-5(a)(2), 95.05-1(b))	Deck foam and inert gas depending on size of vessel. See comments on system requirements.	
Pumprooms. (sec. 34.05-5(a)(4))	Carbon dioxide, foam or water spray. See comments on system requirements.	
Fire Protection Equipment		
Fire Main System:		
Fire Pumps. (secs. 34.10-5, 95.10-5(a), and 193.10-5)	Fire pumps should meet number, capacity, separation and performance requirements.	Pump should be tested to insure delivery of required hose streams and pressures. If the fire main supplies water for service other than firefighting these requirements must be met while simultaneously providing the additional water. Routing of electrical cable and controls should be checked to assure a single casualty cannot affect more than one pump.
Fire hose nozzles (secs. 34.10-10(e), 95.10-10(i))	Replace with nozzles meeting 46 CFR 164.027	
Fire hose (secs. 34.10-10, 95.10-10)	Hose and fittings must meet Coast Guard requirements	Hose lengths checked to insure that hydrant locations meet requirements. Hose must be rubber lined. Threads must be National Standard.
Piping (secs. 34.10-15, 95.10-15, and 193.10-15)	Must be equivalent to Coast Guard standards	
Carbon Dioxide System:		
Quantity and discharge (secs. 34.15-5, 95.15-5, and 193.15-5).	Must meet current Coast Guard regulations	
Controls (secs. 34.15-10, 95.15-10, and 193.15-10)	Controls must be Coast Guard approved with the exception of cable pulleys, cables etc. which are not essential to the carbon dioxide distribution. These must be acceptable to the OCMI for the service intended.	
Piping and discharge outlets (secs. 34.15-15, 95.15-15, 193.15-15, 34.15-25, 95.15-25, and 193.15-25).	Discharge outlets shall be of an approved type. Piping must be equivalent to Coast Guard requirements for carbon dioxide systems. Piping and controls shall be arranged as shown in manufacturer's approved "typical" arrangement drawing.	System should be recently serviced.
Carbon Dioxide Storage (secs. 34.15-20, 95.15-20, and 193.15-20).	do	
Alarms (secs. 34.15-30, 95.15-30, and 193.15-30)	do	
Enclosure openings (secs. 34.15-35, 95.15-35, and 193.15-35).	do	
Foam systems:		
Quantity (secs. 34.17-5, 95.17-5)	do	
Controls (secs. 34.17-10, 95.17-10)	do	
Piping (secs. 34.17-15, 95.17-15)	do	
Water Spray System:		
Capacity and Arrangement (sec. 34.25-5)	do	
Controls (sec. 34.25-10)	do	
Piping and Spray Nozzles (sec. 34.25-15)	Spray nozzles shall be of an approved type, piping may be equivalent to Coast Guard requirements.	
Inert Gas System:		
Inert Gas Generators and Blowers (secs. 32.53-20, 35, and 45).	Equivalent to Coast Guard requirements	
Instrumentation, Alarms and Controls (sec. 32.53-60, 70)	do	
Piping and Stop Valves	Equivelent of Coast Guard requirements	
Halon System		
Halon Fire Extinguishing Systems	Approval by Coast Guard	
Portable and Semiportable Fire Extinguishers		
Extinguishers (secs. 34.05-10, 95.05-15, 193.05-15, 34.50, 95.50, and 193.50).	Coast Guard approved. Type, capacities and locations same	

Basic new vessels requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Fire Detection System		
Entire Detection System	Approval by Coast Guard	

Lifesaving Equipment

Lifesaving equipment must be provided in the number and arrangement required in the applicable vessel regulations. Any new equipment that must be provided must fully comply with the vessel regulations including Coast Guard approval. The following equipment already on the vessel need not be Coast Guard type approved, provided that it (1) is approved by a national Administration signatory to SOLAS, (2) has waterproof labeling, operating instructions, and maintenance manuals, as appropriate, in English, (3) is in good and serviceable condition, and (4) is replaced by Coast Guard approved equipment when and if replacement becomes necessary.

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Lifeboats (46 CFR 33.05, 94.10, and 192.10)	(See text above and detailed requirements in following section).	
Davits (46 CFR 33.10, 94.25, 94.33, 192.25, and 192.33)	do	
Winches (46 CFR 33.10, 94.30, and 192.30)	do	
Pilot ladders (46 CFR 35.01-20, 94.50-5, and 192.50-5)	(See text above.) Must meet minimum requirements of SOLAS 1974, Ch. V, Reg. 17.	
Pilot hoists	(See text above.) Must meet minimum requirements of IMCO Resolution A.275(VIII).	

Inflatable liferafts, hydrostatic releases, Emergency Position Indicating Radio Beacons (EPIRBs), ring life buoys, water lights, buoyant apparatus, debarkation ladders, life preservers, PFD lights, retroreflective material (where required), pyrotechnics (including line-throwing appliance), and lifeboat equipment must all be Coast Guard approved types. The portable lifeboat radio must be type approved by the Federal Communications Commission. Unapproved rigid liferafts may be used if they are found to be equivalent to inflatable liferafts upon special review by Commandant (G-MMT-3/12).

Detailed Requirements for Lifeboats (See 46 CFR 160.035 for New Vessel Requirements)

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
General	Must be in good, seaworthy condition. Damaged parts to be repaired or replaced.	Reparis to be made per NVC 2-63 or 46 CFR 160.035 as appropriate.
Materials	Hulls must be aluminum, steel, or fibrous glass reinforced plastic (FRP) (No wooden hulls). Wasted parts must be replaced using material specified in 46 CFR 160.035. FRP must be fire retardant.	If no fire retardant affidavit available, boat must be coated with intumescent paint inside and out.
Hull fittings	Doubler plates provided at points where boat hull contacts davits.	
	One or more automatic drain plugs with screw-on caps in bottom of hull. Location to be marked with arrow & word "PLUG". Limber holes in transverse frames as necessary for drainage.	Drain plug readily accessible.
	Grabrails and handrails to be provided except on totally enclosed self-righting boats.	If rails must be added, must meet 46 CFR 160.035.
Release gear	Fittings for towing boat and a means to attach painter must be provided. Must be controlled from a single point and provide simultaneous release of the hooks while supporting full weight of boat. Release lever must have a safety latch and require at least a two-step process to activitate. Release gear control handle must be red with warning plate to effect that operation drops boat. Location of handle must be marked with band of color contrasting with surrounding color running athwartships.	Retrofit release gear must meet 46 CFR 160.033.
Weight	Weight fully equipped and loaded must not exceed 44,800 lb considering each person as 165 lb. Weight of fully loaded boat must not exceed maximum weight established by originial approving administration.	
Accommodation space	No lifeboat will be accepted for capacity in excess of 150 persons. Oar propelled boats limited to 59 persons. Hand propelled boats limited to 100 persons.	Review capacity per NVC 3-79.
Equipment	Equipment to be Coast Guard approved. Watertight tanks to be provided for storage of food and water. Lockers for small items..	
Hand propelling gear	Hand propelling gear must be capable of propelling boat both ahead and astern. Gear must be capable of propelling fully loaded boat over 1,000 ft course at 3 kn.	
Engine	Motor propelled boat must be powered by diesel engine. Engine box in open boat must be waterproof to level of cover. Cover must be weatherproof.	
	Engine starting system must be hand starting or hand energized, capable of starting engine at 20° F without starting aids. Alternative starting system with aids may be accepted if aids are permanently installed type capable of starting engine at 5° F with aids and 40° F withouts aids. Engine must be capable of propelling boat at 6 kn for 4 h without overheating. Fuel capacity must be sufficient for 24 h at 6 kn. Means must be provided to determine fuel level. Engine must be capable of running at least 5 min at idle out of water without overheating. Transmission or controllable pitch propeller must be provided that allows engine to start with propeller shaft disengaged and to operate ahead and astern. Sufficient gages must be provided to determine proper engine operation. Normal operating ranges must be indicated on all gages.	Additional starting systems may also be provided. Low temperature starting may be established by affidavit or test. Normal gages are oil pressure and coolant temperature. Also tachometer if overspeed is possible.

DETAILED REQUIREMENTS FOR LIFEBOATS (SEE 46 CFR 160.035 FOR NEW VESSEL REQUIREMENTS)—Continued

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Performance: flooding	Must float upright and relatively level when loaded with persons and equipment and flooded to gunwales.	Confirm by affidavit or test.
Data plate	Corrosion resistant plate must be attached to bow of boat that contains: (1) Indication the boat is accepted by Coast Guard for use only on (vessel name and official number); (2) Date of inspection and acceptance of device; (3) Identification of Marine Inspection Office; (4) Weight for which the lifeboat is accepted; (5) Fully loaded (condition B) weight for which boat is accepted.	
Color	Open lifeboat must have interior colored international orange. Enclosed lifeboat must have canopy with international orange exterior and light colored interior.	
Testing	Each boat must be tested to 46 CFR 160.035-11(c), -11(d), and -13(a).	

DAVITS AND WINCHES

[See 46 CFR 160.015 and 160.032 for new vessel requirements]

Basic new vessel requirements	Acceptance criteria for existing vessels	Addtional inspection for existing vessels
Type	Davit type (gravity, mechanical, etc.) must be in accordance with requirements in applicable regulations.	
Stress analysis	Principal stresses of critical parts and cross-sections must be less than the yield strength of the material when a load of 2.2 times the working load is applied throughout the range of positions possible at any combination 15 deg. list and 10 deg. trim.	May be established by review of test results or affidavit provided by manufacturer or by stress analysis or actual test.
Limit switches	Limit switches must be provided to prevent davit arms form being drawn hard against the stops.	
Winch drums	If multiple lays of cable are used on the winch drums, the winch must be provided with a level winding device or other means to assure that the cable winds onto the drum in a smooth and level wrap.	
Guards	Moving parts must be suitably guarded.	
Lubrication	Bearings must be provided with a means for lubrication A lubrication chart must also be provided.	
Testing	Davits and winches must be subjected to the installation test required in the applicable regulations.	Ensure that original davits have not been improperly modified or repaired.
Data plate	Corrosion resistant plate must be attached to davit and winch that contains: (1) indication the device is accepted by Coast Guard for use only on (vessel name and official number). (2) date of inspection and acceptance of device. (3) Identification of Marine Inspection Office. (4) weight for which the davit or winch is accepted.	

Subchapter Q Items—(Other Than Lifesaving and Fire Protection Equipment)

Equipment such as safety and relief valves, flame arresters, pressure vacuum relief valves, and pollution abatement equipment required to be Coast Guard type-approved must meet the specifications contained in 46 CFR Subchapter Q and 33 CFR.

Boilers, Hot Water Heaters and Fired Thermal Fluid Heaters

Acceptance of boilers and heaters within the scope of this guide will be based on satisfactory service history, satisfactory material condition, and other factors at the time the vessel is certificated. Every reasonable effort should be made to show that the design, fabrication and outfitting provide for personnel and vessel safety substantially equivalent to requirements for new Coast Guard certificated vessels. Sufficient information will be required to establish a safe maximum allowable working pressure, maximum operating temperature, and hydrostatic test pressure. Adequate information must also be submitted to properly determine the size of safety and relief valves, and to provide a basis for evaluation of present and future repair procedures.

Prior to acceptance of boilers or heaters the following minimum information should be submitted:

Drawings of pressure parts which include arrangement, dimensions, details and material specifications (mill certificates are not normally required);

Calculations verifying the design factor of safety based on ultimate tensile or yield strength (not required for vessels stamped ASME "S" or "H");

Acceptable documentation or certification showing the vessel has been built to a code or standard which includes requirements for (1) general design, and (2) independent third party shop inspection with approval of design, welding procedures, welder performance, heat treatment, and nondestructive examination.

Determination of the maximum generating capacity of steam boilers by calculations based on heat input, heating surface, etc., or based on the manufacturer's certification.

If, in the opinion of the cognizant OCMI, excessive deterioration has occurred, suitable repair or renewal will be required. Controls, alarms and shutdowns should be shown fully equivalent to those required on new Coast Guard certificated vessels. 46 CFR Part 63 and NVC 1-69 should be used for guidance.

A fluid used for heat transfer must be intended for such service by the fluid manufacturer. For shipboard applications such fluids are restricted to use at tempertatures below their flash point.

Heating systems which incorporate unfired steam boilers or unfired thermal fluid heaters must be approved by Commandant (G-MMT-2).

Initial and periodic testing and inspection requirements in addition to those normally performed on certificated vessels will not normally be required once a unit has been determined suitable for service. In some cases a reduction in hydrostatic test pressures may be required, depending on how specific units are designed.

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Fired power and heating boilers (and waste heat boilers as appropriate). (References per 46 CFR.): Design, construction and testing per Sec. I or IV of the ASME Code (52.01-1, 53.01-1).	ASME Code design not required. See comments above.	A full inspection will be conducted to determine condition of unit.
Approved fusible plugs for fire tube boilers 30 psig and greater (§ 52.01-50).	None required	
Visible and audible alarms for excessive superheater temperature (§ 52.01-95).	do	
Economizer design pressure 10% above highest safety valve setting (§ 52.01-95).	Show suitable for actual economizer maximum operating pressure.	
Consideration of additional loads (§ 52.01-95)	Not required for vessel with satisfactory service history	
General piping requirements (Part 56) (§ 52.01-105)	See piping requirements	
Two independent means of determining water level including a gage glass (§ 52.01-110).	Two reliable means.	
Two separate means of supplying feedwater to vital boilers (§ 52.01-115).	do	
Feedwater design pressure 25% or 250 psig (whichever less) above boiler NAWP (§ 52.01-115).	See piping requirements.	
Coast Guard approved safety valves—certified capacity—6% maximum pressure rise-sealing provision (§§ 52.02-120, 53.05-1, 53.05-2).	do	
Approved arrangement for pilot-actuated safety valves (§ 52.01-120).	do	
Controls, alarms and shutdowns (§§ 52.01-10, NVC 1-69, 54.01-5, 53.10-3).	do	
Plan approval by Commandant (G-MMT-2) (§§ 52.01-5, 53.15-1).	Plans will be "EXAMINED" with comment by the Commandant subject to cognizant OCMI approval.	
Weld repairs authorized by Commandant after review of specific information (§ 52.01-125).	do	
Foundation design approval	Not required for vessel with satisfactory service history	
Hydrostatic test (§§ 52.01-135, 61.05-10)	Safe hydro pressure must be determined during design review	
Operating tests (§§ 52.01-135, 53.10-3, 63.05-90, 63.10-90)	do	
Coast Guard stamping (§§ 52.01-140, 53.10-10)	Same, but also include hydro test pressure	
Coast Guard shop inspection (§§ 52.01-135, 53.10-3)	Not possible	
Qualified weld procedures and welders (Part 57) (§§ 52.05-5, 52.05-40, 52.05-55, 53.13-1).	Required for repairs or alterations only	
Nondestructive examination (§§ 52.05-20, 52.05-45)	Required for repairs, alterations, or when a significant weld defect is suspected.	
Specific requirements for waste heat boilers (§§ 52.01-110, 54.01-5(a), 54.01-10).	do	
Electric Hot Water Heaters:		
Design per Part 52, Part 53, or Underwriter's Laboratories Inc. (UL) (§ 53.01-10).	Same as for pressure vessels per following text	
Temperature regulation (194 deg. F max.), control and relief, plus pressure relief (§§ 63.15-20, 63.15-25, 63.15-30, 63.15-40).	do	
Fired Thermal Fluid Heaters:		
Design per Section I of the ASME Code (§ 54.01-5(a))	Same as for boilers	
General piping and welding requirements of boilers apply	do	
Fuel controls (§§ 63.05, 63.10)	do	
Specific requirements for fluid heaters (§§ 63.05-30, 63.05-40, 63.05-90, 63.10-30, 63.10-40).	do	

Automation

In cases where reduced engine room manning is desired, the installation shall be in general accordance with NVC 1-69. Plans and data necessary to establish this must be submitted as directed by cognizant OCMI for review and approval. A statement from prior operating engineers and owners attesting to operation of the vessel with reduced engine room manning will help with evaluation of the automation proposal.

Prior to authorization of any reduction in manning, an approved test procedure and an operational evaluation of the machinery plant sufficient to ensure that the plant is safe and reliable to the satisfaction of the cognizant OCMI will be required. This may include a trial period of operation while underway, with marine inspectors on board to observe.

Main and Auxiliary Machinery

Machinery will generally be accepted when certified by a classification society currently recognized by the Coast Guard and is in satisfactory operating condition.

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Main & Auxiliary Machinery (46 CFR 58.05)	Turbines, shafts, gears, cranks, etc. certified by recognized classification society.	Condition satisfactory to cognizant OCMI and comply with §§ 58.01-10, 15, 20, 25, & 30.
Fuel used (46 CFR 58.01-10 and 15)	Flash point requirements must be met. Use of propane, even for boosting, not acceptable.	

Pressure Vessels

Pressure vessels other than those for low temperature service or those containing dangerous substances will be accepted primarily on the basis of design to a recognized national standard, certification by a recognized classification society and successful operating experience. Sufficient information must be submitted to establish the maximum allowable working pressure, maximum and minimum operating temperature, and test pressure.

The following plans must be submitted:

Drawings of pressure parts showing arrangement, dimensions, details and material specifications (mill certificates are not normally required).

Calculations verifying the design factor of safety based on ultimate tensile or yield strength (not required for vessels stamped ASME "U" or "UM").

Acceptable documentation or certification showing the vessel has been built to a code or standard which includes requirements for (1) general design, and (2) independent third party shop inspection with approval of design, welding procedures, welder performance, heat treatment, and nondestructive examination.

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Loadings Corrosion Allowance External Pressure (46 CFR 54.01-30, 35 and 40).	Information should be submitted as part of calculations	Thickness gaging may be required by the OCMI.
Marking and Stamping (46 CFR 54.10-20)	A new nameplate with the information required in § 54.10-20(a)(1)-(7) shall be attached and stamped by the inspector, when he has verfied that the vessel is acceptable.	Prior to stamping, the vessel shall be hydrostatically tested to 1¼ times the MAWP.
Relief devices (46 CFR 54.15)	All pressure vessels shall be provided with relief devices meeting the requirements of § 54.15.	
Postweld Heat Treatment (46 CFR 54.25-7)	Verification of acceptable PWHT for all Class I vessels regardless of thickness.	
Radiography (46 CFR 54.25-8)	Verification of full radiography for all Class I vessels regardless of thickness.	Nondestructive examination of welds may be required by OCMI on any pressure vessel.

Pressure vessels for low temperature service or those containing dangerous substances must have sufficient documentation to establish full equivalence with 46 CFR Part 54.

All pressure vessels shall be tested in accordance with 46 CFR 61.10. Additional nondestructive examination (NDE) shall be conducted as deemed necessary by the cognizant OCMI.

Piping and Special Systems

Piping systems are classified as Class I, II, I-L or II-L depending on system operating pressure and temperature. Piping may also be considered as vital or hazardous. Vital piping systems are those that in the event of failure constitute a hazard to the seaworthiness or maneuverability of the ship. Hazardous systems, in the event of failure, constitute a hazard to vessel personnel or the marine environment. In general, Class II non-vital, non-hazardous systems may be accepted on the basis of classification society certification. Other piping systems and their components must (1) be designed to a recognized national standard, (2) be certified by a recognized classification society, and (3) have received third party inspection by surveyors of the recognized classification society during vessel construction.

The following plans must be submitted. These should include a schematic and an arrangement of the system including system operating pressure and temperature, and standard and rating for which pipe and components are designed.

- Main steam (include evidence that thermal stress analysis was performed with satisfactory results)
- Boiler feed
- Fuel Oil Service, transfer, fill
- Fire Extinguishing (fire main, foam) (Performance tests must be carried out to the satisfaction of OCMI)
- Bilge and Ballast
- Circulating water
- Vent, sounding, overflow
- Vital pneumatic and hydraulic
- Lubrication

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Welding (46 CFR 56.70 and Part 57)	See § 56.70 and Part 57. Weld joint and procedural details differing from these requirements will be considered on a case-by-case basis. Qualifications by acceptable third parties for welding procedures, welder performance, nondestructive examination, etc. may be accepted for existing ships. Otherwise, additional nondestructive examination may be needed.	
Inspection and Testing (46 CFR 56.95, 56.97, and 61.15)	See sec. 56.95. Generally, where acceptable third party inspection occurred during construction, Coast Guard inspection will be visual and external. In the absence of acceptable third party inspection (such as ABS +A1, +AMS registry) a Coast Guard inspection comparable to that required for new construction may be necessary.	See secs. 56.97 and 61.15. Hydrotests of vital and hazardous systems and operating test of all other systems of interest will generally be required. Renewed piping will require 1.5 hydro.
Material Restrictions (46 CFR 56.10-5 (b), (c), and (d), 56.60-3, 5, 10, and 25).	do	
Fresh Water (applicable USPHS Sanitation regulations)	do	
Flammables and Combustibles (There are specific restrictions on materials due to lack of ductility or heat resistance. See 46 CFR 56.10-5, 56.60-2, 10, 15, 20, and 25. Insulation sometimes acceptable substitute).	Evaluate risk and existing installation for each case	
Valves (46 CFR 56.20)	For design and materials see appropriate system class above. Otherwise, sec. 56.20 applies except as noted. ● Right hand turn to shut off ● Rising stem or shut-off indicator ● High pressure design restrictions ● Plug retention ● Markings-loss or destruction of lables OK if inspector can obtain sufficient information from other sources. ● Resilient seats-tank stop valves must be either "Positive shut off" as determined by Commandant or meet an acceptable industry or foreign "fire safe" standard. Valves required to be category "A" will be evaluated on an individual bases. ● Alternatives may be considered on a case-by-case basis for the above requirements for valves.	

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Overpressure Protection (sec. 56.07-10)	Relief devices must meet location, setting, and capacity requirements. Need not meet sec. 54.15-10 except for pressure vessels. Must be suitable type for intended service.	
Flanges and Bolting (46 CFR 56.25, 30)	See 46 CFR 56.25 and 56.30. For materials see appropriate system class above. Generally, foreign flange standards are acceptable to 75% of the manufacturer's rating. Heavy series bolts and nuts required unless bolts tight in holes. This requires special analysis of design. In low pressure systems, especially with flat face flanges and full face gaskets, initial seating condition may require analysis.	Inspectors will look for evidence of leakage, yielded or bent bolts, etc., and hard full face gaskets in low pressure systems.
Special Joinings Fittings (46 CFR 56.30, 35)	See secs. 56.30 and 56.35. Existing flared, flareless, compression, grip, bite, slip-on, expansion, sleeve couplings and other proprietary joints will be examined for suitability in each application. In particular, dresser type couplings may need the addition of positive means to prevent creeping, pullout, and/or heat resistant gasketing.	
Fuel Shut-offs (46 CFR 58.01-25)	Must provide controls required by sec. 58.01-25. Details on an individual case basis.	
Astern Power (46 CFR 58.05-5)	Adequate control in all normal circumstances must be demonstrated see sec. 58.05-5.	
Internal Combustion Engines (46 CFR 58.10-5, -10, -15)	See secs. 58.10-5, -10, -15. Must meet in full except that exhaust piping which would normally have to meet Part 56 will be evaluated on a case basis for worker safety.	
Domestic LPG Services (46 CFR 58.16)	May be used for heating, cooking, incineration of sewage or garbage, etc. but not as machinery fuel. Where used, must meet sec. 58.16 in full.	
Refrigeration (46 CFR 58.20)	Systems used for cargo reliquefaction or containing hazardous refrigerants will be reviewed on a case basis. Conventional freon systems for ship stores, air conditioning, and perishable cargoes may meet any national standard or classification society rules. Sections 58.20-10 (a) and (b) and -15(c) must be met.	
Steering (46 CFR 58.25)	Must meet the requirements that were in effect for vessels of U.S. registry at time the vessel being inspected was built.	
Fluid Power and Controls (46 CFR 58.30. Also appropriate regulations in 46 CFR Part 56, such as 56.07 and 56.60, unless altered by 58.30).	Note that only vital or hazardous systems are subject to all details of secs. 58.30. 58.30-50 must be met for all systems. Where sec. 58.30 lists specific material specifications, or refers to Part 56 for design and materials, use the general design and material requirements for vital and hazardous systems above. See pressure vessel requirements for accumulators. Four-bolt split flanges are not permitted in steering gear or controllable pitch propeller systems.	
Independent Tanks (46 CFR 58.50)	Generally tanks which contain fuel for vital services must have a level of safety and reliability equal to sec. 58.50. Others may either have an equivalent level of safety or be located in a space which is normally unmanned, not containing vital or emergency equipment and equipped with fixed fire protection.	
Miscellaneous Specific Requirements (46 CFR 56.50-1)	See sec. 56.50-1. Full compliance required for these items. Except: Sluice gates and cocks—case-by-case evaluation.	
Systems Containing Oil (46 CFR 56.50-5, 56.50-60)	See above for Flammables and Combustibles. Also see secs. 56.50-5 and 56.50-60. Full compliance required except: sec. 56.50-60(d) tank stop valve ductility not less than 15% in 2" (50MM) and fire safe/postive shut off design case evaluation.	
Gage, Instrumentation Sampling, Control (46 CFR 56.50-10, -97).	See secs. 56.50-10 and -97. If not equipped with root valve at piping connection, must meet same requirements as piping to which it is attached.	
Steam and exhaust excluding internal combustion engine exhaust (46 CFR 56.50-15).	See sec. 56.50-15. Must comply in full with intent. Minor deviations in detail (i.e. bypasses on valves over 8" vice over 6" etc.) considered on case-by-case basis.	
Relief piping (46 CFR 56.50-20 and 25)	See secs 56.50 -20 and -25. Flow areas, back pressures, stop valves and interlocks will be considered on a case basis. Use of active controls in lieu of passive devices will not be accepted.	Check for hanger design and location. Peak flow rates may destroy expansion joints if excessive motion possible.
Feed, condensate, and blowoff (46 CFR 56.50-30, 35, and 40).	See secs. 56.50- 30, 35, and 40. Must have equivalent safety, reliability, and redundancy to 1 of the permitted arrangements. Details evaluated on case basis. Generally must meet valving requirements in full.	Consider safety of people workikng in idle boilers, as well as ship propulsion reliability.
Circulating pumps and suctions (46 CFR 56.50-45)	See sec. 56.50-45. Must meet intent in full. Note that 2 suctions from 1 sea chest or 2 adjacent sea chests are not independent because a single minor fouling or grounding can close both. Alternative sources of either water or power independent of such seachests will be considered.	
Bilge and ballast (46 CFR 56.50-50 and 55)	See secs. 56.50 -50 and -55. Systems not meeting requirements in full will be considered on case basis. A manifolded system is, however, required. The full required water delivery rate must be met. Pipe sized requirements may be relaxed if satisfactory output can be demonstrated. Pump separation must be met. This may mean that fire pumps must be bilge pumps, and suctions from sources of oil more concentrated than that normally found in bilges must be disconnected. Independent and emergency suctions with reliability and output equal to requirements must be available; detail differences will be considered on a case-by-case basis.	
Piping separation (46 CFR 56.50-50 (h), (j), and (k))	Sec. 56.50-50(h) must be met in most cases. Common bilge and ballast systems will not be accepted unless there is an unusual level of sailor-proofing which does not interfere with rapid bilge pumping.	

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Boiler fuel service, gasoline fuel systems, diesel fuel systems, and lube oil systems (46 CFR 56.50-56, 70, 75, and 80).	Meet conceptual requirements in full. Material and thickness deviations will be considedred on a case basis, if general design and material requirements for vital and hazardous systems are met. See secs. 56.50-65, 70, 75, and 80.	
Heat transfer oil (46 CFR table 56.04-2, 56.50-5)	Must meet general requirements for systems conveying oil for applicable piping classification. Fired heater controls per 46 CFR Part 63. Oil may not be used to heat potable water without special precautions, e.g. intermediate transfer fluid or double tube and tubesheet exchangers. Excess temperature shutdown must never be set higher than heat transfer fluid flash point. When fluid is heated by exhaust gas or other waste heat, safety provisions must be provided in addition to temperature controls to prevent possibility of overheating if controls fail.	
Tank vent and overflow (46 CFR 56.50-85 and 95)	See secs. 56.50-85, and 95. Must meet in full, unless existing structure cannot handle the head of the required piping. Alternatives such as overfill protection will then be considered on a case basis.	
Level and sounding (46 CFR 56.50-90)	There must be a safe and reliable way to determine level in all tanks. Deviations from specific requirements of sec. 56.50-90 will be examined on an individual basis.	
Suctions and discharges (applies to all shell penetrations not covered by vent and overflow). (46 CFR 56.50-95).	Must meet SOLAS requirements in effect at time of vessel construction as a minimum. Other deviatios from current U.S. requirements will be considered on a case-by-case basis. Note that the absence of remote operation of skin valves may impact on machinery space manning levels. Sea valves must be ductile (15 percent elongation in 2" (50mm) if ferrous, 10 percent if nonferrous), melting temperature solidus 1,700° F (925° C), and equivalent to category "A" (see sec. 56.20-15(b)). Remote operating devices must be comparably damage resistant. Current tank vessel oil discharge location requirements are applicable to tankships regardless of keel laying date. A sea valve is not considered "effecient and accesssible" if it is or can be locked open; if it can be locked closed, there must be sufficient freedom to tighten it after seat damage.	
Plastic pipe (46 CFR 56.60-25 (a) and (b))	Not permitted in concealed spaces in accommodations or service areas unless within class "A" divisions. When used, must meet general requirements of sec. 56.60-25 (a) and (b).	
Nonmetallic flexible hoses (46 CFR 56.60-25(c))	Must have burst rating 4 times maximum allowable working pressure. If cannot be determined fire resistant or self-extinguishing as required with appropriate documentation or testing, must be replaced with Coast Guard approved hoses.	
Keel coolers (46 CFR 56.50-96)	Those not equipped with isolation valves meeting the skin valve requirements above must meet sec. 56.50-96 in full.	
Low temperature piping (46 CFR 56.50-105)	Must meet sec. 56.50-105 in full detail, except that designs complying with the present IMCO gas ship code with a safety factor of 4 on ultimate stress and 1.6 on yield will be considered on a case basis.	

Electrical

Shipboard electrical installations are to be reviewed using the following guidelines to:

a. Eliminate requirements for "unspecified construction details" to be in accordance with specific U.S. industrial standards and military specifications. Equipment approvals may be based upon classification society approval and construction to a foreign standard that has received recognition in it's own country.

b. Eliminate stringent "numerical" requirements. Alternate numbers will be accepted when approved by a classification society. For example, our regulations require branch circuit conductors supplying a single motor to have a current-carrying capacity of 125% of motor full-load rating. Some classification societies only require a current-carrying capacity of 100%. The same acceptance criteria would hold for dimensions, cable sizes (including 1.5mm exponent 2 power and lighting cable), overcurrent protection ratings or settings, and other "numerical" requirements contained in the Electrical Engineering Regulations (46 CFR Subchapter J).

c. Allow alternate materials and equipment which are routinely used aboard foreign flag vessels, and which have been shown to perform satisfactorily.

d. Maintain general "system" requirements for overall vessel safety.

e. Rely upon a more detailed vessel inspection to eliminate obvious hazards. Inspectors should look for personnel hazards such as the presence of energized parts and hot surfaces, inadequate mechanical protection of moving parts, dangerous wear or deterioration, and inadequate equipment grounding. This inspection will ensure the presence of many safety related items which are normally ensured by our references to specific equipment standards.

New equipment and installations must fully comply with current regulations that apply to new vessels.

Plan submittal should be in general accordance with 46 CFR 111.05-5; detailed submittals need not be made for equipment and systems that are acceptable based upon classification society approval. In these cases, documentation of classification society approval must be provided by the vessel owner.

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection or existing vessels
General/overall		All inspections and tests specified in § 111.05-10 should be performed and all requirements met.

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection or existing vessels
General equipment suitability for the area (watertight, drip proof, corrosion resistant, ambient temperature, etc.) (46 CFR 111.05).	As per secs. 111.05–15 and 111.05–20, except that ambient temperature assumptions may be in accordance with classification society requirements. Porcelain items must be resiliently mounted.	Visual examination for corrosion, especially with regards to aluminum alloys.
Rotating machinery (motors, generators, prime movers) (46 CFR 111.10, 111.25).	Per classification society. Motors per § 111.25–30 for enclosures and protection.	
Power requirements (46 CFR 111.10–1)	Per § 111.10–1	
Voltage regulation (46 CFR 111.10–20)	Per classification society	
Batteries and battery installations (46 CFR 111.15)	Per § 111.15	Visual examination for corrosion.
Transformers (46 CFR 111.20)	Per classification society	
Switchboards (46 CFR 111.30)	Per 111.30–1 except that dimensions, requirements for clearances, bus bar locations and working space need not be met, provided such dimensions are considered adequate. Per classification society for switchboard wiring, bus bar capacity, ratings, spacing and arrangement. Per §§ 111.30–15 and 20 for required switchboard.	Visual inspection for adequate working space.
Electric Propulsion (46 CFR 111.35)	Per classification society and §§ 111.35–1, and 111.35–5(a)–(k).	
Panelboards (46 CFR 111. 40)	Per § 111.40–1 (a)–(c), (e), (g), (h), and per classification society.	
Overcurrent Protection (46 CFR 111.50)	Per § 111.50–1, except that conductor current-carrying capacities may be as determined by the classification society. Per §§ 111.50– 5 and 10 for location and enclosure requirements. Construction and use of overcurrent devices per §§ 111.50– 15 and 20, except that classification society approval is acceptable in lieu of compliance with referenced standards. System protection in accordance with § 111.50–25 insofar as practical.	
Switches and Circuit Breakers (46 CFR 111.55)	Per § 111.55–1. Detailed construction requirements per classification society.	
Wiring Material and Methods (46 CFR 111.60)	Type, size, and current-carrying capacity per classification society, except that solid conductor cable shall not be permitted. Installation per §§ 111.60–1(j)–(n), 111.60–15, 111.60–20, 111.60–25, and 111.60–40, except that equipment is not required to meet referenced standards.	
Fuses (46 CFR 111.50–15)	Must be Underwriter's Laboratories listed if suitable replacements are available. Mounts may need changing.	
Generator Protection (46 CFR 111.65)	Per § 111.65, except that trip settings approved by the classification society are acceptable.	
Motor Circuits and Protection (46 CFR 111.70)	Motors and motor circuits must be provided with the types of protection specified in § 111.70. Motor controllers and group control panels per §§ 111.70– 20, 25, 30, 35, and 40, except ratings or settings of devices, sizing of cables, and equipment construction details may be per classification society.	
Lighting Circuits (46 CFR 111.75)	Per § 111.75, except that lighting branch circuit sizing per classification society. Unspecified equipment construction details per classification society. Navigation lights approved by COMDT to 72 COLREGS.	
Hazardous Areas (46 CFR 111.80– 1, 5, and 8 111.85)	Must meet §§ 111.80– 1, 5, 20, and 25, 111.85, 111.92 and 111.94, except that equipment need not meet referenced standards. All equipment in hazardous areas must be approved by the classification society, and such approval must be based upon actual testing by an internationally recognized testing agency such as UL, FM, CSA, BASEEFA, and PTB. Classification society approved equipment based upon manufacturer's certification is not acceptable.	
Ventilation systems (46 CFR 111.80–10)	Per § 111.80–10	
Elevators and dumbwaiters (46 CFR 111.80–35)	General construction per classification society. Hoistway and car door locks, undercar safeties, and terminal stopping devices must meet ANSI A 17.1. Emergency exit with interlocked stop switch must be provided. Emergency signal device must be provided.	
Remote shutdowns (46 CFR 111.80–13)	Per § 111.80–13	
Shore connection boxes (46 CFR 111.80–15)	Per § 111.80–15	
Submersible motor-driven bilge pumps (46 CFR Part 111)	Per § 111.80–40	
Watertight door systems (46 CFR 111.80–45)	Per § 111.80–45	
Electric powered lifeboat winches (46 CFR 111.80–55)	Per classification society	
Electric Air Heaters (46 CFR 111.80–60)	Per classification society and §§ 111.80–60 (a), (b)(2)–(b)(5)	
Commissary Equipment (46 CFR 111.80–65)	Per classification society and §§ 111.80–65 (b)(1)–(b)(6), (c)	
Electric Steering Gear (46 CFR 111.80–70)	Per § 111.80–70, and 33 CFR Part 164	
Emergency Power and Lighting system (46 CFR Part 112)	Per 46 CFR Part 112	
Communications and Alarm Systems (46 CFR Part 113)	Per 46 CFR Part 113, except that items required to be approved under Subchapter Q, or by the COMDT, such as fire detection systems, emergency loudspeaker systems, sound powered telephone equipment, and general alarm equipment may be approved based upon evidence of satisfactory operation.	

Stability

Foreign Flag Vessels to Be Brought Under U.S. Flag

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
1. Stability test: Each vessel must be inclined to determine its lightship characteristics unless the vessel can meet Coast Guard stability criteria when assuming a conservative value of lightship vertical center of gravity (VCG). In that case, a dead weight survey may be required in order to verify the vessel's lightship displacement and longitudinal center of gravity (LCG). (46 CFR 31.10-30(b), 93.50, and 191.15).	If an inclining experiment had been performed and had been witnessed and approved by one of the recognized classification societies, the Coast Guard may accept their approved lightship values after review of the inclining experiment report. If prior to certification significant changes are made in structure, joiner work, heavy equipment, etc., a new inclining may be required.	
2. Stability Standards: Calculations must be submitted to show that the vessel meets current Coast Guard stability criteria in all allowable loading conditions. (46 CFR 31.10-30(e), 93.07, Part 191).	Same	
3. Stability Information: The master of each vessel must be provided with approved stability information (usually in the form of a stability booklet) based upon the approved stability calculations. (46 CFR 31.10-30(b), 93.10, Part 191).	do	
4. Watertight Doors: Each watertight door installed in required subdivision bulkheads must meet the current requirements of (46 CFR Subchapters D, U, I and Q) (46 CFR Part 163) as applicable.	Watertight doors installed in required subdivision bulkheads must be of the type required by Subchapter H for the specific location. The door must also be controlled and marked in accordance with 46 CFR Subchapter H. The structure of the door will be accepted without review based upon visual examination and operational testing. Watertight doors in other than required subdivision bulkheads will be accepted based upon visual examination and operational testing.	All watertight doors shall be operated locally by manual power and also by hydraulic or electric power, if so fitted, at all annual inspections and reinspections. Where remote control is fitted, the doors shall also be operated by the remote control apparatus.
5. Load lines: Each vessel to which 46 CFR Subchapter E will apply will have to receive a Load Line Certificate in accordance with those regulations.	If the vessel already has a valid International Load Line Certificate issued by one of the recognized classification societies for a country signatory to the ILLC, 1966, if desired by the owner, that classification society will be authorized to issue a Load Line Certificate on the behalf of the U.S. upon the Coast Guard's approval of the stability information.	

Major Alteration or Modification of U.S. Flag Vessels

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
1. Stability test. After completion of the alterations, an inclining experiment will be required if in the opinion of the Coast Guard District Commander (mmt) the alterations substantially affect the stability of the vessel.	If in the opinion of the Coast Guard District Commander (mmt) the alterations or modifications do not significantly affect the stability of the vessel or if it can be shown that the originally approved lightship values can be accurately adjusted for the alterations, a stability test may not be required. A deadweight survey may be required in order to verify the accuracy of the lightship adjustments.	
2. Stability standards. If in the opinion of the Coast Guard District Commander (mmt), the (1) alterations substantially alter the stability characteristics, dimensions or carrying capacity of the vessel, (2) change the type of vessel, or (3) substantially prolong the vessel's service life, the vessel will have to comply with the stability standards in force at the time of the conversion.	If in the opinion of the Coast Guard District Commander (mmt), the alterations modifications or repairs do not result in any of these three criteria being met, the vessel may be permitted to comply with the stability standards to which it had to comply prior to the conversions.	
3. Stability information. Revised stability information will have to be prepared and approved based upon the new approved lightship values.	Same	
4. Watertight doors. Each watertight door installed as part of the alterations must comply with the regulations in force at the time of the conversion.	do	
5. Load lines. A vessel which had a load line prior to the conversion must notify the assigning authority as to the conversion in order to keep the load line valid. Attention should be paid to the effect the alteration has on the vessel's admeasurement tonnage. It is possible that a previously non-load lined vessel would have to obtain a load line as the result of the alteration.	do	

Uninspected U.S. Flag Vessels Brought Under Inspection

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
1. Stability test. A stability test will be required for each vessel.	If the Coast Guard had previously witnessed a stability test on the vessel and approved lightship values, and it can be verified by the OCMI that there is no indication of modifications having been made to the vessel since originial construction (or last stability test), the requirement for the stability test may be waived. However, a deadweight survey will normally be required in order to verify the originial light ship values.	
2. Stability standards.		

UNINSPECTED U.S. FLAG VESSELS BROUGHT UNDER INSPECTION—Continued

Basic new vessel requirements	Acceptance criteria for existing vessels	Additional inspection for existing vessels
Each vessel will have to comply with the stability standards in force at the time of being brought under inspection.	If the vessel has had stability approved by the Coast Guard for load line assignment, no new stability analysis will be required unless the results of the inclining experiment or deadweight survey indicate that the vessel has been changed substantially since the original approval. If it does, a new stability analysis would then be required using the current criteria.	
3. Stability information		
Stability information must be prepared for each vessel based upon approved lightship values and stability calculations.	Same	
4. Watertight doors	Same criteria as for foreign flag vessels to be brought under U.S. flag.	
5. Load lines		
Each vessel to which the load line regulations apply must have a valid Load Line Certificate.	Same	

Protection of the Marine Environment

The requirements contained in 33 CFR Part 155 are in most cases applicable to both U.S. and foreign vessels operating in U.S. waters. Only minor changes, such as translation of required documents, should be necessary if the vessel is currently trading to the U.S.

Applicability of the regulations in 33 CFR Part 157 is determined by the vessel's contract, keel laying or delivery dates. A vessel being reflagged which has not undergone a "major conversion" would be required to meet those requirements applicable to a U.S. vessel with the same construction dates. A "major conversion" for the purposes of this part is one which substantially alters the dimensions or carrying capacity of the vessel or prolongs its service life. Reflagging itself, or any design or equipment change necessary to fit segregated ballast tanks, dedicated clean ballast tanks or a crude oil washing system is not normally considered a "major conversion". The cognizant OCMI will make the final determination of whether a planned project will be treated as a major conversion. Special attention should be paid to the capability of "new" vessels (as defined by 33 CFR 157.03(i)) to meet the requirements of 33 CFR 157.21. If a vessel's previous flag state has not imposed similar stability and subdivision requirements it is probable that there will be difficulty in complying.

For the requirements contained in 33 CFR Part 159, an existing Marine Sanitation Device (MSD) certificated by the U.S. Coast Guard will be acceptable if it meets current U.S. sewage abatement standards. However, non-U.S.C.G. certificated MSD's will undergo the normal MSD certification process. The MSD must comply with 46 CFR Subchapters "F" and "J" to the degree noted above, and be acceptable in the judgment of the cognizant OCMI.

For the requirements contained in 46 CFR 162, non-U.S. Coast Guard approved oily-water separating equipment and oil content meters will be allowed under the following conditions:

a. The equipment must be tested and certificated under IMCO Resolution A.393(x).

b. The equipment must be in compliance with 46 CFR Subchapters "F" and "J" where applicable.

c. The testing and certificating country must be party to the 1978 MARPOL Protocol.

d. A Certificate of Type test and test particulars as set out in IMCO Resolution A.393(x) that is satisfactory to the United States must be on deposit at IMCO headquarters.

The U.S. will accept certificates issued on the basis of tests and evaluation performed by a recognized classification society provided that the government on whose behalf the classification society is acting fully guarantees the completeness and accuracy of the results as evidenced by appropriate signature and official stamps on the Certificate of Type test deposited.

Nothing above relieves a vessel from complying with the "visible sheen" requirement as defined in 40 CFR Part 110.

[FR Doc. 84-6541 Filed 3-9-84; 8:45 am]

BILLING CODE 4910-14-M

federal register

Monday
March 12, 1984

Part V

Nuclear Regulatory Commission

10 CFR Parts 2, 30, 40, 50, 51, 61, 70, 72, and 110

Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 51, 61, 70, 72, and 110

Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising Part 51 of its regulations to implement section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA) in a manner which is consistent with the NRC's domestic licensing and related regulatory authority. Related conforming amendments are being made to Parts 2, 30, 40, 50, 61, 70, and 110. This rule reflects the Commission's policy to develop regulations to take account of the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA voluntarily, subject to certain conditions.

EFFECTIVE DATE: Upon approval of the information collection requirements by the Office of Management and Budget or June 7, 1984, whichever is later. NRC will announce the date of approval of information collection requirements by OMB in a future document.

FOR FURTHER INFORMATION CONTACT: Jane R. Mapes, Senior Regulations Attorney, Regulations Division, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492–8695.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 13739–13766) a proposed revision of 10 CFR Part 51 and related conforming amendments to 10 CFR Parts 2, 30, 40, 50, 61, 70, and 110 of its regulations. Interested persons were invited to submit written comments and suggestions on the proposed amendments during the sixty day comment period which expired May 2, 1980. Comments were also solicited on several provisions of the CEQ regulations which the Commission had identified as requiring further study before implementing regulations could be prepared.

In addition to the preliminary views of the Council on Environmental Quality as set out in CEQ's letters of September 26, 1979 and October 29, 1979 which were published in Appendix B to the proposed rule, the Commission received twenty-one letters of comment, expressing the views of interested Federal agencies, state and local governments, industry, including electric utilities, vendors and architect-engineers, professional organizations and individual members of the public. The letters contained more than 100 individual comments and in some instances represented the views of several commenters. Comments were also received from interested members of the NRC staff.

As requested in the Commission's notice of proposed rulemaking, several commenters expressed views on the following sections of the CEQ regulations: 40 CFR 1502.14(b), 1502.22 (a) and (b) and 1508.18. A brief description of each of these provisions, accompained by a summary of the relevant comments and a statement of the Commission's present views on the issues raised, is set out below. The views of the commenters are fully set out in the individual letters of comment and in a subject matter compendium which has been placed with the letters in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. where they are available for inspection and copying. Since the topics addressed by §§ 1502.14(b) and 1502.22(a) of CEQ's regulations are interrelated, these sections will be discussed together.

By way of preface, the Commission restates its view that, as a matter of law, the NRC as an independent regulatory agency can be bound by CEQ's NEPA regulations only insofar as those regulations are procedural or ministerial in nature. NRC is not bound by those portions of CEQ's NEPA regulations which have a substantive impact on the way in which the Commission performs its regulatory functions.

Consideration of Alternatives

1. *40 CFR 1502.14(b).* This section provides that the environmental impact statement "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

In addition to the Council on Environmental Quality, eleven commenters responded to the Commission's request for views on this provision of the CEQ regulations. Of these eleven commenters, four provided brief statements expressing general support for 40 CFR 1502.14(b). Seven commenters voiced the opinion that § 1502.14(b) does not accurately reflect the statutory mandate of NEPA with respect to the consideration of alternatives. Relying on judicial decisions handed down since the enactment of NEPA, these commenters stated that consideration of alternatives in an environmental impact statement is subject to a rule of reason, that neither the number of alternatives considered nor the amount of information furnished concerning each alternative need be exhaustive. According to the commenters, consideration need only be given to *reasonable alternatives* to the proposed federal action; the detail and amount of information furnished concerning the environmental consequences of each of those alternatives, including the proposed action, need only be sufficient to permit the decisionmaking agency to make a reasoned choice among those alternatives so far as environmental consequences are concerned. The commenters noted that the courts have recognized that Federal agencies have a responsibility to reach meaningful decisions respecting environmental consequences if the objectives of NEPA are to be achieved. The commenters pointed out, however, that although the courts have taken a close look at the adequacy of the information on which those decisions are based, the courts have not required agencies, under the rule of reason, to supply or obtain more detailed information when the information needed for a meaningful decision is adequate.

2. *40 CFR 1502.22(a).* This section provides that "[i]f the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement."

Seven commenters, including the Council on Environmental Quality, submitted views on 40 CFR 1502.22(a). Two commenters expressed general agreement with the CEQ position that the standard set forth in 40 CFR 1502.22(a) merely restates existing NEPA law, is subject to a rule of reason, and therefore should be adopted by the Commission. One of these commenters also expressed concern that failure to obtain the requisite information as mandated by 40 CFR 1502.22(a) would preclude the Commission from carrying out its NEPA responsibilities to make a rigorous comparison of the proposed action with available alternatives.

Several commenters expressed the view that the standard imposed by 40 CFR 1502.22(a) should not be automatically applied in every case because it would place "a burden on the NRC in preparing an EIS that is not

required by NEPA." These commenters noted that "NEPA cannot be read as a requirement that complete information concerning the environmental impact of a project must be obtained before action may be taken," and that this CEQ provision could have the practical effect of "requir[ing] that the EIS not be used as a decision-making document, *i.e.*, does not satisfy the mandate of NEPA, until all 'relevant' information is available so long as the costs of obtaining such information are not 'exhorbitant'."

One commenter emphasized the importance of care and restraint in determining when costly information is essential to a reasoned choice among alternatives. The commenter suggested that requests for data involving large costs should "be justified on the basis that the magnitude of the benefits to be derived from the information clearly exceed the costs associated with obtaining and analyzing this information * * *" and that requirements for data involving large costs "should be limited to matters that speak to the basic license ability [*sic* licensability] of the perferred site/plant combination."

Several commenters stated that NEPA does not require that all relevant information regarding the adverse impact of alternatives, including information which is not readily available because it is expensive or otherwise difficult to obtain, be known before a decision is reached. According to these commenters, NEPA merely requires that the decisionmaker be informed of any uncertain or unknown environmental effects. In each case, responsibility for evaluating the sufficiency of the information rests with the decisionmaker who must determine first, whether it is possible to make a reasoned decision on the basis of the information provided, and second, whether in the absence of adequate information, more information should be obtained or a decision should be made not to proceed with the proposed action. In the opinion of the commenters, strict application of the standard in 40 CFR 1502.22(a) would not only eliminate this element of flexibility in agency decisionmaking, it would also lengthen the time needed to complete NRC environmental reviews. The commenters expressed the view that application of the rule is unlikely to result in better decisionmaking and could have a severe and detrimental effect on the ability of the NRC, as an independent regulatory agency, to carry out its substantive licensing and related regulatory functions in a responsible and objective manner.

The primary mission of the Nuclear Regulatory Commission is to regulate civilian nuclear energy activities to ensure that they are conducted in a manner which will protect the public from the standpoint of radiological health and safety, maintain national security, comply with the antitrust laws and, since the passage of the National Environmental Policy Act of 1969, protect the environment. Charged with carrying out the licensing and related regulatory functions of the former Atomic Energy Commission,[1] the NRC has no authority to encourage and promote the development of atomic energy for peaceful purposes. Nor does it bear any responsibility for the development or regulation of other energy sources.

Within this framework, the possible actions which the Commission itself may take are limited. Their scope is determined in the first instance by the nature of the application or petition presented to the Commission for action. So far as Commission action is concerned, the available alternatives are to grant the application, grant the application subject to certain conditions, or deny the application, either with or without prejudice. Although the Commission has an obligation to determine the accuracy and relevance of the safety-related and environmental information presented and to perform the requisite safety and environmental analyses, the Commission has no power to compel an applicant to come forward or to require an applicant, once having come forward, to prepare and submit a totally different proposal, for example to construct and build a different type of nuclear power reactor pursuant to detailed specifications furnished by the Commission on a site identified by the Commission but not chosen by the applicant. As an independent regulatory agency, the NRC does not select sites or designs or participate with the applicant in selecting proposed sites or designs.

In preparing this revision of 10 CFR Part 51 in final form, the Commission has reviewed its regulatory experience under NEPA, both from the standpoint of the kinds of alternatives which are considered in making evironmentally sound regulatory decisions and the kinds and amounts of information needed to evaluate the comparative merits of those alternatives. In the usual case, these alternatives include the alternative of no action (denial of the application) and reasonable alternatives outside the jurisdiction of the NRC.

The types of alternative actions which the Commission itself is able to take reflect the Commission's functional role—the role of an independent regulatory agency authorized to perform quasi-judicial and quasi-legislative functions. The decisions which the Commission is required to make in carrying out its responsibilities as an independent regulatory agency play an equally important role in determining whether, from the standpoint of NEPA, all reasonable alternatives have received substantial treatment and whether the information submitted with respect to each alternative is sufficiently detailed. In developing these regulations, the Commission has tried to ensure that, at the respective points of decision, sufficient information will be available for meaningful consideration and comparison of a reasonable spectrum of alternatives, leading, in turn, to a reasoned decision. The Commission believes that the provisions of subpart A of Part 51 are consistent with the standard in 40 CFR 1502.14(b), that alternatives selected for detailed consideration be accorded substantial treatment. The Commission is also of the opinion that the way in which the NRC conducts its evironmental reviews implements this standard in a responsible and meaningful manner. This includes the practice of handling generic matters (for example, those which are common to all power reactor licensing proceedings and which may relate to environmental as well as safety issues) in generic rulemaking proceedings and generic environmental impact statements. Generic environmental issues which have received this kind of analysis and review need not be accorded the same kind of detailed consideration as that given to issues arising solely in the context of a specific licensing proceeding.

The Commission intends to follow the standard in 40 CFR 1502.22(a), though it notes that implementation of § 1502.22(a) may present substantive issues, specifically whether information which is not known is (a) relevant to adverse impacts, (b) essential to a reasoned choice among alternatives, and (c) obtainable at a cost which is not exorbitant. Based upon its past experience, the Commission believes that it will seldom, if ever, be called upon to determine whether the cost of obtaining unknown information deemed relevant to adverse impacts and essential to a reasoned choice among alternatives is or is not exorbitant. In

[1] The Atomic Energy Act of 1954, as amended, Pub. L. 83–703, as amended, 42 U.S.C. 2011 et seq.; the Energy Reorganization Act of 1974, as amended, Pub. L. 93–438, as amended, 88 Stat. 1233–1254, see especially 42 U.S.C. 5841 et seq.

the unlikely event that the issue is presented, the Commission reserves the right to resolve the matter in a manner which is consistent with the Commission's reponsibilities as an independent regulatory agency.

As illustrated in the following description of the manner in which NRC considers alternatives in connection with its environmental review of license applications for nuclear power plants, the amount of detailed information needed to make a reasoned decision on each of the many issues presented varies substantially among issues but is in each case commensurate with the nature of the issue addressed. With respect to most issues, with the possible exception of those relating to radiological matters, information need not be presented in the same degree of detail as that furnished in support of the applicant's proposal. In the review of alternative sites, for example, the Commission has found that reconnaissance-level information is adequate to assure that these alternatives are accorded substantial treatment.

Consideration of Alternatives in NRC Environmental Review and Analysis of License Applications for Nuclear Power Plants

In the customary NRC environmental review, detailed descriptions are prepared of the proposed plant, of the site on which the plant is proposed to be located, of the need for the plant, and of the environmental impacts likely to result from construction of the plant and from station operation. The following alternatives to the project are then addressed:

1. *Alternative energy sources and systems,* including alternatives which do not require new generating capacity and alternatives which do require new generating capacity. The former include such alternatives as power purchases, reactivation of retired plants, extension of the service life of existing plants and conservation measures. The latter include other alternative energy sources uniquely available to the applicant. In each case, consideration is given to the following types of energy sources: solar and wind, geothermal, petroleum liquids, natural gas, hydrodynamic, advanced nuclear, municipal solid wastes, biomass and coal. After the available alternative energy sources have been identified, they are categorized as competitive or non-competitive.

The amount and type of information needed to make a determination that a particular energy source is not available, or that a particular energy source, although available, is not competitive, is less extensive than that required to evaluate the comparative advantages and disadvantages from the standpoint of the environment between the proposed plant which is the subject of the license application and an alternative energy source which is both available and competitive. Once it is readily apparent that an alternative is non-competitive, either because of its technological status or lack of availability, the only data and information required with respect to that alternative is that needed to explain why the alternative is no longer being considered. Similarly, it is possible to reach a meaningful decision on the issues presented at subsequent levels of review (for example, classification of alternatives as environmentally preferable, environmentally equivalent, or environmentally inferior to the applicant's proposed plant, and comparison of the applicant's proposed plant with environmentally preferable or environmentally equivalent alternatives) without insisting that the amount and type of information presented respecting the alternative energy source be as extensive and detailed as that provided concerning the facility sought to be licensed.

2. *Alternative sites.* The Commission uses a two-stage decision standard to assure that adequate consideration has been given to alternative locations for constructing power generation facilities to meet the demonstrated need. The first part of this standard requires that the applicant submit a slate of alternative sites which are "among the best that could reasonably be found" inside a region in which it is reasonable to construct a plant to meet the projected need for power. The second part of the standard requires that the proposed site be approved only if no obviously superior alternative site has been identified.

The reason for considering alternative sites is that many environmental impacts can be avoided or significantly reduced through proper selection of the location for a new generating facility. These significant impacts which can be avoided or reduced are also readily detected at the planning stage of a power plant. For this reason alternative site reviews are encouraged as early as possible in the process of licensing a power plant and the use of reconnaissance-level information for making the comparative analyses is urged. The use of reconnaissance-level information to identify potentially significant environmental impacts has been extensively used and while it may not be possible to optimize design or make detailed impact predictions based on such information it is still sufficient to make decisions at the pre-design stage to determine which site should be chosen. It is highly unlikely that detailed examination of the site selected would reveal a significant environmental impact that had escaped the reconnaissance-level investigations. Based on its past experience, the Commission has found reconnaissance-level information adequate for informed environmental decisionmaking on alternative sites.

3. *Alternative plant systems.* These systems include alternative heat dissipation systems, alternative circulating water systems and alternative non-radioactive-waste-treatment systems.

Several levels of review, each requiring differing amounts and types of information, are used in evaluating alternatives to the heat dissipation systems and circulating water systems of the proposed plant. An initial screening is performed to eliminate alternative systems or system components which are obviously unsuitable for use at the proposed site, or are obviously incompatible with the types of systems expected to be used in the proposed plant. The remaining alternatives are screened again for the purpose of identifying those which are environmentally preferable, environmentally equivalent or environmentally inferior to the systems which the applicant is proposing to use in the proposed plant. The baseline systems against which the alternative systems are compared are those proposed by the applicant with any verified mitigation schemes to limit adverse impacts. The information needed to make this determination varies among alternatives and from case to case according to the type and magnitude of the anticipated environmental impact. Only limited information, sufficient to justify the reasons given, is needed concerning alternatives which are rejected. Considerably more information is needed to compare the proposed systems with the environmentally preferable alternative.

4. *Alternative Transmission systems.* These alternatives include alternative transmission corridor routes, alternative system designs and alternative construction and maintenance practices.

The consideration given to these alternatives is similar to that given to the preceding types of alternatives. As in those cases, the amount and type of information needed concerning a particular alternative is highly variable

depending for the most part on the nature and level of the environmental evaluation and review. Thus, far more detail is required to make a rigorous comparison between an environmentally preferable alternative and the applicant's proposal than is needed to determine which alternatives are environmentally preferable, environmentally inferior or environmentally equivalent to the applicant's proposal or to screen out alternatives which, for varying reasons, will not be considered.[2]

The courts have consistently held that the test of an agency's NEPA obligation to consider alternatives is subject to a rule of reason.[3] In overturning a holding of the Court of Appeals that rejection of an alternative, in this case energy conservation, on the basis of a threshold test was capricious and arbitrary, the United States Supreme Court stated:

* * * The term "alternatives" is not self-defining. To make an impact statement something more than an exercise in frivolous boilerplate the concept of alternatives must be bounded by some notion of feasibility. As the Court of Appeals for the District of Columbia Circuit has itself recognized:

"There is reason for concluding that NEPA was not meant to require detailed discussion of the environmental effects of 'alternatives' put forward in comments when these effects cannot be readily ascertained and the alternatives are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies—making them available, if at all, only after protracted debate and litigation not meaningfully compatible with the time-frame of the needs to which the underlying proposal is addressed." *Natural Resources Defense Council,* v. *Morton, 148 U.S. App. D.C. 5, 15–16,* 458 F. 2d 827, 837–838 (1972).

See also *Life of the Land* v. *Brinegar,* 485 F. 2d 460 (CA9 1973), cert. denied, 416 U.S. 961 (1974). Common sense also teaches us that the "detailed statement of alternatives" cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man. Time and resources are simply too limited to hold that an impact statement fails because the agency failed to ferret out every possible alternative, regardless of how uncommon or unknown that alternative may have been at the time the project was approved * * *.

Vermont Yankee Nuclear Power Corp. v. *NRDC,* 435 U.S. 519 at 551 (1978). Accord: *Seacoast Anti-Pollution League* v. *Nuclear Regulatory Commission,* 598 F. 2d 1221 at 1223 (1st Cir. 1979).

In *Sierra Club* v. *Morton,* 510 F. 2d 813 at 820 (5th Cir. 1975), the Court of Appeals stated:

* * * The courts have approached their review of claims that congressionally specified detail of environmental effects was lacking in an EIS with a view that Congress did not intend to mandate perfection, or intend "for an impact statement to document every particle of knowledge that an agency might compile in considering the proposed action." [Footnotes omitted.]

In *Cady* v. *Morton,* 527 F. 2d 786 at 796 (1975), the Court of Appeals for the Ninth Circuit concluded that "the fact that the EIS concedes that certain environmental effects are not known * * * does not necessarily undermine the adequacy of the statement * * *" The court reasoned:

Neither section 102(2) (B) or (C) [42 U.S.C. § 4332 (2) (B) or (C)] can be read as a requirement that complete information concerning the environmental impact of a project must be obtained before action may be taken. If we were to impose a requirement that an impact statement can never be prepared until all relevant environmental effects were known, it is doubtful that any project could ever be initiated. *Jicarilla Apache Tribe of Indians* v. *Morton,* 471 F. 2d 1275, 1280 (9th Cir. 1973).

With respect to the requisite level of detailed information,[4] the courts have held that the detail required "* * * is that necessary to establish that an agency in good faith objectivity has taken a sufficient look at the environmental consequences of a proposed action and at alternatives to that action."[5] Information has been considered sufficient if it permits a reasoned choice to be made among different courses of action and if it provides enough detail to enable those who did not have a part in compiling the information to understand and consider meaningfully the pertinent environmental influences involved.

The consideration to be given alternatives is discussed in the opinion of the Atomic Safety and Licensing Appeal Board in ALAB–531 (In the Matter of Portland General Electric Company, et al., Trojan Nuclear Plant, Docket No. 50–344, 9 NRC 263 (1979).)[6] In that case, which involved an amendment to an operating license for a facility for which a full NEPA review had already been conducted, the Appeal board affirmed the ruling of the Licensing Board that an environmental impact statement need not be prepared in connection with an amendment to the operating license for the Trojan nuclear facility which amendment would permit the expansion of the capacity of the facility's spent fuel storage pool by replacing the existing storage racks which provided space for 260 fuel assemblies with new storage racks which would provide space for 651 fuel assemblies. The conclusion of the Licensing Board was based on a finding that the environmental impacts associated with the expansion of the capacity of the spent fuel pool were local in character and insignificant in extent.[7] For this same reason, the Licensing Board also declined to consider alternatives to pool capacity expansion, reasoning that "* * * if the environmental effects of the proposed action are negligible, the impacts of any alternatives perforce must be equal or greater * * *" and citing "*Sierra Club* v. *Morton,* 510 F. 2d 813, 825 (5th Cir. 1975) for the proposition that alternatives which would occasion similar or greater harm need not be evaluted. 8 NRC at 454."[8]

The Appeal Board endorsed this view, stating:

As we read it, the NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come into play in such circumstances—in short, there is no obligation to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expended. 9 NRC 263 at 266.

The Appeal Board also concluded that:

* * * The staff and Licensing Board properly confined themselves to an identification and appraisal of those environmental effects directly attributable to the expansion of the capacity of the Trojan pool. Because pending or past licensing actions affecting the capacity of other spent fuel pools could not either enlarge the magnitude or alter the nature of those effects there was thus no occasion to take into

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[2] The review of alternatives is limited to alternatives that are applicable to and compatible with the proposed plant, the applicant's service area and the regional transmission network, alternatives that are not prohbited by local, state or federal regulations, and alternatives that can be judged as practical from a technical standpoint with respect to the proposed dates of plant operation.

[3] *Natural Resources Defense Council, Inc.* v. *Morton,* 458 F. 2d 827 at 834, 837 (U.S. App. D.C. 1972).

[4] An agency's information-gathering obligations, like an agency's other NEPA obligations are necessarily bounded by a rule of reason. *State of Alaska* v. *Andrus,* 580 F.2d 465 at 472–473 (D.C. Cir. 1978).

[5] *Save Our Sycomore* v. *Metropolitan Atlanta, Etc.,* 576 F.2d 573 at 576 (5th Cir. 1978).

[6] In evaluating this decision of the Appeal Board, it is important to keep the factual context in which it was rendered clearly in mind. The action under consideration was an amendment to an operating license. Prior to issuance of the operating license, a full NEPA review, including consideration of alternatives, was conducted. NEPA does not require that the same ground be replowed.

[7] "[T]he evidence establishes without contradiction that the process of installing the new racks in that pool and the operation of the pool with its expanded capacity will neither (1) entail more than negligible environmental impacts; nor (2) involve the commitment of available resources respecting which there are unresolved conflicts * * * (footnotes omitted)" 9 NRC 263 at 266.

[8] 9 NRC 263 at 265.

account any such actions in determining the license application at bar. 9 NRC 263 at 268.

As indicated in the preceding discussion, the Commission's general approach to the consideration of alternatives from the standpoint of NEPA is closely tailored to the nature and scope of the Commission's licensing and related regulatory functions, including the fact that the Commission's role in protecting the radiological health and safety of the public is a limited one, confined primarily to granting applications with or without conditions or denying applications, and does not include authority to undertake developmental programs. At the same time, the Commission and the NRC staff have made a concerted effort to make sure that this approach is implemented in such a way that the basic NEPA requirement that an agency in good faith objectivity take a hard look at the environmental consequences of a proposed action and at the alternatives to that action,[9] is fully satisfied. From the standpoint of the Commission's basic functions, the Commission is of the opinion that this approach, which has been followed in revised Part 51, is both best suited to achieving the objectives of NEPA and consistent with the provisions of NEPA as interpreted by the courts in light of the rule of reason.

Worst Case Analysis

3. *40 CFR 1502.22(b).* This section provides that "[i]f the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence."

Section 1502.22(b) summarizes the environmental decisionmaking process and identifies the points at which agencies must make decisions when information is not known. Thus, each agency must decide for itself whether the information which is not known is relevant to adverse impacts and if relevant, whether the information is important to the decision. The agency must also decide whether it wishes to proceed with the action in the absence of needed information. Up to this point, the Commission has no difficulty with the provisions of § 1502.22(b). The problem lies in the final sentence which states that "[i]f the agency proceeds [with the action], it shall include a worst case analysis and an indication of the probability or improbability of its occurrence." By thus specifying what information the agency must consider in order to achieve the NEPA policy goal of minimizing adverse impacts and in order to make a reasoned decision among alternatives, § 1502.22(b) becomes, in essence, a substantive requirement rather than a procedural regulation. As stated earlier, it is the Commission's view that NRC is not bound by those portions of CEQ's NEPA regulations which have a substantive impact on the way in which the Commission performs its regulatory functions. As discussed in the following paragraphs, the Commission has articulated its interim policy regarding Nuclear Power Plant Accident Considerations under NEPA (45 FR 40101–40104, June 13, 1980).

The courts have held that the nature and form of environmental analysis required in any given case are matters left to the discretion of the agency involved. *Alaska* v. *Andrus,* 580 F.2d 465, 480 (D.C. Cir. 1978). This must be particularly true where determinations respecting the nature and form of that environmental analysis involve consideration of complex technical questions particularly within the competence of the agency to evaluate. In these circumstances, the judgment of the NRC as the agency with the requisite technical expertise should govern.

Since December 1, 1971, when the former Atomic Energy Commission published a proposed Annex to Appendix D of 10 CFR Part 50 (36 FR 22851) containing certain standardized assumptions to be used by applicants in discussing accidents in environmental reports, both the AEC and the NRC, its successor agency, have been actively concerned with the problem of how the consequences of nuclear power plant accidents should be evaluated, both from the standpoint of safety and from the standpoint of their environmental impact. This continuing concern led to the publication of the Reactor Safety Study (WASH–1400) in draft form in August 1974 and final form in October 1975, followed by the publication in September 1978 of the "Risk Assessment Review Group Report to the U.S. Nuclear Regulatory Commission," NUREG/CR–0400. On January 18, 1979, the Commission issued a policy statement on the Reactor Safety Study in light of the Risk Assessment Review Group Report. In this policy statement, the Commission accepted the findings of the Review Group on the achievements and limitations of the Reactor Safety Study. The accident on March 28, 1979 at Three Mile Island, Unit 2, emphasized the need for a change of policy on how to analyze and evaluate the environmental consequences of accidents.

On June 13, 1980, the Commission responded to this need by publishing a Statement of Interim Policy (45 FR 40101–40104) containing guidance, to be effective immediately, on the treatment to be accorded nuclear power plant accidents in environmental impact statements prepared pursuant to section 102(2)(C) of NEPA. In issuing the interim guidance, the Commission noted that its "experience with past NEPA reviews of accidents [conducted in accordance with the set of standardized assumptions contained in the former proposed Annex to Appendix D of 10 CFR Part 50, now withdrawn] and the TMI accident clearly leads us to believe that a change is needed * * *." The Commission also stated that "* * * pending completion of rulemaking activities in the areas of emergency planning,[10] siting criteria, and design and operational safety [including rulemaking relating to degraded core cooling and core melt accidents] all of which involve considerations of serious accident potential, the Commission finds it essential to improve its procedures for describing and disclosing to the public the basis for arriving at conclusions regarding the environmental risks due to accidents at nuclear power plants * * *.

It is the Commission's expectation that this guidance,[11] will remain in effect until such time as the Commission is able to continue the rulemaking proceeding initiated December 1, 1971, for the purpose of codifying the Commission's position on the treatment of accident risks under NEPA. Because of the number and importance of other safety-related matters which are relevant to accidents and their consequences and which must first be

[9] *Natural Resources Defense Council, Inc.* v. *Morton,* 458 F. 2d 827 (U.S. App. D.C. 1972).

[10] On August 19, 1980, the Commission published a final rule, to be effective November 3, 1980, upgrading its emergency planning regulations (45 FR 55402–55413.)

[11] The Commission's prior position as set out in the former proposed Annex to Appendix D of 10 CFR Part 50 has consistently been upheld by the courts. See: *Carolina Environmental Study Group* v. *United States,* 510 F.2d 796 at 799 (1975); *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 at 551 (1978); *Hodder* v. *NRC,* 13 ERC 1711 (1978), cert. denied, 13 ERC 1713 (1979).

addressed in speparate rulemaking proceedings, it is the Commission's considered opinion that it would be premature at this time to attempt to codify the guidance and formally incorporate it into the Commission's regulations. As indicated in the guidance, the Commission expects the experience gained under the Statement of Interim Policy and the close study given to significant safety-related issues in connection with the Commission's on-going activities, including rulemaking, to make existing and future nuclear power plants safer, to play an important and formative rule in determining to scope and content of future NRC regulations dealing with the treatment of accident risks under NEPA.

As formulated in the Statement of Interim Policy, the Commission guidance on how accident considerations are to be handled in future NEPA reviews, states, in part, that—

It is the position of the Commission that its Environmental Impact Statements, pursuant to * * * [NEPA] shall include a reasoned consideration of the environmental risks (impacts) attributable to accidents at the particular facility or facilities within the scope of each such statement. In the analysis and discussion of such risks, approximately equal attention shall be given to the probability of occurrence of releases and to the probability of occurrence of the environmental consequences of those releases. Releases refer to radiation and/or radioactive materials entering environmental exposure pathways, including air, water, and ground water.

Events or accident sequences that lead to releases shall include but not be limited to those that can reasonably be expected to occur. In-plant accident sequences that can lead to a spectrum of releases shall be discussed and shall include sequences that can result in inadequate cooling of reactor fuel and to melting of the reactor core. The extent to which events arising from causes external to the plant which are considered possible contributors to the risk associated with the particular plant shall also be discussed * * *.

The environmental consequences of releases whose probability of occurrence has been estimated shall also be discussed in probabilistic terms. Such consequences shall be characterized in terms of potential radiological exposures to individuals, to population groups, and where applicable, to biota. Health and safety risks that may be associated with exposures to people shall be discussed in a manner that fairly reflects the current state of knowledge regarding such risks. Socioeconomic impacts that might be associated with emergency measures during or following an accident should also be discussed. The environmental risk of accidents should also be compared to and contrasted with radiological risks associated with normal and anticipated operational releases.

In promulgating this interim guidance, the Commission is aware that there are and will likely remain for some time to come many uncertainties in the application of risk assessment methods, and it expects that its Environmental Impact Statements will identify major uncertainties in its probabilistic estimates. On the other hand the Commission believes that the state of the art is sufficiently advanced that a beginning should now be made in the use of these methodologies in the regulatory process, and that such use will represent a constructive and rational forward step in the discharge of its responsibilities.

Applied consistently, in accordance with its terms, the Commission's Statement of Interim Policy on Nuclear Power Plant Accident Considerations under NEPA can be expected to have a broad and pervasive impact. Under the provisions in 40 CFR 1502.22(b), an agency need only undertake the preparation of a worst case analysis, including an indication of the probability or improbability of its occurrence, when information relevant to adverse impacts is essential to a reasoned choice among alternatives is not known and cannot be obtained and the agency has decided to take the action despite the demonstrable absence of information. In these circumstances, which are limited to those in which the uncertainty of the requisite information base is recognized, the worst case analysis serves as a counterweight which the agency is required to place in the balance to assure that the need for the action which the agency is, in fact, planning to take is properly weighed against the risk and severity of possible adverse impacts. In accordance with the intent and the guidance contained in the Commission's Statement of Interim Policy, the NRC staff will initiate treatments of accident considerations in its ongoing NEPA reviews of nuclear power plants, i.e., for any proceeding at a licensing stage where a Final Environmental Impact Statement has not yet been issued. In addition, all Environmental Reports submitted by applicants for construction permits and for operating licenses on or after July 1, 1980, should also include a discussion of the environmental risks associated with accidents that follows this interim guidance.

Although the Commission's Statement of Interim Policy addresses accidents at nuclear power plants, the general principles and objectives enunciated in the Interim Statement and quoted in part in this preamble are readily applicable to and equally appropriate for other types of NRC licensing and regulatory actions for which the NRC staff has determined to prepare an environmental impact statement. (See § 51.20(b), which decribes types of actions, in addition to actions relating to nuclear power reactors, for which environmental impact statements will be prepared.) In considering the environmental risks attributable to accidents which might occur in connection with these types of NRC licensing and regulatory actions, the NRC staff will follow the principles in the Statement of Interim Policy as a matter of general guidance.

On March 25, 1980, the staff of the Council on Environmental Quality submitted a copy of the Environmental Law Institute's report entitled "NRC's Environmental Analysis of Nuclear Accidents: Is It Adequate?" dated February 4, 1980, and a copy of a letter dated March 20, 1980, from CEQ Chairman Gus Speth to NRC Chairman John Ahearne for NRC consideration as a Council comment on the Commission's proposed revision of 10 CFR Part 51 as published in the **Federal Register** on March 3, 1980. Both the letter and the report were highly critical of NRC's past practices with respect to the environmental analysis of possible nuclear accidents under NEPA. The CEQ letter characterized NRC treatment of potential accidents and their environmental impacts in environmental impact statements as " * * * largely perfunctory, remarkably standardized, and uninformative to the public * * *" despite "the broad diversity of size, design, and location of the nuclear reactors licensed by the Commission over the years, * * *." Noting that the typical NRC environmental impact statement "does not consider or analyze the possibility of a major accident even though it is these 'Class 9' accidents which have the potential for greatest environmental harm and which have led to the greatest public concern * * *," CEQ identified the policy contained in the proposed Annex to Appendix D of 10 CFR Part 50 as published for comment in December 1971 as the culprit primarily responsible for the problem.

In its Statement of Interim Policy, the Commission has formally withdrawn the proposed Annex to Appendix D of 10 CFR Part 50 and stated that as of June 13, 1980, the effective date of the Statement of Policy, the Annex shall not be used by applicants or by the NRC staff. The reasons given for the withdrawal, which reflect many of the concerns voiced by CEQ, are:

1. The Annex proscribes consideration of the kinds of accidents (Class 9) that, according to the Reactor Safety Study, dominate the accident risk.

2. The definition of Class 9 accidents in the Annex is not sufficiently precise to warrant its further use in Commission policy, rules,

and regulations, nor as a decision criterion in agency practice.

3. The Annex's prescription of assumptions to be used in the analysis of the environmental consequences of accidents does not contribute to objective consideration.

4. The Annex does not give adequate consideration to the detailed treatment of measures taken to prevent and to mitigate the consequences of accidents in the safety review of each application.

In order to make doubly clear that Class 9 accidents would now be considered in environmental impact statements, the Commission stated:

> * * * Environmental Impact Statements shall include considerations of the site-specific environmental impacts attributable to accident sequences that lead to releases of radiation and/or radioactive materials, including sequences that can result in inadequate cooling of reactor fuel and to melting of the reactor core [Class 9 accidents]. In this regard, attention shall be given both to the probability of occurrence of such releases and to the environmental consequences of such releases * * *.

The Commission also indicated that under the new interm policy, the treatment of accident considerations "will take into account significant site- and plant-specific features, [and] will result in more detailed discussions of accident risks than in previous environmental statements, particularly for those related to conventional light water plants at land-based sites."

In its letter of March 20, 1980, CEQ stated:

> We also encourage the Commission to consider preparing supplemental accident analyses for plants currently licensed for operation, particularly for those located near high population centers and those with unique features suggesting higher risk * * *.

The following excerpts from the Commission's Statement of Interim Policy are relevant to this concern:

> It is the intent of the Commission in issuing this Statement of Interim Policy that the staff will initiate treatments of accident considerations, in accordance with the foregoing guidance, in its ongoing NEPA reviews, i.e., for any proceeding at a licensing stage where a Final Environmental Impact Statement has not yet been issued * * * it is also the intent of the Commission that the staff take steps to identify additional cases that might warrant early consideration of either additional features or other actions which would prevent or mitigate the consequences of serious accidents. Cases for such consideration are those for which a Final Environmental Statement has already been issued at the Construction Permit stage but for which the Operating License review stage has not yet been reached. In carrying out this directive, the staff should consider relevant site features, including population density, associated with accident risk in comparison to such features at presently operating plants. Staff should also consider the likelihood that substantive changes in plant design features which may compensate further for adverse site features may be more easily incorporated in plants when construction has not yet progressed very far.

In addition to CEQ, eight other commenters expressed views on the provisions of 40 CFR 1502.22(b) relating to worst case analysis. Three commenters, the States of Georgia and Illinois and the County of Suffolk, New York, expressed broad support for the CEQ position. As the previous discussion illustrates, the Commission, in its Statement of Interim Policy on Nuclear Power Plant Accident Considerations, has responded affirmatively to these concerns.

Five commenters, relying on existing case law holding that an environmental impact statement need not discuss remote and highly speculative consequences or events whose occurrence is extremely improbable, and that the consideration to be given to environmental risks incident to reasonable alternative courses of action is subject to a rule of reason, expressed the view that the provisions of the CEQ regulations relating to worst case analysis (40 CFR 1502.22(b)) are not mandated by the statutory provisions of the National Environmental Policy Act of 1969, as amended. One of these commenters expressed the view that the "* * * future treatment of Class 9 accidents in environmental impact statements is a complicated question that, in our opinion, requires more detailed consideration than is possible in the present notice-and-comment rulemaking." The Commission's action of June 13, 1980 promulgating policy guidance on the treatment to be accorded accidents in environmental impact statements and inviting comments thereon responds directly to this concern.

Major Federal Action

4. *40 CFR 1508.18.* This section defines "Major Federal action" to include, *inter alia*, "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action." In inviting comments and suggestions on this section, the Commission specifically noted that § 1508.18 does not appear to address the question whether an environmental assessment or environmental impact statement is required when the Commission denies a petition for rulemaking under 10 CFR 2.802.

Six commenters expressed views on § 1508.18, two supporting and one opposing the definition, with the remainder offering general comments of an explanatory nature. In its preliminary comments, CEQ encouraged the Commission to adhere to the definition of "major federal action" set forth in § 1508.18, noting that in some cases, a denial of a petition for rulemaking involves consideration of certain generic issues which warrant NEPA review.

Although § 1508.18 classifies reviewable failures to act as actions, § 1508.18 does not classify every action of this type as a major Federal action requiring preparation of an environmental impact statement. Similarly, although denials of petitions for rulemaking fall within this broad class of Federal actions, not all denials of rulemaking petitions are major Federal actions for which an environmental impact statement must be prepared. Since it is not possible to forecast with any degree of certainty the entire range of situations in which environmental review would be appropriate, the Commission has decided, after careful review of the pertinent statutes and case law, that with respect to denials of petitions for rulemaking, the Commission accepts the CEQ definition, and thus does not categorically exclude denials of petitions for rulemaking from environmental review.

In reaching this conclusion, the Commission recognized that there may, in fact, be situations, such as those presented by petitions which address substantive matters on which the Commission does not have an existing policy, where the denial of a petition for rulemaking constitutes a major Federal action warranting scrutiny under NEPA. In such cases, which are expected to be few in number, the Commission fully intends to undertake the requisite environmental analysis to determine whether to prepare an environmental impact statement. On the other hand, it appears that there are certain situations where the action of the Commission in denying a petition for rulemaking need not be subject to environmental review. Where, for instance, the action of the agency in denying the petition is not reviewable in either an administrative or judicial tribunal, 40 CFR 1508.18 clearly excludes such action from the definition of "major federal action." Likewise, where the petition relates to a section of the regulations categorically excluded from NEPA analysis (see § 51.22(c) (1), (2) and (3)), the action of the agency in denying such a petition need not be subjected to scrutiny under

NEPA. And finally, where the petition raises an issue or issues considered and resolved by the Commission in some earlier action, the Commission need not retrace its earlier steps and prepare another environmental impact statement or environmental assessment prior to denying the petition. In this later situation, the Commission, in denying such a petition for rulemaking, is merely reaffirming its previous policy decision. Accordingly, there is no requirement that an environmental impact statement or environmental assessment be prepared. These examples—the list is by no means exhaustive—illustrate some of the situations where the action of the Commission in denying a petition for rulemaking does not fall within the ambit of NEPA.

Response to Comments on and Changes to Specific Provisions of the Proposed Rule

Although the basic structure of revised Part 51 is essentially the same as that of the proposed rule, some provisions of the proposed rule have been revised. In addition, certain minor editorial and clarifying changes have been made. The principal differences between the proposed revision of Part 51 as published for comment on March 3, 1980 and the text of Part 51 as adopted and promulgated by the Commission in final form are identified and discussed below in the order in which they appear in the regulation.

Several commenters noted that the proposed regulations failed to specify how the Commission's responsibilities under other environmental laws, such as, for example, the National Historic Preservation Act of 1966, the Wild and Scenic Rivers Act, the Endangered Species Act of 1973 and the Coastal Zone Management Act of 1972, would be accommodated. As explained in the preamble to the proposed rule, new subparts will be added to Part 51 as necessary to incorporate any additional regulations which may be required to implement provisions of other environmental laws. To the extent practicable, the Commission intends that its responsibilities under other environmental laws be coordinated with its NEPA procedures.

Section 51.10 Purpose and scope of subpart; Application of regulations of Council on Environmental Quality.

The first paragraph of § 51.10(b) of the proposed rule which identified certain provisions of the CEQ regulations to which the Commission intended to devote further study has been revised. The revision affirmatively recognizes the Commission's continuing obligation to conduct its domestic licensing and related regulatory functions in a manner which is both receptive to environmental concerns and consistent with the Commission's responsibility as an independent regulatory agency for protecting the radiological health and safety of the public. No change has been made in those provisions of § 51.10(b) which reserve the Commission's right to act independently (see § 51.10(b) (1), (2) and (3) which relate respectively to the examination of future interpretations or changes in the CEQ regulations, the preparation of independent environmental impact statements and the right to make final decisions.)

Three commenters suggested that the proposed rule be revised to provide more specific guidance on the limitations imposed on NRC's environmental review authority by section 511(c)(2) of the Federal Water Pollution Control Act. Several sections have been added to revised Part 51 to clarify NRC's licensing and NEPA responsibilities with respect to water quality.

The Commission has amended § 51.10(c) to reflect the conclusion of the Atomic Safety and Licensing Appeal Board [12] that Federal responsibility for regulating nonradiological pollutant discharges into aquatic bodies rests with the Environmental Protection Agency.

Consistent with the Appeal Board decisions, the Commission has also amended § 51.22(c) to exclude from the NEPA process as a categorical exclusion amendments to permits and licenses deleting from those permits and licenses any limiting conditions of operation or monitoring requirements based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act (Category 17). The NRC will rely on agencies with authority under the Federal Water Pollution Control Act to determine the need for and, accordingly, to impose requirements for any mitigative actions necessary to protect the aquatic segment of the environment from the impacts of nonradiological pollutant discharges resulting from station construction and operation. Further, NRC will rely on those agencies to prescribe monitoring as necessary to document actual effects of station operation.

One caveat deserves mention. The Commission does not intend these revisions to 10 CFR Part 51 to be interpreted to mean that NRC no longer has any operational responsibility with respect to the aquatic environment. In connection with its independent responsibilities under other statutes, the NRC may indeed be required to consider matters relating to the aquatic

[12] *Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2) ALAB-515, 8 NRC 702, December 27, 1978; *Carolina Power and Light Company* (H. B. Robinson, Unit No. 2) ALAB-569, 10 NRC 557, October 31, 1979.

* * * Suffice it to recall that in *Yellow Creek*, after an exhaustive analysis of the Water Act's legislative history (8 NRC at 706–12), we explained that it provided the following lessons (*id.* at 712–13):

"The first is that the spread of Federal responsibility for water quality standards and pollution control among the various licensing agencies, which resulted from the reading given NEPA by the *Calvert Cliffs* court, has been curtailed. That responsibility is shifted to EPA as its exclusive province. The second is that the mandate to acquire 'expertise' in developing, setting, and enforcing effluent limitations and water quality standards is also given to EPA; federal licensing agencies are to rely on that agency when such matters are involved and not develop duplicate expertise on their own. Third, those agencies are not to 'second-guess' EPA by undertaking independent analyses and setting their own standards in this area. And, finally, given the pointed Congressional comments cited, NRC, as statutory successor to the AEC, is unmistakably bound by those strictures.

"To be sure, in deciding whether to license specific projects, each agency must continue to weigh any resulting degradation of water quality in its NEPA cost-benefit balance. Section 511(c)(2) does not change this obligation. Rather, its intendment is to limit those agencies' NEPA roles to that balancing, leaving the substantive regulation of water pollution in EPA's hands."

On the basis of this analysis, we held squarely "that NRC may not undercut EPA by undertaking its own analyses and reaching its own conclusions on water quality issues already decided by EPA." 8 NRC at 715 * * *.

* * * events teach that the staff and Boards can best expend their limited resources by concentrating on those questions which only this Commission can handle, rather than by duplicating the efforts of a sister agency in a field peculiarly within that agency's competence. This is fully consistent with statutory mandates, for Congress stressed in the amended Water Act that it was to be implemented in a way that would avoid "needless duplication." [14]

[14] 33 U.S.C. 1251(f), which reads as follows: It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

In sum, Congress has designated EPA the Federal guardian of the quality of the nation's waters. That agency's decisions may turn out to be wrong in particular cases. But the remedy—as the Licensing Board properly appreciated—is not for us to substitute our judgment for EPA's. We are bound to take EPA's considered decisions at face value, and simply to factor them into our cost-benefit balance. The Board below acted correctly in doing so. ALAB-569, 10 NRC 557 at 560–562.

In ALAB-515 (8 NRC 702 at 714), the Appeal Board stated that "we read that interagency agreement [the NRC–EPA Second Memorandum of Understanding] as adopting the position we do here." The Board also stated: "We think the NRC Policy Statement means exactly what it says, in committing this agency [NRC] not to impose different monitoring requirements where EPA has acted. That reading is consistent with the legislative history of the Water Act; to allow inconsistnet requirements would not be."

environment. Under the provisions of the Endangered Species Act of 1973, for example, the NRC is obliged to consider listed species and endangered habitats, many of which are associated with the aquatic environment.

The Commission is not unmindful of the fact that under certain provisions of the Federal Water Pollution Control Act, such as sections 401(a)(2) and 401(d), NRC licenses, like licenses issued by other Federal agencies, are subject to conditions deemed imposed by the Federal Water Pollution Control Act as a matter of law. In order to accord explicit recognition to these statutory requirements and at the same time to obviate the need to undertake a series of time-consuming actions to amend specific licenses to incorporate conditions imposed by statute which may be subject to frequent change by certifying States, the Commission is amending § 50.54 of its regulations to make clear that NRC licenses issued under 10 CFR Part 50 are subject to all conditions deemed imposed by the Federal Water Pollution Control Act as a matter of law, whether or not those conditions are stated in the license.

Although the Commission is precluded from including in facility permits and licenses any conditions of its own relating to nonradiological discharges of pollutants to receiving waters, it does have an independent responsibility under NEPA to factor all significant impacts into its overall cost-benefit balance and to consider alternatives to the proposed action which are available for reducing adverse effects. These impacts include any degradation of water quality which may exist even though water quality permits and certifications issued pursuant to the FWPCA have been fully complied with. In making that balance, as discussed in two NRC decisions,[13] the NRC may accept and use without independent inquiry the determinations made by EPA or the permitting authority concerning the magnitude of the aquatic environmental impacts. In order to satisfy its NEPA obligations and complete the overall cost-benefit balance in those instances where no assessment of aquatic impacts is available, the NRC must determine the magnitude of the potential aquatic impacts. The NRC may either do this on its own or in conjunction with the permitting authority and other agencies having relevant expertise. The NRC recognizes, however, that in carrying out these NEPA responsibilities, it has no authority to rely on limitations or monitoring requirements which are different from those imposed by EPA or the permitting authority pursuant to the Federal Water Pollution Control Act.

The Commission views its responsibilities under NEPA as including the responsibility for keeping informed of the environmental effects of its licensing actions. For effects involving degradation of the aquatic environment, the reporting requirements of NPDES permits issued pursuant to the Federal Water Pollution Control Act will be generally relied upon to alert the NRC to potential problems. In addition, the Commission will continue its practice of including conditions in its licenses to assure that it is kept knowledgeable about other environmental matters involving its licensees. This practice is consistent with the CEQ regulations which obligate agencies to adopt monitoring and enforcement programs where appropriate (40 CFR 1505.2(c)). The CEQ regulations also provide that the lead agency shall "* * * include appropriate conditions in grants, permits or other approvals" (40 CFR 1505.3(a)), and provide mitigation and monitoring information to cooperating agencies and the public upon request (40 CFR 1505.3 (c) and (d)).

In the opinion of the Commission, this well-established practice should be appropriately reflected in the regulations. Accordingly, the Commission is amending Part 50 of this chapter to add a new § 50.36b which provides that each operating license for a utilization or production facility may include environmental conditions. These environmental conditions may include procedures for reporting and keeping records of environmental data, and conditions and monitoring requirements for the protection of the non-aquatic environment. They will be drafted in a manner which recognizes that the regulation of nonradiological pollutant discharges to aquatic bodies lies with the appropriate NPDES permitting agency. Environmental conditions will be derived from information contained in the applicant's environmental report as analyzed and evaluated in the NRC record of decision. The Commission may also include additional environmental conditions as appropriate. A conforming amendment has been made to § 51.50.

Section 51.10(d), which relates to enforcement actions, has been revised to make clear that section 102(2) of NEPA does not apply to denials of requests for action submitted pursuant to 10 CFR 2.206. (See 40 CFR 1508.18(a).)

Section 51.12 Application of subpart to ongoing environmental work.

Several commenters requested additional guidance on the extent to which the revised regulations would apply to ongoing environmental work, and identified certain ambiguities in the text of § 51.12 of the proposed regulations. In order to avoid undue delays in the review of applications for construction permits and operating licenses for nuclear power plants, one commenter suggested that the revised regulations not be made applicable to environmental reports completed within 180 days after the effective date of the revised regulations or to environmental impact statements completed within 90 days after that effective date. Although the Commission has decided not to adopt this particular suggestion, it recognizes that practical problems are likely to arise while the new regulations are being phased in and the necessary adjustments are being made in the conduct of NRC's environmental activities to accommodate the new procedures. Sections 51.12 (a) and (b) have been revised to reflect these concerns.

In adopting revised Part 51 in final form, the Commission directed that the revised regulations not go into effect until the information collection requirements have been approved by the Office of Management and Budget (OMB) or 75 days after the date of publication in the **Federal Register**, whichever is later. This grace period should enable applicants, the NRC staff and any other interested persons, to make a more orderly transition from the old to the new procedures. A new § 51.17 has beeen added and reserved for OMB approval.

Consistent with the intent of the CEQ regulations, the Commission does not intend revised Part 51 to be applied to ongoing environmental activities in a manner which will require completed environmental work or completed portions of environmental work to be redone solely by reason of the adoption and promulgation of these revised procedures. Instead, the Commission expects the revised regulations to be applied to ongoing environmental work to the extent practicable and in accordance with a rule of reason. The extent to which the provisions of the revised regulations are applicable to environmental work in progress will depend in each case on how far and how satisfactorily that work has progressed. For example, if work on a

[13] *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 48-58 (1977), affirmed CLI-77-8, 5 NRC 503, 508-09 (1977); *see also* CLI-78-1, 7 NRC 1, 24-26 (1978); *Carolina Power & Light Co.* (H. B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 560-563 (1979).

draft or final environmental impact statement is nearing completion on the date the revised regulations become effective, the Commission would not expect the staff to initiate a scoping process. On the other hand, the Commission wold not dissuade the staff from initiating a scoping process, even though the time established in the revised reguations for the initiation of scoping had passed, if the ongoing environmental work was at a stage where scoping might still be useful.

At the present time, the Commission has pending before it a number of applications for licenses to operate nuclear power reactors which are in various stages of environmental and safety review. In each case, the draft environmental impact statement for the construction permit for the facility was filed with the Environmental Protection Agency prior to July 30, 1979, the effective date of the CEQ regulations. In the majority of these cases, however, the draft environmental impact statement for the operating license has either not been filed or was filed on or after that date. The Commission does not intend revised Part 51 to be applied in such a way that environmental work relating to the issuance of operating licenses for these facilities will be considered to be exempt from the provisions of revised Part 51 simply because the draft environmental impact statements on the construction permits for these facilities were filed with EPA prior to the effective date of the CEQ regulations.

In accordance with § 51.12(b) of the revised regulations, the new procedures will be fully applicable to all environmental reports filed by applicants on or after the effective date of revised Part 51, and to all environmental work undertaken by the NRC staff following a determination by the staff pursuant to § 51.25 to prepare an environmental impact statement or an environmental assessment, if the determination was made on or after the effective date of revised Part 51.

The Commission's primary concern, under both the old and the revised versions of Part 51, is to satisfy its NEPA obligations in an environmentally responsible manner. To this end, § 51.41 of revised Part 51, like § 51.5(c)(3) of the Commission's former regulations, authorizes the Commission to require applicants to furnish additional environmental information whenever such information may be needed. One cannot automatically conclude that because an environmental report has been filed or an environmental assessment or environmental impact statement has been completed, that no more environmental data or analysis will be required. Irrespective of the procedures which may or may not have been followed, completed environmental reports, assessments or impact statements which may have been found to be deficient will, of necessity, have to be supplemented or redone. By the same token, it should not be necessary to redo environmental reports, assessments, impact statements or other environmental work of high quality solely because of the adoption of these revised procedures.

Section 51.13 Emergencies.

Section 51.13 has been revised to make clear that in taking actions subject to this section the Commission will consult with the Council on Environmental Quality about appropriate alternative NEPA arrangements as soon as feasible. Insofar as practicable, the Commission will endeavor to consult with the Council on Environmental Quality before taking the action. Since § 51.13 applies to emergency circumstances in which the need for prompt action may make prior consultation impractical, it is the Commission's intent that the provision requiring that "the Commission will consult with the Council as soon as feasible" be understood to include consultation with CEQ which occurs after the Commission has taken the emergency action. The emergency circumstances to which § 51.13 applies include situations in which the hazards of radiation are likely to become more severe unless immediate mitigative or remedial actions are taken.

Section 51.15 Time schedules.

Section 51.15 has been revised to reflect more accurately the respective responsibilities of the NRC staff, the licensing and appeal boards and the Commission for the conduct of licensing proceedings. The revision is consistent with the views expressed by the Atomic Safety and Licensing Appeal Board in ALAB-489, *In the Matter of Offshore Power Systems* (Floating Nuclear Power Plants) 8 NRC 194 at 201-208 (1978) that, absent Commission direction to the contrary, the licensing boards do not have the authority to control the NRC Staff's independent NEPA review or to dictate the schedule for completion of that review.[14]

Section 51.16 Proprietary information.

A new § 51.16 has been added to make clear that any proprietary information, whether submitted by applicants, petitioners for rulemaking, commenters, or other persons subject to the provisions of subpart A of revised Part 51, will be handled in accordance with established Commission procedures as specified in 10 CFR 2.790. Although the Commission believes that it will seldom be necessary to consider proprietary information in the review and evaluation of environmental matters, § 51.16 has been added so that the requisite procedures will be in place should the need arise.

Sections 51.20 and 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements and environmental assessments.

Several commenters took issue with the types of actions identified by the Commission as requiring either environmental impact statements or environmental assessments. One major concern was that actions which were perceived as having a significant environmental impact might not be accorded adequate environmental review. Another concern was that the reference in § 51.20(a)(2) to the Commission's discretionary authority to prepare environmental impact statements was ambiguous and unnecessary. The Commission has given

[14] ALAB-489, the Appeal Board was asked to consider the question "(1) may the Board fix a deadline by which the staff must prepare and file its environmental impact statement?" The Appeal Board answered this question with "a qualified yes: The Licensing Board may direct the staff to publish its environmental documents by specific dates if, after affording the parties—including the staff—opportunity to be heard on the matter, it finds that no further delay is justified. In the present case, however, the decision to fix a firm date for filing the documents demanded does not rest on any such finding." (8 NRC 194 at 208.) The Appeal Board explained these qualifications more fully in the following excerpt from the opinion:

"One thing the Board may do is ascertain why the staff document in question has not been forthcoming. Certainly if it is to conduct the hearing in accordance with responsibilities assigned to it, the Board must at a minimum be entitled to look behind the staff's explanation for delay in submitting the environmental statement. If the staff can provide adequate assurance that it is acting as quickly and reasonably as the circumstances permit—and we emphasize the word *reasonably*—then the Board can ask no more and should reschedule the filing date accordingly.

"Where the Board finds, however, that the staff cannot demonstrate a reasonable cause for its delay, the Board may issue a ruling (with appropriate findings supported by the record) noting the staff's unjustified failure to meet a publication schedule. It may then either proceed to hear other matters or, if there be none, suspend the proceeding until the staff files the necessary documents. In either situation the Board, on its own motion or on that of one of the parties, may refer the ruling to us. See 10 CFR 2.730(f). We would hear such referrals expeditiously; and, were we to agree with the Board, we would certify the matter to the Commission. Its authority to rectify the situation is undoubted." (8 NRC 194 at 207, footnotes omitted.)

careful consideration to these comments and has looked closely at §§ 51.20 and 51.21 to determine what, if any, changes might be made to alleviate these concerns.

At the outset, the Commission wishes to make clear that it fully accepts its responsibilities under NEPA for the preparation and issuance of environmental impact statements on all major Commission actions which significantly affect the quality of the human environment. The Commission also recognizes that it has a continuing obligation to conduct its licensing and related regulatory functions in an environmentally responsible manner. In preparing these revised regulations, the Commission has tried to structure its NEPA process to assure that these responsibilities will be effectively carried out.

Within the broad spectrum of Commission actions subject to subpart A of revised Part 51, only those types of actions which have been determined by rule to be categorical exclusions are excluded from the NEPA process. The remaining types of actions are subject to NEPA review, requiring either an enviornmental impact statement or an environmental assessment leading in turn to a finding of no significant impact or to a decision to prepare an enviornmental impact statement. Under this scheme, an environmental assessment need not be made if the Commission has already decided to prepare an environmental impact statement. This two-step process (preparation of an environmental assessment followed by preparation of an environmental impact statement) need only be followed when it is unclear at the outset whether preparation of an environmental impact statement for the action in question is justified.

This general scheme is reflected in §§ 51.20, 51.21 and 51.22 of the Commission's regulations which specify the criteria for determining which types of actions require environmental impact statements, or environmental assessments, or which qualify as categorical exclusions. Section 51.21, which relates to environmental assessments, provides that environmental assessments are to be prepared for all licensing and regulatory actions except those covered by categorical exclusions or those for which environmental impact statements are being written.

Section 51.20(a) of the Commission's regulations provides that an environmental impact statement will be prepared whenever a proposed Commission action is determined to be a major Federal action significantly affecting the quality of human environment. Section 51.20(a) and (b)(13) also provides that the Commission may prepare an environmental impact statement in connection with other types of proposed actions (e.g., actions normally eligible for categorical exclusion or actions for which a finding of no significant impact would normally be prepared), when the Commission determines, in the exercise of its discretion, that it is advisable to do so. It is not possible to predict how often or under what circumstances the Commission might wish to exercise this discretion. However, there are likely to be at least a few occasions on which actions, which in normal circumstances might qualify for a categorical exclusion or only result in a finding of no significant impact following the completion of an environmental assessment, would, because of unique, unusual or controversial circumstances, require extensive environmental review. In order to make clear that its NEPA responsibilities will be fully honored in connection with these actions, the Commission has retained § 51.20(a)(2) in the text of the regulations. Complementary provisions have been included in §§ 51.21 and 51.22(b).

Section 51.20(b) of revised Part 51 lists the principal types of actions which require environmental impact statements. Although the list is intended to be reasonably complete, it is not exclusive in the sense that environmental impact statements are to be prepared on the actions listed and no others. Actions which have been subject to an environmental assessment or which appear to be eligible for a categorical exclusion but involve unique, unusual or controversial environmental concerns may also require environmental impact statements.

The types of actions subject to § 51.21 cover a wide spectrum. Although § 51.21(b) of the proposed rule listed some of the more representative types of actions likely to be found in this class, the Commission has decided, after considering the comments, that, instead of trying to refine the descriptions of the actions listed or to prepare a more comprehensive list, the better approach would be to define the boundaries of the class, thus making clear to all concerned that preparation of an environmental assessment would be required for all licensing and regulatory actions subject to subpart A of 10 CFR Part 51 except those requiring an environmental impact statement or those eligible for categorical exclusion.

Sections 51.26–51.29 Scoping.

Comments on the provisions of the regulations implementing the scoping process ran the gamut from general approval to opposing concerns that the regulations are overly structured or that more detailed scoping procedures should be provided. Except for a few minor revisions needed to conform the scoping procedure more closely to NRC licensing practices, the Commission has decided, after careful consideration of these comments, to promulgate these sections of the regulations as originally proposed. Until the NRC has obtained more experience in the conduct of the scoping process, it is difficult to judge whether the scoping procedures contained in the regulations are overly formalized or insufficiently detailed. In the opinion of the Commission, any additional changes in the regulations at this time would be premature.

The Commission is satisfied that its scoping procedures as promulgated comply with CEQ's requirements. Sections 51.26–51.29 of the revised regulations closely track those sections of the CEQ regulations which relate to the scoping process, specifically 40 CFR 1501.1(d), 1501.4(d), 1501.7 and 1508.22.

The scoping process provided in subpart A of revised Part 51 is intended to be informal in nature. Consistent with this approach, the regulations permit but do not require that a public scoping meeting be held. In accordance with § 51.26(b), the decision to call a public scoping meeting in any given instance is at the discretion of the NRC staff. If the NRC staff determines that there is no need to hold a public scoping meeting, participation in the scoping process may be limited to the submission of written comments.

Section 51.28(a) (§ 51.29(a) of the proposed regulations) identifies six classes of persons who must be invited to participate in the scoping process. Section 51.28(b) provides that the NRC staff, at its discretion, may also invite other persons as appropriate. Participants take part in the scoping process by invitation and their role is merely advisory. Decisions respecting the scope of an environmental impact statement are the sole responsibility of the NRC. Section 51.28(c) specifically states that "[p]articipation in the scoping process for an environmental impact statement does not entitle the participant to become a party to the proceeding to which the environmental impact statement relates. Participation in an adjudicatory proceeding is governed by the procedures in 10 CFR 2.714 and 2.715. Participation in a

rulemaking proceeding in which the Commission has decided to have a hearing is governed by the provisions in the notice of hearing."

The objectives of the scoping process, which only applies to environmental impact statements, are set out in detail in § 51.29 of the revised regulations. The principal purpose of that process is to define the proposed action which is the subject of the environmental impact statement, determine the scope of the statement and identify those issues which are to be analyzed in depth and those which can be eliminated from detailed study.

While acknowledging the value of the scoping process, several commenters pointed out that it was of limited usefulness to applicants because decisions respecting the scope and the issues to be addressed in an environmental impact statement were made after most of the applicant's environmental studies had been completed. In consequence, at the conclusion of the scoping process, an applicant might find both that previously collected environmental data was unneeded and that extensive amounts of new environmental information must be provided. The observations of the commenters are not without merit. At the same time, the problem cannot be entirely alleviated.

The time frame within which the scoping process may be scheduled is subject to certain recognized limits. Under NEPA, the need to prepare an environmental impact statement depends on the likelihood and the nature of a federal action. In the case of a regulatory agency like the NRC, the occasion for federal action, such as the issuance of a license to construct or operate a nuclear power reactor, does not arise until after a request for the action has been presented. Under these circumstances, the date of receipt of a license application marks the earliest possible date on which the scoping process could be commenced. However, it is usually not practicable to initiate the scoping process on that date since NRC staff and other interested persons must first have an opportunity to become familiar with the application and the environmental issues which it presents.

To limit the point in time at which the scoping process may be formally initiated does not mean that an applicant must be deprived of all assistance and guidance. Even though the conclusions and determinations which may be reached in a particular scoping process cannot be fully predicted in advance, some useful guidance can be provided. Section 51.40 of the revised regulations encourages applicants to consult with the NRC staff on environmental matters. Recognizing applicants' needs for guidance on the scope, relative significance and type of treatment to be accorded issues to be considered in environmental impact statements on federal actions with which they are concerned, the Commission has revised § 51.40(b)(2) of the regulations to make clear that applicants may seek guidance from the NRC staff on matters subject to the scoping process.

Section 51.33 Draft finding of no significant impact.

Section 51.33 gives the NRC staff discretionary authority to prepare a draft finding of no significant impact and issue the draft finding for public comment. This provision provides a mechanism which the NRC staff may use, should it wish to do so, to obtain public comment on whether a final finding of no significant impact or an environmental impact statement should be prepared and issued. Section 51.33(b) describes certain circumstances in which the preparation of a draft finding of no significant impact may be appropriate. These circumstances include those in which preparation of a draft finding will further the purposes of NEPA. The NRC staff is not required, however, to use this discretionary procedure.

Section 51.45 Environmental Report and Section 51.71 Draft Environmental Impact Statement—Contents.

One commenter noted that the term "cost-benefit analysis" used in §§ 51.20 (b), (c) and (e), 51.23 and 51.26(a) of the Commission's former regulations was not retained in the proposed revision of 10 CFR Part 51 and requested an explanation. The change in terminology from the specific expression "cost-benefit analysis," which denotes a quantitative analysis expressed in monetary terms, to the generic term "analysis," which is intended to include an analysis, evaluation and balancing of important qualitative factors as well as a quantitative cost-benefit analysis, reflects in part the shift in emphasis in the CEQ regulations towards a greater awareness of the quality of the environment and the importance of giving full consideration to unquantified environmental impacts, values, and amenities. This change in emphasis is highlighted in 40 CFR 1502.23 which states that the preparation of a cost-benefit analysis is optional and provides that monetary cost-benefit analyses are not to be included in the main text of environmental impact statements but are either to be incorporated by reference or appended to the statement as an aid in evaluating environmental consequences. Section 1502.23 also states that "For purposes of complying with the Act [NEPA], the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations * * *."

The Commission chose to use the generic term "analysis" because it encompasses all aspects of an environmental analysis, qualitative as well as quantitative. In changing the terminology from "cost-benefit analysis" to "analysis," the Commission did not intend to convey the impression that cost-benefit analyses of quantifiable environmental impacts are no longer required. Sections 51.45(c) and 51.71(d) both provide that "[t]he analysis will, to the fullest extent practicable, quantify the various factors considered." Instead, the Commission intended to make clear that a comprehensive environmental analysis should include the consideration and balancing of qualitative as well as quantitative impacts.

Several commenters requested an explanation of the provisions in §§ 51.45(b) (1) and (3) directing that the environmental impacts of the proposed action be discussed in proportion to their significance and that, to the extent practicable, the environmental impacts of the proposal and the alternatives be presented in comparative form. The commenters expressed concern that these directives would necessitate the preparation of unduly detailed and lengthy analyses on matters which could be adequately dealt with in a more concise manner.

The sentence in § 51.45(b)(1) which reads "Impacts shall be discussed in proportion to their significance." is identical to the first sentence of § 1502.2(b) of the CEQ regulations which provides the following further explanation:

> There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

The sentence in § 51.45(b)(3) which reads "To the extent practicable, the environmental impacts of the proposal and the alternatives should be presented in comparative form." is drawn from § 1502.14 of the CEQ regulations.

Section 1502.14, entitled "Alternatives including the proposed action," states in pertinent part:

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

In the opinion of the Commission these provisions should not necessitate the preparation of unduly detailed or lengthy analyses.

Members of the NRC staff indicated that implementation of the provision in § 51.71(b) that the draft environmental impact statement "include consideration of major points of view expressed on the environmental impacts of the proposed action and the alternatives, * * *" presented certain practical problems in that these major points of view cannot always be adequately identified and evaluated until after the comments on the draft environmental impact statement have been received. For example, when an application for a permit to construct a nuclear power reactor is received, it is customary for the NRC staff to evaluate the environmental information submitted by the applicant. On the basis of this independent evaluation and analysis, the NRC staff then prepares and issues a draft environmental impact statement for public comment. The draft environmental impact statement is circulated to interested state and federal agencies and made available to members of the public. Until comments on the draft statement have been received and analyzed, it is not possible to determine whether all major points of view have been considered. In each case, however, the issue is resolved by the time the final environmental impact statement is completed and issued. In order to accommodate this concern, § 51.71(b) has been revised to make clear that major points of view will be considered in the draft environmental impact statement to the extent sufficient information is available.

Section 51.51 Uranium Fuel Cycle Environmental Data—Table S-3.

On August 2, 1979, the Commission promulgated a final fuel cycle rule which sets out revised environmental impact values for the nuclear waste management and fuel reprocessing parts of the uranium fuel cycle to be included in environmental reports and environmental impact statements for individual light-water nuclear power reactors (44 FR 45362–45374, August 2, 1979; correction notice, 44 FR 56312, October 1, 1979.) The rule, which amended Part 51 of the Commission's existing regulations, became effective September 4, 1979. On June 6, 1983, in response to a series of legal challenges, the U.S. Supreme Court issued a unanimous decision upholding all three versions (original, interim and final) of the S–3 rule (*Baltimore Gas and Electric Co., et al.* v. *NRDC*, 51 U.S.L.W. 4678.) Accordingly, the Commission is incorporating the text of the effective S–3 rule in revised Part 51 (See §§ 51.51, 51.71(d) and 51.75.) Although the Commission has found it necessary to make certain minor conforming amendments so that the rule will be consistent with the revised format of Part 51, no changes have been made in the substantive provisions of the S–3 rule.

Section 51.53 Suppplement to Environmental Report—Operating License Stage.

Section 51.95 Supplement to final environmental impact statement—Operating License.

Several commenters noted that § 51.53 of the proposed revised regulations, unlike § 51.21 of the Commission's former regulations, does not authorize an applicant engaged in preparing an environmental report in connection with an application for an operating license for a facility to incorporate by reference information contained in the environmental report or the final environmental impact statement prepared in connection with the construction permit for that facility. The Commission did not intend to eliminate this authority; accordingly, § 51.53 has been revised. A similar change has been made in § 51.95, Supplement to final environmental impact statement—Operating license, to authorize the NRC staff to incorporate by reference in a supplement relating to an operating license for a facility any information contained in the final environmental impact statement or in the record of decision prepared in connection with the construction permit for that facility.

Sections 51.53 and 51.95 have also been revised to make clear that the requirements to prepare supplements to the environmental report and the final environmental impact statement on the construction permit for a facility in connection with the issuance of an operating license for that facility are not requirements to repeat at the operating license stage the full-scale environmental review of the facility performed at the construction permit stage. The sole function of these supplements is to update the prior environmental review. Thus the supplements need only address matters which differ from or reflect significant new information concerning matters discussed in the Applicant's Environmental Report—Construction Permit Stage or in the NRC's final environmental impact statement on the construction permit.

Section 51.92 Supplement to final environmental impact statement.

Section 51.92 has been revised to make clear that the NRC staff will prepare a supplement to a final environmental impact statement for a proposed action if that action has not been taken and if there are substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information which are relevant to environmental concerns and bear on the proposed action or its impacts.

Section 51.73 Request for comments on draft environmental impact statement.

Section 51.100 Timing of Commission action.

Consistent with § 1506.10(c) of CEQ's regulations (40 CFR 1506.10(c)) § 51.73, "Request for comments on draft environmental impact statement," prescribes a minimum comment period of 45 days and specifies that the comment period is to be calculated from the date on which the Environmental Protection Agency's weekly notice announcing the filing of draft and final environmental impact statements is published in the **Federal Register**. Revised Part 51 also provides that the comment periods for supplements to draft and final environmental impact statements are to begin on the dates on which the EPA notices announcing the availability of those supplements are published in the **Federal Register** (see, for example, §§ 51.73, 51.92, 51.95, of revised 10 CFR Part 51.)

Subject to certain exceptions, § 51.100(a) prohibits the Commission from making a decision or issuing a record of decision on a proposed action for which an environmental impact statement is required until the later of the following dates: ninety days after publication by the Environmental Protection Agency of a **Federal Register**

notice stating that the draft environmental impact statement has been filed with EPA, or thirty days after publication by the Environmental Protection Agency of a **Federal Register** notice stating that the final environmental impact statement has been filed with EPA.

Several commenters expressed concern that reliance on EPA's publication dates instead of NRC's publication dates would result in confusion and delay. These commenters urged that the **Federal Register** publication date of the applicable NRC notice be used in calculating the requisite time periods for submitting comments or taking NRC actions.

Since its establishment on January 19, 1975, the NRC, in common with other Federal agencies, has followed the customary and uniform practice of calculating the expiration date of an environmental impact statement comment period and the date of the minimum period for review of an environmental impact statement from the date on which the EPA notice[15] listing the specific environmental impact statement was published in the **Federal Register.** This arrangement has not caused any uncertainty or confusion. In accordance with EPA practice, all draft and final environmental impact statements received by EPA prior to noon on a given Friday are routinely listed in the EPA notice of availability published in the **Federal Register** on the following Friday. Similarly, all draft and final statements received by EPA after noon on a given Friday are listed in the **Federal Register** notice published by EPA two weeks later. The date on which the EPA notice is published in the **Federal Register** is the date from which the minimum periods of review for all environmental impact statements listed in the notice, including any NRC environmental impact statements listed, are calculated. Because the publication schedule for EPA notices is firmly fixed and the time when an environmental impact statement is filed with EPA is known to the filing agency, the date on which a comment period begins or from which the 90 day or 30 day review period is to be calculated can be known with certainty. This NRC practice is well established, has not resulted in confusion and uncertainty, and is consistent with the provisions of the CEQ regulations. Accordingly, the changes suggested by the commenters have not been adopted.

[15] Prior to December 5, 1977, these notices were published by CEQ.

Section 51.104 NRC proceedings using public hearings; Consideration of environmental impact statement.

Section 51.104 has been extensively revised to reflect current NRC practice respecting the consideration of environmental issues in licensing hearings. In accordance with accepted practice, § 51.104 provides that the NRC staff may not place a final environmental impact statement in evidence in a proceeding or present the NRC staff position on environmental issues until after the final environmental impact statement has been filed with the Environmental Protection Agency, furnished to commenting agencies and made available to the public. Section 51.104 also provides that in those proceedings in which the NRC staff has determined that no environmental impact statement need be prepared for the proposed action, any party to the proceeding may take a position and offer evidence on those aspects of the proposed action which are within the scope of NEPA and subpart A of 10 CFR Part 51. The opportunity accorded parties to present evidence on environmental issues is subject to the Commission's Rules of Practice, for example, as set out for formal adjudications in Subpart G of 10 CFR Part 2, and to any specific procedural constraints which may be placed on the scope of a particular hearing in order to manage the hearing efficiently. For example, in a hearing limited solely to the consideration of antitrust issues, presentation of evidence on environmental matters would be inappropriate. In order to acknowledge the Commission's authority to control the conduct of its licensing hearings in a positive way, § 51.104(b) has been revised by adding the words "unless the Commission orders otherwise."

Section 51.106 Public hearings in proceedings for issuance of operating licenses.

Section 51.106 incorporates the provisions of former § 51.53, which relates to operating license hearings, into revised Part 51. Although § 51.106 was not included in the proposed rule, the Commission did not intend to revoke this regulation which was promulgated in 1974 and amended in 1981 in accordance with the customary notice and comment procedure.

Conforming Amendments

Following enactment of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, January 7, 1983, 96 Stat. 2201–2263, the Commission initiated a review of the licensing procedures in 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories; Licensing Procedures," to determine what changes may be necessary and appropriate. As part of that review, the Commission will also determine whether conforming changes to other parts of the regulations, including Part 51, are needed. In view of these circumstances, conforming amendments to 10 CFR Part 60 are not being promulgated at this time in connection with this final rule. In the interim, pending completion of this review, a minor conforming amendment has been made to 10 CFR 2.101(f).

Categorical Exclusions

In the proposed rule, as published March 3, 1980, the Commission requested comments on the classes of actions proposed to be excluded from the NEPA process as categorical exclusions and suggestions on types of actions for which additional categorical exclusions might be established. One commenter recommended that the Commission define with greater specificity the "special circumstances" (see § 51.22(b) of the proposed rule) under which an environmental assessment or an environmental impact statement would be prepared for an action which otherwise would be categorically excluded from the NEPA process. Ten commenters submitted comments on one or more of the categorical exclusions contained in the proposed rule. These comments focused on categorical exclusions 4, 9, 10, 11, 12, 13, portions of categorical exclusion 14, and 15. Three commenters suggested additional types of actions for inclusion in the rule as categorical exclusions. Brief descriptions of these comments and the Commission's responses follow. The text of each categorical exclusion is reproduced below *as it appeared in the proposed rule.* The bracketed reference identifies the section of the final rule in which the category is listed.

Section 51.22(b)

One commenter recommended that the Commission define with greater specificity the "special circumstances" in proposed § 51.22(b) which the Commission may invoke to require an environmental assessment or environmental impact statement for actions otherwise categorically excluded. The commenter also urged the Commission to provide notice and opportunity for affected parties to present their views before a decision is made to invoke the special circumstance exception.

The Commission disagrees with the commenter. The Commission may wish, as a matter of discretion, to have the benefit of an environmental assessment or an environmental impact statement in considering the desirability of a proposed course of action, even though, as a strict legal matter, neither may be required. A major purpose of proposed § 51.22(b) is to preserve this necessary flexibility. In addition, it is impossible to identify in advance the precise situations which might move the Commission in the future to determine that special circumstances exist. Therefore, the term "special circumstances" has not been further defined. For similar reasons, the Commission has decided not to require the use of notice and comment procedures in determining when to prepare an environmental assessment or an environmental impact statement on an action which except for special circumstances would be eligible for categorcial exclusion. Although there may be occasions when the Commission will wish to seek comment from affected persons or the public at large before making a finding of special circumstances, the Commission believes that its responsibilities for protecting the public health and safety and giving appropriate consideration to environmental values will be best served if it retains the flexibility and authority to direct its staff to prepare environmental assessments or environmental impact statements very early in the decisionmaking process. However, a notice of intent to prepare an environmental impact statement will be published pursuant to §§ 51.26 and 51.116.

Section 51.22(c)

Proposed Category 4.—Entrance into or amendment, suspension, or revocation of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commisssion. [§ 51.22(c)(4)]

The only substantive comments received concerning this categorical exclusion were those contained in the letter of October 29, 1979 from CEQ staff counsel to the Executive Legal Director of NRC.[16] The author of this letter concludes that insofar as Category 4 would "exclude new agreements and amendments to agreements with States, pursuant to Section 274 of the Atomic Energy Act of 1954, from review in environmental impact statements or environmental assessments * * * [the] Council cannot endorse this categorical exclusion as written." Except for the comments of the Department of Natural Resources of the State of Georgia, which expressed general support for CEQ's views, including the views contained in the October 29, 1979 letter from CEQ published in Appendix B [17] to the proposed rule, no other comments were received on proposed categorical exclusion 4.

Proposed categorical exclusion 4 addresses a limited and highly specific type of federal action. The main thrust of the CEQ staff comment is that the NRC action of entering into or amending a section 274 Federal-State Agreement should remain subject to the NEPA process because subsequent regulatory actions which the State is permitted to take by virtue of the agreement are similar to regulatory actions which would have been taken by NRC in the absence of an agreement and which would, because of their status as Federal actions, clearly be subject to NEPA. The CEQ comment does not address the question of how licensing and regulatory actions taken by the State during the life of a section 274 agreement are to be evaluated in an environmental impact statement or in an environmental assessment prepared at the time of entrance into the agreement on the limited Federal action of entrance into the agreement when information on the kind and number of State regulatory actions to be taken during the period the agreement is in effect cannot be known and in consequence the environmental effects of those actions cannot be ascertained. CEQs analysis, which is founded on the premise that the State is acting as an agent for the Federal government and is exercising delegated Federal powers, does not recognize the clear line of separation established by the agreement between Federal and state actions.[18]

The Federal-State agreement authorized by section 274 of the Atomic Energy Act of 1954, as amended, does not constitute a delegation or transfer of Federal authority to the States. Instead, the Agreement specifies the conditions under which the States may exercise their own sovereign authority. Under the provisions of a section 274 agreement, the NRC's regulatory authority over source, byproduct and special nuclear material, conferred upon it by the Atomic Energy Act of 1954, as amended, is discontinued, thereby enabling the States, in the exercise of their inherent police powers to protect the public health and safety of their citizens, to assume regulatory authority over those materials. Under this arrangement, except as expressly provided under 10 CFR Part 150, once a state has assumed regulatory responsibility under a section 274 agreement, the NRC is precluded from exercising direct regulatory control over individual state licensees. Under section 274j of the Act, the Commission retains certain residual powers which permit the Commission to terminate or suspend all or part of a State agreement and reassert its own licensing and regulatory authority if it finds that "* * * (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section [§ 274]." In aid of this residual authority, section 274j also provides that the Commission "* * * shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section [§ 274] * * *."

As indicated previously, any attempt, on the occasion of entrance into a Federal-State agreement, to obtain useful information on the environmental impact of subsequent State regulatory actions which might be taken during the period the agreement remains in force, is likely to yield disappointing and speculative results. Except for matters relating to uranium mills and mill tailings for which the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95–604, November 8, 1978, has made special provision, many of the licensing and regulatory actions which might be taken by States under a section 274 agreement are unlikely to have any significant environmental effect. In many instances, the state regulatory actions will be similar to federal actions for which the Commission has established a categorical exclusion in § 51.22(c) of revised Part 51. In the case of other state actions, the only significant environmental effects will be those caused by the radioactive properties of the regulated materials. With respect to those types of actions, the environmental impact attributable to the Federal action of entering into a section 274 agreement should also be minimal because the statutory requirements governing § 274

[16] 45 FR 13739 at 13766, March 3, 1980.

[17] *Id.*

[18] In *Natural Resources Defense Council* v. *NRC* (C.A.D.C. No. 77–1570, *per curiam* Order, January 6, 1978), the U.S. Court of Appeals for the District of Columbia Circuit held that an Agreement State is not a federal agent or delegate under 42 U.S.C. 2021, that an Agreement State licensing action is not a "Federal action" for purposes of NEPA, and that NRC involvement with Agreement States is not federal action subject to NEPA. See, also *Northern States Power Company* v. *Minnesota*, 447 F.2d 1143, 1149–50 (8th Cir. 1971), affirmed 405 U.S. 1035 (1972).

agreements provide assurance that so far as radiological hazards are concerned the States will regulate the materials covered by the agreements in a manner similar to the way in which the materials were regulated by NRC.

Congress enacted the Federal-State Amendment to the Atomic Energy Act in 1959. Ten years later the National Environmental Policy Act of 1969 became law. The law is clear that "NEPA does not repeal by implication any other statute * * *" [19] and that NEPA's policies and goals "are supplementary to those set forth in existing authorizations of Federal agencies" and should not "in any way affect the specific statutory obligations of any Federal agency." [20] Accordingly, NEPA does not alter the meaning of section 274 and the clear line which it establishes between state and federal actions.

As enacted, NEPA only applies to major *federal actions* significantly affecting the human environment. To use Section 274 of the Atomic Energy Act of 1954, as amended, as a vehicle for extending NEPA to state actions and thereby broadening the scope of NEPA would be tantamount to giving the Commission the power to override the clear intent of Congress. Except to the extent that Congress has required states to consider the environmental impacts of uranium milling activities and mill tailings, [21] Congress has declined to extend NEPA to the states. Absent action by the Congress broadening the scope of NEPA, there is no sound basis in law for extending the NEPA process to actions taken by states in the exercise of their police powers in accordance with the terms of a section 274 Federal-State agreement.

Proposed Category 9.—Issuance of an amendment to a permit or license for a reactor pursuant to Part 50 of this chapter, which changes a requirement with respect to installation or use of a facility component located within the restricted area, as defined in Part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that (i) the amendment does not involve any significant hazards consideration, (ii) there is no change in the types or amounts of any effluents that may be released offsite, and (iii) there is no associated increase in individual or cumulative occupational radiation exposure. [§ 51.22(c)(9)]

The comment on this categorical exclusion is discussed in conjunction with a similar comment on Category 11.

Proposed Category 10.—Issuance of an amendment to a permit or license pursuant to Parts 30, 40, 50, or 70 of this chapter which (i) changes insurance and/or indemnity requirements, or (ii) changes recordkeeping, reporting, or administrative procedures or requirements. [§ 51.22(c)(10)]

One commenter suggested that changes in insurance or indemnity requirements could have a direct impact on certain activities and hence should not be categorically excluded. The commenter provided no further elaboration of his position.The Commission recognized in its discussion and finding supporting this exclusion in the proposed rule that to the extent the financial arrangements of licensees may be affected by changes in insurance and/or indemnity requirements, economic and social consequences will result. However, the Commission viewed, and continues to view, as extremely remote the possibility that the environmental impact of licensed activities would be altered by changes in insurance and/or indemnity requirements; such changes would not authorize construction or operation of licensed activities or effect changes in the permitted types or amounts of radiological effluents. Moreover, if unusual or unique circumstances are found to exist, the Commission has discretion under § 51.22(b) to conduct an environmental review. The Commission is retaining this categorical exclusion. However, the Commission has revised the description of Category 10. to make clear that changes in surety requirements are included within the scope of the exclusion.

Proposed Category 11.—Issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites as identifed in §§ 51.20(b) or 51.21(b) of the this subpart which are administrative, organizational, or procedural in nature, or which result in a change in process operations or equipment, provided that (i) there is no increase in the types or amounts of effluents that may be released offsite, (ii) there is no associated increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no increase in the potential for or consequences from radiological accidents. [§51.22)(c)(11)]

One commenter, while not objecting to the substance of the exclusion of some types of changes in process operation or equipment, recommended the addition on two further limitations on the scope of the exclusion. The first limitation would require that there be no potential for an accident of a different type than evaluated previously. The Commission views this limitation as unnecessary because the proposed rule already encompasses this concern and is even broader in that consequences of postulated accidents will also be examined. Specifically, proposed § 51.22(c)(11) would exclude a change in process operations or equipment only if, among other things, there is no increase in the *potential for or consequences* from radiological accidents (emphasis added). Hence, if a proposed change raises a credible possibility of a radiological accident(s) different from those previously evaluated, then the accident potential as well as the consequences will be examined.

The second suggested limitation would require that there be no reduction in the margin of safety of any feature. The Commission does not accept this recommendation because it is overbroad. The recommendation is overbroad because it would apply to "any feature," including, if read literally, devices having no relationship to protection of environmental values or radiological health or safety. Moreover, the recommendation does not recognize the possibility that a slight reduction in a conservative margin of safety of a particular feature may result, without jeopardizing in any way the public health and safety, in a net increase in the overall safety of the facility by allowing quicker response times, higher flow rates, more accurate readouts, etc., in other features of the facility.

Another commenter recommended that the scope of categorical exclusions 9 and 11 be enlarged to permit exclusion so long as there is no *significant* increase in the types or amounts of effluents or exposure to radiation (emphasis added). The proposed rule permits exclusion only if there is no increase. The commenter based his suggestion on the language of proposed § 51.21(b)(2) which would require an environmental assessment only when there is a significant increase in effluents or exposures. The Commission accepts the recommendation in part and has amended categorical exclusions 9 and 11 by adding the word "significant" in each proviso of each exclusion where the word does not already appear. This

[19] *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519 at 548, citing *Aberdeen & Rockfish R. Co.* v. *SCRAP*, 422 U.S. 289, 319 (1975), *see also United States* v. *SCRAP*, 412 U.S. 669, 694 (1973).

[20] *United States* v. *SCRAP*, 412 U.S. 669, 694 (1973); see also *Aberdeen & Rockfish R. Co.* v. *SCRAP*, 422 U.S. 289 (1975); *Flint Ridge Development Co.* v. *Scenic Rivers Assoc.*, 426 U.S. 776 (1976).

[21] Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, November 8, 1978, Sec. 204, 92 Stat. 3021 at 3036-3038, 42 U.S.C. 2021.

change is consistent with the definition of categorical exclusion which speaks in terms of significant impacts. See §51.14(a)(1).

Proposed Category 12.—Issuance of an amendment to a license pursuant to Parts 50 and 70 of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to Parts 50, 70, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. [§ 51.22(c)(12)]

Two commenters objected to the Commission's proposed categorical exclusion of certain license amendments relating to safeguards and physical security plans. Both commenters believe that the excluded actions can have a significant effect on the environment. One commenter interpreted the exclusion as excluding *all* actions relating to safeguards and physical security which do not involve significant construction impacts.

The Commission believes that the commenters read the exclusion more broadly than intended. As the discussion and finding supporting the proposed exclusion explains, the excluded license amendments are needed to implement new safeguards regulations in license provisions and permit modifications to licensee safeguards programs established under existing requirements. The discussion and finding describe the general types of amendments within the scope of the exclusion; they are largely of a minor procedural nature. Substantive and significant amendments to the regulations from the standpoint of environmental impact do not fall within the exclusion. These actions are subject to the environmental review requirements of §§ 51.20 or 51.21. Some clarifying changes have been made in the description of this categorical exclusion.

Proposed Category 13.—Approval of package designs for the delivery of licensed materials to a carrier for transportation. [§ 51.22(c)(13)]

Two commenters objected to the categorical exclusion of package design approvals (§ 51.22(c)(13)). Both commenters essentially argue that there are instances when the Commission's actions regarding transportation are potentially so significant that full NEPA review is essential. The Commission believes the commenters misconstrue the scope of this exclusion by reading it too broadly. As explained in the discussion and finding supporting the proposed exclusion of package design approvals, certificates of compliance approving package designs for packages to be used in the transportation of radioactive materials are issued upon demonstration that the package designs meet applicable performance standards contained in Part 71 of the Commission's regulations. Although it is expected that packages manufactured in accordance with approved designs will be used to transport radioactive materials, the certificates of compliance do not authorize the actual transportation of those materials. Furthermore, at the time a certificate approving a package design is issued, no specific information is available on the number of packages that will be manufactured or the manner in which they will be used.

The Commission has previously considered the impacts of the actual transportation of radioactive materials in packages meeting the performance standards of 10 CFR Part 71 in a generic environmental impact statement (Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes, NUREG–0170, December, 1977) and has concluded that such impacts are small. Since this generic environmental impact statement was issued, there has been no relaxation in the performance standards which the Commission uses in acting on requests for package approvals. Under these circumstances, there is no need for nor any useful purpose to be served by requiring a second NEPA review in connection with the issuance of in dividual package design approvals. Accordingly, the Commission has retained this categorical exclusion.

Proposed Category 14.—Issuance, amendment, or renewal of the following types of materials licenses issued pursuant to 10 CFR Parts 30, 40, or 70:

(i) Distribution of devices and products containing radioactive material to general licensees and persons exempt from licensing.

(ii) Medical licenses.

(iii) Nuclear pharmacies.

(iv) Teletherapy licenses.

(v) Licenses to academic institutions for educational purposes.

(vi) Industrial radiography.

(vii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities.

(viii) Irradiators (dry storage—self-contained).

(ix) Irradiators (wet storage—panoramic).

(x) Gauging devices, analytical instruments, and other devices utilizing sealed sources.

(xi) Source material licenses for fabrication of the products specified in 10 CFR 40.13, fabrication of military munitions, and laboratory use for research and development.

(xii) Well logging.

(xiii) Research and development licenses involving less than ten curies of radioactive material.

[§ 51.22(c)(14)(i)–(xvi)—The descriptions and order of some subcategories have been changed.]

A number of comments were received on this categorical exclusion. One commenter suggested that this section should be revised to make clear that generic or programmatic impact statements are not excluded. This comment misconstrues the purpose of and the findings necessary to support a categorical exclusion. By definition, a categorical exclusion means a category of actions "which do not individually or cumulatively have a significant effect on the human environment * * *." See 10 CFR 51.14(a)(1). A generic impact statement on a proposed action having no significant environmental impact is not required under NEPA and would serve only to divert scarce agency resources from more pressing business.

A number of comments were received on specific subcategories of exclusions within this section. Two commenters suggested that the exclusion of materials licenses issued to academic institutions for educational purposes (§ 51.22(c)(14)(v)) be clarified to make clear that licenses for nuclear reactors at such institutions are not excluded. The Commission agrees with the commenters that the exclusion is not intended to cover licenses to construct and operate nuclear reactors at academic institutions. Those licenses are issued under Part 50 of the Commission's regulations. Since this categorical exclusion explicitly applies only to "materials licenses issued pursuant to 10 CFR Parts 30, 31, 32, 33, 34, 35, 40 and 70," no change to the regulation is required. However, the discussion and finding supporting the academic institution subcategory has been revised to make clear that only materials licenses are categorically excluded.

Another commenter correctly noted with respect to the discussion and finding supporting the exclusion for industrial radiography materials licenses (§ 51.22(c)(14)(vi)) that an average occupational exposure per individual radiographer of less than 0.4 rem per year is not "less than 1%" of the permissible exposure as stated. The correction has been made.

One commenter recommended that the amount of packaged radioactive waste which may be excluded should be limited as to quantity. (Proposed

§ 51.22(c)(14)(vii).) The Commission has reexamined this categorical exclusion in light of the comment and, in response, has placed two limits on the exclusion. In order to be eligible for the exclusion, the total possession limit for packaged radioactive wastes held in interim storage at the same time may not exceed 50 curies. In addition, the period of time during which any single package of radioactive waste may be held in interim storage may not exceed 180 days. [See § 51.22(c)(14)(xii).]

One commenter, a state agency, recommended that the categorical exclusion for source material licenses for the fabrication of certain products (proposed § 51.22(c)(14)(xi)) be eliminated. The commenter referred to the experience it had with a source material licensee within its geographic boundaries and listed a number of reasons why, in its view, activities under such licenses raise the potential for significant environmental impacts. The Commission does not believe that all of the commenter's arguments are germane to the proposed exclusion. However, the discussion and finding supporting the exclusion of source material licenses does not clearly address the possibility of off-site environmental impacts resulting from accidents in handling, processing, or disposing of large quantities of depleted uranium at licensed facilities. Therefore, the Commission has withdrawn this exclusion. The Commission has, however, added two new categorical exclusions: one for source material licenses which authorize the possession and use of depleted uranium as shielding material in containers or devices. [§ 51.22(c)(14)(ix)]; and one for the possession, manufacturing, processing, shipment, testing, or other use of depleted uranium military munitions [§ 51.22(c)(14)(xv).]

One commenter objected to the categorical exclusion for well logging (proposed § 51.22(c)(14)(xii)) arguing principally that if a source is lost in underground operations and consequently abandoned, the possibility exists that the radioactive material could escape into an aquifer and preclude or compromise the use of the aquifer as a source of drinking water or irrigation water. In support of this comment, the commenter cited the loss of a one curie americium-beryllium source in a mineral exploration bore in Texas and the subsequent decontamination efforts. The Commission has carefully considered the comment but has concluded, in the light of past regulatory experience and current licensing practices, that the environmental impact of licensing actions authorizing use of sealed sources and radioactive tracer materials in well-logging procedures is negligible. Accordingly, the Commission has retained this categorical exclusion. Some minor editorial revisions have been made in the description of the exclusion. [§ 51.22(c)(14)(xi).]

Proposed Category 15.—Issuance, amendment or renewal of licenses for import of nuclear facilities and materials pursuant to Part 110 of this chapter, except for import of spent power reactor fuel. [§ 51.22(c)(15).]

One commenter stated that imports of nuclear facilities and materials pursuant to Part 110 of the Commission's regulations may have NEPA implications and that this category should be either limited in scope or eliminated as a categorical exclusion (§ 51.22(c)(15)). No elaboration of the comenter's position is provided. Another commenter implied that a full NEPA review of the transportation of imports might be essential in some instances. The Commission believes that no change to this proposed exclusion is necessary. The Commission is unable to respond to the first comment because of its generality. As to the second comment, the discussion and finding which accompanied the proposed exclusion specifically stated that import licenses do not authorize transportation of imported facilities and materials within the United States. Hence, transportation issues are not germane to this exclusion. Moreover, the discussion and finding also noted that an NRC final environmental statement (Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes, NUREG–0170, December 1977) concluded that the environmental impact of the transportation of imported radioactive materials from the time of their arrival in the United States until they reach their ultimate destination is negligible. Hence, the exclusion of this category of actions is appropriate.

Additional Types of Actions Suggested as Categorical Exclusions

Two commenters suggested that an additional exclusion be created for the issuance, renewal or amendment of byproduct, source and special nuclear material licenses to holders of construction permits for power reactors, where such licenses expire upon the issuance of an operating license. The Commission does not agree that an additional categorical exclusion is necessary or appropriate for these actions. Although the comment is somewhat general, the Commission interprets it as being directed at devices containing sources used for calibration purposes at the site, neutron startup sources used for initiating fission in the reactor core, and unirradiated reactor fuel stored at the site subsequent to issuance of a construction permit but prior to issuance of the operating license. Sources contained in devices used for calibrating various equipment at the construction site are already categorically excluded. [See § 51.22(c)(14)(viii).] Therefore, an exclusion for licensing these devices is unnecessary. However, it is not appropriate for the Commission to categorically exclude neutron startup sources or unirradiated reactor fuel from revised Part 51 because the environmental impacts of licensing these sources are specifically considered in the Commission's review of each nuclear power reactor facility.

Two commenters also suggested that the renewal of a construction permit issued for a power reactor pursuant to 10 CFR 50.55(b) be categorically excluded. The Commission does not agree that an exclusion for this class of actions is appropriate. The completion date specified in a construction permit for a facility may be extended by the Commission for a reasonable period of time for good cause shown (10 CFR 50.55(b)). The ultimate disposition of an extension request will depend to a great extent upon the particular facts alleged by the licensee. For instance, the discovery of unanticipated environmental conditions or impacts during construction may be cited by a licensee as a contribution factor for the delay in completing construction on a timely basis. Since each extension request will be heavily fact dependent and may involve fundamental environmental questions, the Commission cannot conclude on a generic basis that the renewal of a construction permit will have no significant effect on the human environment. Therefore, a categorical exclusion for this class of actions is not warranted.

Two commenters also requested a categorical exclusion for any change in a principal environmental protection commitment by a holder of a construction permit or an operating license which does not necessitate the issuance of an amendment to such permit or license. The Commission believes that an exclusion for these types of actions is not warranted. The staff's environmental review of license applications is based in large part upon the environmental information submitted to it by the license applicant.

License applicants commonly commit to taking certain actions relative to environmental protection objectives. Since the staff's evaluation of the environmental impacts of a proposed facility is premised on these commitments, any deviations therefrom subsequent to the issuance of a permit or license may result in environmental impacts which the Commission has not previously considered. Therefore, this category of actions should not be categorically excluded.

One commenter suggested a categorical exclusion similar to existing 10 CFR 51.5(d)(4) to exclude actions not specifically identified as requirng either an environmental assessment or impact statement. This comment misconceives the nature of a categorical exclusion. An exclusion must be supported by a factual finding that a category of actions does not individually or cumulatively have a significant effect on the human environment. The Commission has endeavored to identify categories of actions which are appropriate subjects for environmental impact statements, environmental assesments or categorical exclusion. Since no factual findings can be made to support actions which are at this time either unidentified or unidentifiable, a general categorical exclusion is not appropriate.

One commenter recommended the categorical exclusion of certain NRC actions under the proposed emergency planning rule.[22] Specifically, the commenter suggested that NRC actions requiring licensees to shut down operating facilities because of inadequate state and local emergency plans, allowing startup following a determination or redetermination of adequacy, or allowing continued operation despite certain inadequacies in the emergency plans should qualify as categorical exclusions. The preamble which accompanied the final emergency planning rule makes clear that NRC actions leading to the possible shutdown of an operating reactor will proceed in accordance with existing NRC enforcement procedures. See 45 FR 55403, August 19, 1980. Consistent with CEQ guidance, § 51.10(d) of revised Part 51 provides that Commission actions initiating or relating to administrative enforcement actions or proceedings are not subject to section 102(2) of NEPA. Hence proceedings to shut down reactors (or other possible enforcement actions) for failure to comply with emergency planning requirements are not within the scope of Part 51, and a categorical exclusion for these actions is not necessary. However, the Commission agrees with the comment that actions authorizing renewed start up of reactors after compliance with emergency planning requirements has been demonstrated should be categorically excluded. A key assumption in the Commission's decision not to prepare an environmental impact statement for the emergency planning rule was that shutdowns of nuclear power plants as a result of actions taken under the rule are expected to be infrequent and of short duration.[23] Therefore, it is very unlikely that the resumption of operation at a particular facility would have a significant effect on the human environment. Morever, the Commission retains discretion to require an environmental assessment in special circumstances. As the commenter recognized, special circumstances may include resumed operation after a long shutdown or a shutdown involving multiple facilities. Accordingly, the Commission has categorically excluded actions authorizing the resumption of operation, provided that the basis for the authorization relates solely to compliance or recompliance with emergency planning requirements. [§ 51.22(c)(18)]

Section 51.22 of revised Part 51 sets out the procedures to be followed to establish categorical exclusions (§ 51.22(a)), describes the function of the categorical exclusion to exclude certain types of actions from environmental review requirements (§ 51.22(b)) and lists those categories of actions which the Commission has declared to be categorical exclusions (§ 51.22(c)). Section 51.22(b) also provides that in special circumstances the Commission may prepare an environmental impact statement or an environmental assessment on an action covered by a categorical exclusion.

The Commission has identified eighteen categories of actions which meet the requirement for a categorical exclusion. A description of each of these categories, with the requisite finding, follows:

Category to Actions

1. Amendments to Parts 0, 1, 2, 4, 7, 8, 9, 10, 11, 14, 19, 21, 25, 55, 75, 95, 110, 140, 150, or 170 of this chapter, and actions on petitions for rulemaking relating to these amendments.

Discussion and Finding

Except for Part 8, Interpretations, the regulations in the following parts relate to matters of Commission organization, administration and procedure.

Part 0—Conduct of Employees
Part 1—Statement of Organization and General Information
Part 2—Rules of Practice for Domestic Licensing Proceedings
Part 4—Nondiscrimination in Federally Assisted Commission Programs
Part 7—Advisory Committees
Part 8—Interpretations
Part 9—Public Records
Part 10—Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information
Part 14—Administrative Claims under Federal Tort Claims Act
Part 140—Financial Protection Requirements and Indemnity Agreements
Part 150—Exemptions and Continued Regulatory Authority in Agreement States under Section 274
Part 170—Fees for Facilities and Materials Licenses and Other Regulatory Services under the Atomic Energy Act of 1954, as amended.

The regulations in these parts serve the dual purpose of making needed information readily available to the public and providing procedures for the orderly conduct of Commission business. These regulations in and of themselves will not affect the volume of that business.

In some instances, the regulations implement Federal laws and executive orders which prescribe specific procedures and policies for the conduct of government business. These laws include the Administrative Procedure Act (15 U.S.C. 551 et seq.), the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (Pub. L. 93–579), the Government in the Sunshine Act (5 U.S.C. 552b), the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), certain provisions in 18 U.C.C. 201–209 dealing with conflicts of interest in Federal employment, and House Concurrent Resolution No. 175, July 11, 1958, on the Code of Ethics for Government Service (72 Stat. B12, 5 U.S.C.A. § 7301, Note.) Executive Order 11222, May 8, 1965, provides in part that "[t]he elimination of conflict of interest in the Federal service is one of the most important objectives in establishing general standards of conduct."

[22] The final emergency planning rule amending 10 CFR Parts 50 and 70 adopted by the Commission was published on August 19, 1980 (45 FR 55402). The rule became effective on November 3, 1980.

[23] See 45 FR 55413–55415, August 19, 1980, Emergency Planning: Negative Declaration; Finding of No Significant Impact for Effective Rule Changes. See also, 45 FR 3913 at 3915, January 21, 1980, Emergency Planning: Draft Negative Declaration for Proposed Rule Changes.

In some instances, application of the regulations will have economic or social, but not environmental consequences. Examples include: Part 140 which contains regulations implementing the provisions of the Price-Anderson Act relating to financial protection and indemnity agreements; Part 170 which prescribes the schedule of Commission fees; and Part 4 which contains regulations on nondiscrimination which implement the provisions of Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974.

Formal interpretations of the Commission's regulations authorized by the Commission and prepared by the General Counsel are codified in Part 8. Although these interpretations may address matters of substance as well as procedure, the issuance of a formal interpretation and its inclusion in Part 8 of the Commission's regulations is an action without environmental effect.

The regulations in the following parts impose requirements on licensees.

Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material
Part 19—Notices, Instructions, and Reports to Workers; Inspections
Part 21—Reporting of Defects and Noncompliance
Part 25—Access Authorization for Licensee Personnel
Part 55—Operators' Licenses
Part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement
Part 95—Security Facility Approval and Safeguarding of National Security Information and Restricted Data
Part 110—Export and Import or Nuclear Facilities and Materials

Part 11 sets forth critieria and procedures for determining the eligibility of individuals for access to or control over formula quantities of special nuclear material in transportation and certain types of fuel cycle facilities. The requirements in Parts 19 and 21 relate to such matters as inspections, reports, record-keeping and posting of documents and notices. The requirements in Parts 25 and 95 relate to the protection of classified national security information and restricted data and the authorization for individuals to have access to such information. Part 55 establishes procedures and criteria for the issuance of licenses to operators and senior operators of licensed facilities. These regulations include procedures for filing and requirements for approval of applications, including requirements relating to written examinations, operating tests, and medical examinations. Part 75 sets forth reporting and recordkeeping requirements related to implementation of the US/IAEA Safeguards Agreement and provides for access to licensed facilities by IAEA inspectors. Although the regulations in Parts 11, 19, 21, 25, 55, 75, and 95 address matters of substance and have a social and economic effect, they do not have a significant effect on the environment.

Part 110 sets out the procedures and criteria for issuance of licenses to export and import nuclear materials and facilities. In the case of export licenses, the procedures and criteria have been specified by the Congress in the Nuclear Non-Proliferation Act of 1978 (Pub. L. 95-242, 92 Stat. 120) which does not include environmental impact as a factor to be considered. Consistent with this stautory mandate, the Commission has limited the scope of revised Part 51 to NRC's domestic licensing and related regulatory functions. Section 51.1 specifically states that the regulations in Part 51 "do not apply to export licensing matters within the scope of Part 110 * * *" To the extent that they apply to import licenses, the regulations in Part 110 are largely procedural. In addition, as explained in the discussion and finding for Categorical Exclusion 15, which applies to the issuance, amendment or renewal of licenses for the import of nuclear facilities and materials pursuant to Part 110, except for the import of spent power reactor fuel, the limited action of importation, which is the only action authorized by an import license, has no significant effect on the environment.

Accordingly, for the reasons stated, the Commission finds that amendments to Parts 0, 1, 2, 4, 7, 8, 9, 10, 11, 14, 19, 21, 25, 55, 75, 95, 110, 140, 150, or 170 of its regulations and actions on petitions for rulemaking relating to such amendments (Category 1) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 1. as a categorical exclusion, and directs that Category 1. be listed in §51.22(c) as a categorical exclusion.

Category of Actions

2. Amendments to the regulations in this chapter which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations, and actions on petitions for rulemaking relating to these amendments.

Discussion and Finding

Minor amendments of this type are sometimes needed to update, clarify or eliminate an ambiguity in an existing regulation. Since these amendments are usually editorial and do not change the substance of an existing regulation they can neither increase nor decrease any environmental impact which the existing regulation may have.

Accordingly, the Commission finds that amendments to its regulations which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations and actions on petitions for rulemaking relating to such amendments (Category 2.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 2. as a categorical exclusion, and directs that Category 2. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

3. Amendments to Parts 20, 30, 31, 32, 33, 34, 35, 40, 50, 51, 60, 61, 70, 71, 72, 73, 81, or 100 of this chapter which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission or for amendments to or renewals of licenses or construction permits or other forms of permission; (ii) recordkeeping requirements; or (iii) reporting requirements; and actions on petitions for rulemaking relating to these amendments.

Discussion and Finding

Although amendments of this type affect substantive parts of the Commission's regulations, the amendments themselves relate solely to matters of procedure. Requirements to keep records and make reports and regulations providing specific instructions as to where applications should be filed, how they should be signed and executed, the number of copies to be furnished, and the procedural steps which will be followed in connection with their review, do not have an effect on the environment. Like the amendments in Category 1., their function is to facilitate the orderly conduct of Commission business. Accordingly, the Commission finds that amendments of this type (Category 3.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 3. as a categorical exclusion, and directs that Category 3. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

4. Entrance into or amendment, suspension, or termination of all or part

of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

Discussion and Finding

Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2021), provides a mechanism (a section 274b. Federal-State Agreement) which authorizes the Commission to discontinue and enables individual States to assume, as they become ready and willing to do so, certain defined areas of regulatory authority over source, byproduct and special nuclear material. In order to make sure that the health and safety of the public will continue to be adequately protected, section 274d. prescribes certain conditions which must be met before an agreement can be entered into.

d. The Commission shall enter into an agreement under subsection b. of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection o.* and in all other respects compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

These requirements provide assurance that following the transfer of functions under the section 274b. agreement, the State will administer the existing regulatory program in a manner similar to the way in which it was previously administered by the NRC.

Under section 274j of the Act, the Commission retains certain residual powers which permit the Commission to terminate or suspend all or part of a State agreement and reassert its own licensing and regulatory authority if it finds that "* * * (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section [section 274]." In aid of this residual authority, section 274j also provides that the Commission "* * * shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section [section 274] * * *"

Under the statutory scheme provided in section 274, state regulatory actions do not become Federal actions for the purposes of NEPA by virture of the provisions of a Federal-State agreement. The agreement does not constitute a delegation or transfer of Federal authority to the States. Instead, the agreement specifies the conditions under which the States may exercise their own sovereign authority. Under the provisions of the agreement, the NRC's regulatory authority over source, byproduct and special nuclear material, conferred upon it by the Atomic Energy Act, is discontinued, thereby enabling the States, in the exercise of their inherent police powers to protect the public health and safety of their citizens, to assume regulatory authority over those materials. Thus, regulatory actions taken by states under an agreement are state actions and as such are not subject to NEPA which only applies to Federal actions.

Although execution of a Federal-State agreement is essential to shift regulatory control over source, byproduct and less-than-critical quantities of special nuclear material from the NRC to a state, the formal Federal action of entering into such an agreement has no immediate or measurable environmental impact. At the time of entrance into an agreement, information on the kind and number of State regulatory actions to be taken during the indeterminate period an agreement may remain in effect cannot be known and in consequence the environmental effects of those actions cannot be ascertained. Accordingly, no meaningful environmental impact statement or environmental assessment can be prepared. Under these circumstances, a categorical exclusion for actions of this type appears warranted.

In order to implement the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, it will be necessary for the Commission and those Agreement States which wish to retain regulatory authority over uranium milling to amend the provisions of the section 274b agreements now in force. The purpose of these amendments is to bind the States, in accordance with the provisions of the Act, to carry out their responsibilities with respect to the regulation of mill tailings in a manner which will not only provide adequate protection of the public health and safety but which will also protect the environment from hazards associated with those materials. Among other things, the States will be required to prepare detailed environmental analyses before they license activities which result in the production of mill tailings.

Implementation of the amended agreements, as intended by the Congress, will have a significant and beneficial effect upon the environment. To acknowledge this, however, does not change the fact that the formal action of amending an agreement, in and of itself, is not only without any environmental impact, but given the nature of the statutory mandate, which requires that the terms of the agreements conform to the requirements of the Act, is essentially ministerial.

Accordingly, the Commission finds that entrance into or amendment, suspension, or termination of all or part of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission (Category 4.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 4. as a categorical exclusion and directs that Category 4. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

5. Procurement of general equipment and supplies.

Discussion and Finding

Procurements of general equipment and supplies ensure that NRC personnel are able to efficiently perform their official responsibilities on a day to day basis. Although these procurements have an economic effect, they do not have a significant effect on the environment.

Accordingly, the Commission finds that procurements of general equipment and supplies (Category 5.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 5. as a categorical exclusion, and directs that Category 5. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

6. Procurement of technical assistance, confirmatory research provided that the confirmatory research does not involve any significant construction impacts, and personal services relating to the safe operation

*Section 274o., which was added by Pub. L. 95-604 (92 Stat. 3037), contains certain requirements relating to the licensing and regulation of mill tailings.

and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

Discussion and Finding

These actions involve scientific and engineering studies, assessments and analyses in areas relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to regulation, licensing and inspection by the NRC. The actions do not include confirmatory research programs which entail physical construction of plants and facilities.

Although these activities have an economic effect, no significant effect on the environment is anticipated.

Accordingly, the Commission finds that procurement of technical assistance, confirmatory research which does not involve any significant construction impacts and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation (Category 6.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 6. as a categorical exclusion, and directs that Category 6. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

7. Personnel actions.

Discussion and Finding

Personnel actions refer to administrative actions affecting NRC employees or potential employees, including labor union activities and the hiring, promotion and separation of personnel. Although these activities have a social and economic effect, they do not have a significant effect on the environment.

Accordingly, the Commission finds that personnel actions (Category 7.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 7. as a categorical exclusion, and directs that Category 7. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

8. Issuance, amendment, or renewal of operators' licenses pursuant to Part 55 of this chapter.

Discussion and Finding

Part 55 of the Commission's regulations prohibits persons from performing the functions of an operator or a senior operator at a licensed facility unless authorized to do so by a license issued by the Commission. Although issuance or denial of an operator's license may have a significant economic effect on the individual applicant, the action of the Commission in issuing, amending or renewing an operator's license in accordance with the procedures of 10 CFR Part 55 does not have an environmental effect. The environmental impact of the operation of a licensed facility by a licensed operator is fully considered in the environmental impact statement or environmental assessment prepared in connection with the licensing action authorizing operation of the facility. The formal action of certifying an operator does not authorize facility operation.

Accordingly, the Commission finds that issuance, amendment or renewal of operators' licenses pursuant to Part 55 of this chapter (Category 8.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 8. as a categorical exclusion, and directs that Category 8. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

9. Issuance of an amendment to a permit or license for a reactor pursuant to Part 50 of this chapter which changes a requirement with respect to installation or use of a facility component located within the restricted area, as defined in Part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that (i) the amendment involves no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and (iii) there is no significant increase in individual or cumulative occupational radiation exposure.

Discussion and Finding

Experience has indicated that amendments in this category either have no environmental impact or have an environmental impact that is insignificant. Changes which relate to the installation or use of a facility component located within a restricted area and which do not involve significant hazards considerations, significant changes in offsite effluents, or significant increases in occupational doses do not result in offsite effects that could have a significant impact on the human environment. Associated effects, if any, would be minimal and would be confined to limited access areas on site. Experience has also shown that amendments that change an inspection or surveillance requirement are usually of a procedural nature. The purpose of these changes is to incorporate accepted improvements in the installation or use of facility components or in inspection and surveillance which will facilitate the conduct of the licensee's business and insure the adequacy and timeliness of information reported to the Commission. As a result, such amendments will not lead to significant environmental impacts on the human environment either individually or cumulatively.

Accordingly, the Commission finds that license amendments of this type (Category 9.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 9. as a categorical exclusion, and directs that Category 9. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

10. Issuance of an amendment to a permit or license pursuant to Parts 30, 31, 32, 33, 34, 35, 40, 50, 60, 61, 70, or 72 of this chapter which (i) changes surety, insurance and/or indemnity requirements, or (ii) changes recordkeeping, reporting, or administrative procedures or requirements.

Discussion and Finding

Issuance of an amendment to a permit or license to change surety, insurance and/or indemnity requirements or to change requirements relating to recordkeeping, reporting or other administrative procedures does not affect the scope or nature of the licensed activity. Although changes in surety, insurance and/or indemnity requirements affect the financial arrangements of licensees and have economic and social consequences, they do not alter the environmental impact of the licensed activities. Similarly, changes in recordkeeping and reporting requirements and other administrative procedures relating to the licensee's organization and management do not change the nature and the consequent environmental impact of the licensed activity. The function of these procedural and administrative changes is merely to facilitate the orderly conduct of the licensee's business and to insure that the information needed by the Commission to perform its regulatory functions is readily available. Accordingly, the Commission finds that license amendments of this type (Category 10.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates

Category 10. as a categorical exclusion, and directs that Category 10. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

11. Issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites and amendments to materials licenses identified in § 51.60(b)(1) which are administrative, organizational, or procedural in nature, or which result in a change in process operations or equipment, provided that (i) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for or consequences from radiological accidents.

Discussion and Finding

Some requests for amendments to these types of licenses are administrative, organizational or procedural in nature or involve changes in process operations and equipment which do not result in any significant adverse incremental impacts to the environment from the licensed activity. Implementation of these minor and routine types of changes do not significantly alter the previously evaluated environmental impacts associated with the licensed operation, taking into account construction impacts, types and amounts of effluents released by the operation, occupational exposure of employees, or potential accidents. Furthermore, these amendments do not affect the scope or nature of the licensed activity.

Accordingly, the Commission finds that this class of amendments to licenses for fuel cycle plants and radioactive waste disposal sites and to certain types of materials licenses (Category 11.) comprise a category of actions that do not individually or cumulatively have a significant effect on the human environment, designates Category 11. as a categorical exclusion, and directs that Category 11. to be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

12. Issuance of an amendment to a license pursuant to Parts 50, 60, 61, 70, 72, or 75 of this chapter relating solely to safeguards matters (i.e. protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to Parts 50, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to (i) organizational and procedural matters, (ii) modifications to systems used for security and/or materials accountability, (iii) administrative changes, and (iv) review and approval of transportation routes pursuant to 10 CFR 73.37.

Discussion and Finding

Amendments and approvals of this nature relate to the protection of nuclear materials against theft or diversion or to the protection of nuclear materials, facilities, and transportation activities against radiological sabotage. They are needed (1) to implement new safeguards regulations through incorporation of provisions into licenses and (2) to permit modifications to licensees' safeguards programs established under existing requirements. With the exception of amendments involving significant construction, they are confined to (i) organizational and procedural matters, (ii) modifications to systems used for security and/or materials accountability, (iii) administrative changes, and (iv) review and approval of transportation routes pursuant to 10 CFR 73.37. The issuance of license amendments relating to these matters in and of themselves will not cause any significant environmental impacts.

With regard to route approvals, the requirement in 10 CFR 73.37(b)(7) for advance NRC approval of transportation routes applies only to spent fuel shipments and was included in the Commission's regulations in order to provide additional assurance that shipments containing spent fuel would be adequately protected against loss, diversion or sabotage. Before approving a particular transportation route, the NRC first makes a determination, on the basis of independently acquired information, that (1) details have been worked out for swift response by local law enforcement agencies, if requested, and (2) concrete details for NRC contingency planning for the route are adequate. The NRC bases its route approvals on the following criteria: (1) Routes that permit more timely responses by local law enforcement agencies are preferred; (2) routes that avoid passage through tactically disadvantageous positions are preferred; (3) routes should have appropriate rest and refueling stops available; and (4) routes with advance safety design features such as divided highways and guard rails are preferred. In this manner the NRC is able to obtain or verify the adequacy of requisite safeguards information and to ensure that transportation will take place only over routes that have adequate safeguards.

The NRC distinguishes between safety matters and safeguards matters in its regulatory scheme. The requirement of NRC route approval is one of a number of elements of the physical protection system for spent fuel shipments and involves only a safeguards review. Safety matters are covered by 10 CFR Part 71 (packaging) and by Department of Transportation (DOT) regulations. Generally DOT is responsible for regulating safety in the transportation routing of radioactive materials. DOT did an environmental assessment in connection with the adoption of its rules authorizing the shipment by road throughout the Nation of all types of radioactive materials. DOT found in that environmental assessment that no environmental impact statement was required in connection with the adoption of the rules because the risks of highway transport are so low that the regulations authorizing such transport will have no significant adverse environmental impact.

DOT in its environmental assessment relied in part on two studies sponsored by the NRC: (1) Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes, NUREG–0170 (December 1977); (2) Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment, NUREG/CR–0743; SAND 79–0369 (1980). The Commission finds from these studies and other available information, like DOT, that the transport of radioactive materials will not have a significant adverse environmental impact.

The Commission in NUREG–0170, a generic environmental impact statement, considered the environmental impacts of the transportation of radioactive materials, including the transportation of those materials over routes approved for safeguards purposes, and concluded that such impacts are small. This generic environmental impact statement set out the NRC's views of the present (1977) and projected (1985) environmental impact of the transportation of radioactive material and provided documentation for the NRC determination that the environmental impacts, radiological as well as non-radiological, of both the normal transportation of radioactive materials and of the risk and consequent environmental impacts attendant on accidents involving radioactive material shipments were sufficiently small that

shipments by all modes of transport should be allowed to continue and that no immediate changes to NRC regulations were needed. This report also concluded that the risks of theft or sabotage resulting in any significant radiological release are sufficiently small to constitute no major adverse impact on the environment. The Commission has examined the potential impacts set forth in NUREG–0170 and characterized as "small" and determined that they do not amount to a significant adverse impact.

NUREG/CR–0743 was developed to supplement NUREG–0170 by specifically studying the transport of nuclear materials through urban areas. That report concurred with the general conclusions in NUREG–0170 that neither accident-free transport nor the overall expected effects of accidents pose a significant hazard to urban populations. However, that study, although it contained a high degree of uncertainty as to the potential consequences of sabotage of spent fuel shipments, did suggest that sabotage has the potential for producing serious radiological consequences in areas of high population density.

In response to this uncertainty the NRC and the Department of Energy (DOE) sponsored separate coordinated experimental programs. While the results of these studies are still undergoing review, they appear to support the conclusion that transport of radioactive materials will not have significant adverse environmental impacts. The Commission believes that the available information, including the review of these two studies to date, provides sufficient certainty to conclude at this time that the transportation of radioactive materials in accord with NRC and DOT regulations will not have a significant adverse impact on the environment. In this connection, *see City of New York, et al.* v. *U.S. Department of Transportation, et al.*, 715 F.2d 732 (2d Cir., 1983) in which the U.S. Court of Appeals for the Second Circuit upheld DOT's determination that promulgation of DOT regulation HM–164 governing the highway transportation of radioactive materials was not an action requiring preparation of an environmental impact statement. Appeal dismissed and certiorari denied, February 27, 1984, No. 83–770, U.S. Supreme Court, October term 1983. The Commission notes, however, that if special circumstances are shown to exist in connection with a particular shipment an environmental assessment or an environmental impact statement may be prepared for that shipment, and that as further review continues, this conclusion may be modified.

Accordingly, the Commission finds that license amendments and approvals of this type (Category 12.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 12. as a categorical exclusion, and directs that Category 12. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

13. Approval of package designs for packages to be used for the transportation of licensed materials.

Discussion and Finding

Certificates of compliance approving package designs for packages to be used in the transportation of radioactive materials are issued upon demonstration that the package designs meet applicable performance standards contained in Part 71 of the Commission's regulations. Although it is expected that packages manufactured in accordance with approved designs will be used to transport radioactive materials, the certificates of compliance do not and cannot authorize the actual transportation of those materials. At the time a certificate approving a particular package design is issued, there is no specific information available on the number of packages that will be manufactured or the frequency of use. Since the Commission finds from other available material that the transportation of radioactive material in accord with applicable regulations will not have a significant adverse impact on the environment, the approval of package designs in accord with those regulations similarly can have no significant adverse environmental impact.

The Commission previously considered the impacts of the actual transportation of radioactive materials in packages meeting the performance standards of 10 CFR Part 71 in a generic environmental impact statement (Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes, NUREG–0170, December 1977) and concluded that such impacts are small. This generic environmental impact statement was prepared to aid the NRC in reevaluating its regulations for the air transportation of radioactive materials, including packaging and related ground transportation. Although the statement was directed at air transportation, packaging standards and other transportation modes—land transport and water transport—were also considered. The statement set out the NRC's views on the present (1977) and projected (1985) environmental impact of the transportation of radioactive materials. The statement also provided documentation for the NRC determination that the environmental impacts, radiological as well as non-radiological, of normal transportation of radioactive materials, including the transportation of those materials in packages for which the Commission had issued design approvals, and the risks and consequent environmental impacts attendant on accidents involving radioactive material shipments were sufficiently small that shipments by all modes of transport should be allowed to continue. On the basis of this generic environmental impact statement, the NRC concluded that no immediate changes to its regulations, including those portions of the regulations relating to the certification of package designs, were needed. The Commission has examined the potential impacts set forth in NUREG–0170 and characterized them as "small" and determined that they do not amount to a significant adverse impact.

NUREG/CR–0743, Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment (1980) was developed to supplement NUREG–0170 by specifically studying the transport of nuclear materials through urban areas. That report concurred with the general conclusions in NUREG–0170 that neither accident-free transport nor the overall expected effects of accidents pose a significant hazard to urban populations. However, that study, although it contained a high degree of uncertainty as to the potential consequences of sabotage of spent fuel shipments, did suggest that sabotage has the potential for producing serious radiological consequences in areas of high population density.

In response to this uncertainty the NRC and the Department of Energy (DOE) sponsored separate coordinated experimental programs. While the results of these studies are still undergoing review, they appear to support the conclusion that transport of radioactive materials will not have significant adverse environmental impacts. The Commission believes that the available information, including the review of these two studies to date, provides sufficient certainty to conclude at this time that the transportation of radioactive materials in accord with applicable regulations will not have a significant adverse impact on the environment. The Commission notes

that as further review continues, this conclusion may be modified.

Accordingly, the Commission finds that approvals of package designs for packages to be used for the transportation of licensed materials (Category 13.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 13. as a categorical exclusion, and directs that Category 13. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

14. Issuance, amendment, or renewal of materials licenses issued pursuant to 10 CFR Parts 30, 31, 32, 33, 34, 35, 40, or 70 authorizing the following types of activities:

(i) Distribution of radioactive material and devices or products containing radioactive material to general licensees and to persons exempt from licensing.

(ii) Distribution of radiopharmaceuticals, generators, reagent kits and/or sealed sources to persons licensed pursuant to 10 CFR 35.14 and 35.100.

(iii) Nuclear pharmacies.

(iv) Medical and veterinary.

(v) Use of radioactive materials for research and development and for educational purposes.

(vi) Industrial radiography.

(vii) Irradiators.

(viii) Use of sealed sources and use of gauging devices, analytical instruments and other devices containing sealed sources.

(ix) Use of uranium as shielding material in containers or devices

(x) Possession of radioactive material incident to performing services such as installation, maintenance, leak tests and calibration.

(xi) Use of sealed sources and/or radioactive tracers in well-logging procedures.

(xii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities provided the interim storage period for any package does not exceed 180 days and the total possession limit for all packages held in interim storage at the same time does not exceed 50 curies.

(xiii) Manufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees, except processing of source material for extraction of rare earth and other metals.

(xiv) Nuclear laundries.

(xv) Possession, manufacturing, processing, shipment, testing, or other use of depleted uranium military munitions.

(xvi) Any use of source, byproduct, or special nuclear material not listed above which involves quantities and forms of source, byproduct, or special nuclear material similar to those listed in sections (i)–(xv) of Category 14.

Discussion and Findings

Previously, the Commission's attention to environmental review requirements for materials licensing actions has focused largely on activities in the uranium fuel cycle. In this revision to 10 CFR Part 51, other types of materials licenses are accorded additional attention. Although some types of materials licensing actions have not been the subject of an in-depth environmental review, the NRC and its predecessor agency, the Atomic Energy Commission, have had over thirty years experience in licensing and regulating these materials licensees. Based on this experience, the NRC believes that these activities, individually or cumulatively, have not resulted in any significant impact on the environment. Absolute confirmation that none of these licensing actions would ever have any significant environmental impact could be obtained only by in-depth reviews of each of thousands of licensing actions each year. The Commission does not believe that the huge expenditure of resources that would be required would be justified and believes that the environment would be better protected if NRC's resources were devoted to the environmental analyses called for under §§ 51.20(b) and 51.21 of this subpart for the types of actions which experience suggests have real potential to cause significant environmental problems. Under the revised regulations, the NRC staff may prepare an environmental impact statement or an environmental assessment, as appropriate, for any licensing actions covered by a categorical exclusion should special circumstances come to its attention that would warrant such action.

(i) Distribution of radioactive material and devices or products containing radioactive material to general licensees and to persons exempt from licensing.

These licenses authorize persons to distribute radioactive materials and devices such as density gauges, level gauges, and other gauging devices to persons who are general licensees and to distribute products containing radioactive material such as watches, electron tubes, or smoke detectors to persons who are exempt from licensing. These licenses for distribution do not authorize processing or use of radioactive materials. There are no effluent releases or personnel exposures associated with the licensed activities. These distribution licenses presuppose ultimate use or possession of the radioactive materials under a general license or exemption established by regulation, which regulation, under § 51.21, will require an environmental assessment addressing the environmental impacts of the generally licensed or exempted activities of the recipients of the materials. The radioactive material, devices and products that may be distributed pursuant to these licenses must meet the specific standards and requirements in the NRC regulations. At the time of issuance of the regulations authorizing distribution, the determination was made that subsequent exempt or generally licensed use or possession of the materials would not constitute a risk to the public health and safety.

(ii) Distribution of radiopharmaceuticals, generators, reagent kits and/or sealed sources to persons licensed pursuant to 10 CFR 35.14 and 35.100.

These licenses authorize persons to distribute radiopharmaceuticals, generators, reagent kits and/or sealed sources to NRC's Group medical licensees. These licenses for distribution do not authorize possession, use or processing of radioactive materials. There are no effluent releases or personnel exposures associated with the licensed activities.

(iii) Nuclear pharmacies.

Nuclear pharmacies purchase prepared radiopharmaceuticals, radioisotope generators and reagent kits from manufacturers. They elute the generators and distribute the eluate as a prepared radiopharmaceutical or compound the eluate with reagent kits to make prepared radiopharmaceuticals. They dispense and distribute prepared radiopharmaceuticals to medical licensees in unit-dose or multi-dose forms. If the services of a nuclear pharmacy are not used, the medical licensee performs these functions in his own nuclear medicine laboratory. Due to the short half-life of medically useful isotopes, the radioactive wastes that nuclear pharmacies generate may be decayed to background levels in storage. Releases in effluents may be estimated at 5% of maximum permissible values. Due to the soft gamma emission of most medically useful isotopes and the use of personnel shielding devices, exposure to personnel may be conservatively estimated at 25% of the maximum permissible dose.

(iv) Medical and veterinary.

NRC issues licenses to hospitals and to physicians authorizing use of radioactive materials in the diagnosis

and treatment of patients. These licensed activities may include such activities as: receipt of radioactive material, preparation of radiopharmaceuticals from Mo-99/Tc-99m generators and reagent kits, administration of unsealed radiopharmaceuticals to patients for diagnostic or therapeutic purposes, the use of sealed sources for brachytherapy (i.e., radiation delivered from a short distance) and/or teletherapy (i.e., radiation delivered from a long distance), use of sealed sources contained in devices implanted in patients (e.g., nuclear-powered pacemakers), laboratory use of unsealed sources for performance of diagnostic tests or for tracer studies for research purposes, use of source material for shielding (e.g., as a component of a teletherapy unit or a linear accelerator), and the disposal of the authorized materials by holding for decay or by transfer to authorized recipients.

For the purposes of this discussion, medical licenses also include similar activities conducted by veterinarians for diagnosis or treatment of animals and laboratory use of unsealed sources for diagnostic tests as performed by clinical laboratories.

The environmental impact of these licensed activities is insignificant. In light of 10 CFR 20.107, radiation exposures of patients are not considered. The environmental impacts would be: occupational exposures estimated at less than 10% of the applicable limits; non-occupational exposures of members of the public who may have contact with these patients are generally minimal; releases to air and water or to sanitary sewerage (primarily as patient excreta) are of small quantity, or if of larger quantities, are short-lived. Effluent releases with the exception noted in 10 CFR 20.303(d) are estimated at less than 10% of the applicable limits.

(v) Use of radioactive materials for research and development and for educational purposes.

These licenses authorize persons (e.g., academic institutions, industrial firms, and government agencies) to use sealed and/or unsealed sources of byproduct, source and special nuclear material for activities such as research and development (10 CFR 30.4(q)), educational purposes, classroom demonstrations, animal tracer studies, and tracer studies of materials and compounds. (Licenses to construct or operate nuclear research reactors are not materials licenses and therefore are not within the scope of this categorical exclusion.) This categorical exclusion does not encompass (a) processing or manufacturing, (b) performance of field studies in which licensed material is deliberately released directly into the environment for purposes of the study, or (c) use of radioactive tracers in field flood studies involving secondary and tertiary oil and gas recovery. As specified in § 51.60(b)(1)(vi), applicants seeking licenses authorizing the use of tracers in field flood studies involving secondary and tertiary oil and gas recovery are required to submit environmental reports. In the case of other field studies in which licensed material is deliberately released directly into the environment for purposes of the study, environmental reports will be requested on a case-by-case basis as needed.

A typical facility is designed to minimize release of effluents to the environment. Remote handling equipment, personnel protective clothing, and shielding materials are standard equipment to minimize personnel exposures. A day-to-day radiation safety program provides for monitoring of personnel exposures, contamination levels, radiation levels, and effluent releases. Personnel exposures and effluent releases are estimated at less than 10 per cent of the limits of 10 CFR Part 20.

(vi) Industrial radiography.

Gamma radiation sources (primarily iridium-192 and cobalt-60) are used for non-destructive testing of materials throughout the United States. The sources used are metallic and are encapsulated in a stainless steel capsule. Therefore, during ordinary use it is not expected that there will be releases of radioactive material to the environment. The radiation exposure during routine use of sources in industrial radiography is well within NRC limits for occupational exposure. The average exposure per individual radiographer is less than 0.4 rem per year, which is less than 10% of the permissible exposure.

(vii) Irradiators.

These devices are used for a variety of purposes in research and industry to expose products to large amounts of radiation. Typical uses include sterilization or microbiological reduction in medical and pharmaceutical supplies and insect eradication through sterile male release programs. Irradiators usually contain from a few hundred curies to megacuries of radioactive material, principally cobalt 60. The radioactive material is contained in sealed sources. Product irradiation occurs within areas to which access is controlled and which are shielded to protect both operating personnel and the environment.

Personnel exposures during use of these devices are less than 5% of the limits in 10 CFR Part 20. There are no effluent releases resulting from operation of irradiators.

(viii) Use of sealed sources and use of gauging devices, analytical instruments and other devices containing sealed sources.

Sealed sources used by licensees are usually singularly or doubly encapsulated depending on activity in stainless steel. Therefore, in ordinary use it is not expected that the use of sealed sources will result in the release of radioactive material to the environment. Sealed sources used by licensees are usually required to undergo rigorous prototype testing to ensure that the likelihood of a substantial release of radioactive material to the environment during abnormal use of sealed sources is unlikely.

Gauging devices used to measure thickness, density, and level of materials contain sealed sources, usually cesium-137 and strontium-90, which are encapsulated so that there is no leakage during use. The devices provide shielding such that radiation levels external to the devices are on the order of a few milliroentgens per hour. Other devices include gas chromatographs with millicurie quantities of nickel-63 or hydrogen-3, analytical devices such as X-ray fluorescence analyzers with sealed sources containing a variety of radioisotopes, instrument calibration devices containing millicurie to curie quantities of cesium-137 and cobalt-60, and soil-density gauges which contain millicurie quantities of cesium-137 and americium-241 neutron sources.

Personnel exposure from use of these devices is less than 5% of the limits in 10 CFR Part 20. There are no effluents associated with the use of devices containing sealed sources.

(ix) Use of uranium as shielding material in containers or devices.

These licenses for possession and use of uranium for shielding are a non-nuclear use of radioactive materials. Because of its high density, uranium is excellent as shielding material. Depleted uranium has very low specific activity and the corresponding low radiation levels emitted make it very unlikely that any individual will receive a radiation dose in excess of 5% of maximum permissible dose specified in Part 20. In addition, because of its physical and chemical properties, there should be no release of radioactive material to the environment during normal use of depleted uranium as shielding and very

limited release during abnormal conditions.

(x) Possession of radioactive material incident to performing services such as installation, maintenance, leak tests and calibration.

These licenses only authorize the possession of radioactive material incident to performing services either at the customer's facility or at the licensee's facility. Generally the activity involves the use of sealed sources only. Since service licenses involved very little actual possession and use of radioactive material, personnel exposure from performing the services should be less than 5% of the limits in 10 CFR Part 20 and there should be no effluent releases.

(xi) Use of sealed sources and/or radioactive tracers in well-logging procedures.

During the past 20 years in which the NRC and its predecessor agency, the AEC, have been regulating the use of sealed radioactive sources and short-lived radioactive tracers in well logging, there have been approximately 89 incidents in which well-logging sources have been forced to be abandoned in wells. A risk analysis prepared by the NRC staff shows only a small radiological risk to the public health and safety from the potential release of radioactive material due to long term corrosion or damage from drilling into sources that have been abandoned. In addition, routine safety measures, such as those described below, also protect against significant environmental impacts from well-logging activities.

Well drilling permits require that gas and oil wells be cased to below potable water aquifers to prevent cross contamination from brine, oil and gas normally associated with wells. This requirement also serves to preclude contamination of potable water aquifers when radioactive materials are used in these cased wells. In the event a source becomes irretrievable during a well-logging operation, safety requirements are imposed to minimize the escape of radioactivity from the source and the surrounding areas. These requirements include: (1) Sealing the source in place with a cement plug to immobilize it and to preclude abrasion and corrosion; (2) setting a deflection device (whipstock) at the top of the cement plug to deflect a drill away from the general area of the source in the event of an inadvertent future drilling; (3) mounting a permanent identification plaque at the surface of the well to alert anyone planning to enter the well to the existence of a source downhole; and (4) requiring notification to be placed in pertinent land records maintained by State oil and gas regulatory agencies to alert against redrilling the well. In addition, the construction of the source itself minimizes the possibility of releases and migration of radioactive material. Source capsules are always doubly encapsulated and fabricated of stainless steel or other corrosion resistant material. The radioactive material is in the form of a very low solubility compound. The sources are enclosed in a logging tool made of steel which provides additional protection.

The radioactive materials used as tracers in well logging have short half-lives and the quantities involved are small—in the low millicurie range. The use of these tracers does not present any environmental impact because of the small quantities which decay to innocuous radioactivity levels in short periods of time.

(xii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities provided the interim storage period for any package does not exceed 180 days and the total possession limit for all packages held in interim storage at the same time does not exceed 50 curies.

These licenses authorize the acceptance of radioactive waste in packages that meet all governmental regulations for transport of radioactive materials. The packaged radioactive material is stored temporarily until a sufficient number of packages is accumulated for shipment to licensed land burial sites.

In general, these activities are analogous to the transport carried out by common and contract carriers, which are exempt from NRC license requirements. Packages are not permitted to be opened although over-packaging may be carried out in the event defective packaging is received. There are no routine releases of radioactive effluents. Safety requirements for the storage facility include protection against unauthorized entry, fire resistant buildings and packages, fire detection and suppression capability, radiation monitoring equipment and operating and emergency procedures. By limiting the total radioactivity in storage at any one time to a maximum of 50 curies and by limiting the storage period for any package to a maximum of 180 days, the chances of significant releases of radioactivity or excess exposure of personnel in the event of accident conditions, such as a fire, are minimal.

(xiii) Manufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees, except processing of source material for extraction of rare earth and other metals.

Manufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees consists of approximately 234 NRC licensees at the present time. Under these licenses, persons manufacture radiopharmaceuticals, labeled compounds for research purposes and sealed sources for use in gauging and analytical equipment. Other licensees in this category use and handle radioactive materials in solid form to manufacture sealed sources, e.g., radiography devices, or use and handle already sealed sources by incorporating the sources into devices used for gauging purposes.

In 1978, licensees in this category had an average dose of 0.45 rem for persons with measurable exposure and an average dose of 0.21 rem for all persons monitored. The collective dose for this category of licensees was 3,280 man-rems. The potential impact, therefore, is very small, less than one calculated health effect. Ninety-eight percent of the facilities had releases in air of less than one percent of the maximum permissible concentrations in 10 CFR Part 20. The largest release reported was approximately 12 percent of the maximum permissible concentrations. Releases of liquid wastes were well within the limits in NRC regulations.

Operations where source material is processed for extraction of rare earth or other metals may involve generation of large volumes of waste containing low levels of radioactive material. The storage and ultimate disposal of this waste may have significant environmental impact. Therefore, these types of operations are not listed as a categorical exclusion.

(xiv) Nuclear laundries.

Nuclear laundries receive slightly contaminated clothing from nuclear facilities and provide decontamination services. The "clean" garments are then returned to the customer. As of August 31, 1981, there were four NRC licensees in this category. The quantities of radioactive material involved are small, usually a few millicuries of radioactive material. In 1978, three of the four licensed laundries reported an average dose of 0.22 rem for persons with measurable exposure and a collective dose of 1 rem. The small amount of activity used by those licensees is disposed of in accordance with NRC regulations.

(xv) Possession, manufacturing, processing, shipment, testing, or other use of depleted uranium military munitions.

Possession, manufacturing, processing, shipment, testing or other use of depleted uranium munitions, e.g., bullets and other projectiles, includes about 10 licenses held by U.S. military organizations and less than 10 licensees involved with the manufacturing process. The military tests involve the use of low specific activity depleted uranium (3.6×10^{-7} curies/gram) as metal alloy penetrators (rods) which vary in weight from a few grams to less than 10 kilograms. These rods are propelled at high velocities against metal targets such as armor plate. Testing of these munitions is carried out at remote desert locations on military reservations, in constructed enclosures, or over deep ocean waters. Any materials released to the environment are of low radioactive content, are highly dispersed, and are of chemical and physical form which is not readily incorporated into flora or fauna. Thus, radioactive releases to the environment which could affect human, animal or plant life from testing at any of the locations are negligible and occupational exposures from handling depleted uranium are so low that personnel monitoring is not required. Additionally, since the penetrators tested do not explode, cratering or other defacing of the environment is not experienced. The military also transports and stores depleted uranium munitions for war-readiness posture. Because the munitions are transported and stored in sealed containers as solid metal in nondispersible form, there is negligible environmental impact associated with such transportation and storage.

Manufacturers of depleted uranium munitions are also included here for the sake of completeness, although manufacturers are excluded in section (xiii) of Category 14.

(xvi) Any use of source, byproduct, or special nuclear material not listed above which involves quantities and forms of source, byproduct, or special nuclear material similar to those listed in sections (i)–(xv) of Category 14.

It has been the Commission's experience in the past that additional environmentally insignficant materials licensing actions occasionally arise. These cases involve uses of source, byproduct or special nuclear material in quantities and form similar to those categorically excluded in sections (i)–(xv) of Category 14. and, therefore, have insignificant environmental impacts. By categorically excluding actions of this type, the Commission will avoid the unnecessary expenditure of scarce resources in preparing environmental assessments for those few environmentally insignificant cases not separately identified as the subject of a specific categorical exclusion. The Commission anticipates that considerably less than 1% of its licensing actions in the nuclear materials area would fit within this category.

Accordingly, the Commission finds that issuance, amendment, and renewal of licenses described above (Category 14.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 14. as a categorical exclusion, and directs that Category 14. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

15. Issuance, amendment or renewal of licenses for import of nuclear facilities and materials pursuant to Part 110 of this chapter, except for import of spent power reactor fuel.

Discussion and Finding

Import licenses issued pursuant to 10 CFR Part 110 merely authorize import into the United States and do not authorize any person to possess, use, or transfer the facilities or materials within the United States. Also, import licenses do not authorize transportation of imported facilities and materials within the United States. An exception has been made in the categorical exclusion for imports of spent power reactor fuel. In the Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes (NUREG–0170, December 1977) the NRC staff examined the environmental impact of the transportation of imports from the time a shipment first arrives in the United States until it reaches its ultimate destination and concluded that the environmental impact of such transportation was negligible.

Accordingly, the Commission finds that issuance, amendment or renewal of licenses for import of nuclear facilities and materials pursuant to Part 110 of this chapter, except for import of spent power reactor fuel (Category 15.), comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 15. as a categorical exclusion and directs that Category 15. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

16. Issuance or amendment of guides for the implementation of regulations in this chapter, and issuance or amendment of other informational and procedural documents that do not impose any legal requirements.

Discussion and Finding

Regulatory guides are issued (and sometimes revised) to explain the NRC staff's position regarding an acceptable method of implementation of regulations. Compliance with their provisions is not required. Since regulatory guides do not modify existing regulations and are not enforceable by themselves they can neither increase nor decrease any environmental impact which an existing regulation may have. Other informational and procedural documents covered by this exclusion have no environmental impact for the same reason.

Accordingly, the Commission finds that issuance or amendment of guides for the implementation of regulations in this chapter and issuance or revision of other similar informational and procedural documents (Category 16.) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 16. as a categorical exclusion, and directs that Category 16. be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

17. Issuance of an amendment to a permit or license pursuant to Parts 30, 40, 50, or 70 of this chapter which deletes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.

Discussion and Finding

Pursuant to the Federal Water Pollution Control Act (FWPCA), the Environmental Protection Agency has exclusive responsibility for developing, setting and enforcing nonradiological effluent limitations and water quality standards. These effluent limitations and water quality standards apply to a wide variety of pollutants. However, they do not apply to source, byproduct and special nuclear material. On June 1, 1976, the U.S. Supreme Court held that source, byproduct and special nuclear materials do not fall within the class of pollutants which are subject to regulation under the Federal Water Pollution Control Act. (*Train* v. *Colorado PIRG*, 426 U.S. 1 at 25.)

In the past, in order to make sure that NRC licensees were conducting their activities in an environmentally responsible manner, the Nuclear Regulatory Commission, like its predecessor agency, the Atomic Energy

Commission, included conditions relating to water quality matters covered by the FWPCA in NRC permits and licenses. Following an extensive and careful examination of the legislative history of section 511(c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1371(c)(2)), the Atomic Safety and Licensing Appeal Board held in two decisions that the Environmental Protection Agency has exclusive responsibility for the substantive regulation of nonradiological pollutant discharges where an NPDES permit is in effect, and described the respective roles of EPA and NRC in the following terms:

> The first is that the spread of Federal responsibility for water quality standards and pollution control among the various licensing agencies, which resulted from the reading given NEPA by the *Calvert Cliffs* court, has been curtailed. That responsibility is shifted to EPA as its exclsive province. The second is that the mandate to acquire "expertise" in developing, setting, and enforcing effluent limitations and water quality standards is also given to EPA; federal licensing agencies are to rely on that agency when such matters are involved and not develop duplicate expertise on their own. Third, those agencies are not to "second-guess" EPA by undertaking independent analyses and setting their own standards in this area. And, finally, given the pointed Congressional comments cited, NRC, as statutory successor to the AEC, is unmistakably bound by those strictures.
>
> To be sure, in deciding whether to license specific projects, each agency must continue to weigh any resulting degradation of water quality in its NEPA cost-benefit balance. Section 511(c)(2) does not change this obligation. Rather, its intendment is to limit those agencies' NEPA roles to that balancing, leaving the substantive regulation of water pollution in EPA's hands.
>
> ALAB–515 (1978) In the Matter of Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2) 8 NRC 702 at 712–713, as quoted in ALAB–569 (1979) In the Matter of Carolina Power and Light Company (H. B. Robinson, Unit No. 2) 10 NRC 557 at 561.

The law established in these Appeal Board decisions is clear. The NRC no longer has a role setting conditions relating to nonradiological discharges of pollutants into aquatic bodies or establishing requirements for aquatic monitoring where an NPDES permit is in effect. Instead, EPA, and those states to whom permitting authority has been delegated, have exclusive responsibility for regulating nonradiological pollutant discharges through the NPDES permit system. The NRC's role in the water quality area is limited to regulating radiological discharges into aquatic bodies and NEPA matters such as weighing aquatic impacts in the NEPA analysis which NRC is required to make before reaching a major Federal licensing decision.

Under certain provisions of the Federal Water Pollution Control Act, such as sections 401(a)(2) and 401(d), NRC licenses, like licenses issued by other Federal agencies, become subject to conditions deemed imposed by the Federal Water Pollution Control Act as a matter of law. In recognition of these statutory requirements and to make clear that NRC licenses are issued subject to these conditions, whether stated in the licenses or not, the Commission is amending § 50.54 of its regulations.

In order to comply with existing law and to assure that its regulatory responsibilities are carried out in a consistent manner in accordance with these revised regulations, the NRC is continuing its ongoing process of amending all outstanding NRC licenses and permits to delete from those licenses and permits any limiting conditions of operation or monitoring requirements pertaining to nonradiological discharges of pollutants subject to the provisions of the Federal Water Pollution Control Act. These amendments will not affect EPA's independent responsibility to administer and enforce or the obligation of an NRC licensee or permittee to comply with the requirements of the Federal Water Pollution Control Act.

The Commission finds that license amendments of this type (Category 17) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment because these impacts have been addressed under the appropriate provisions of the Federal Water Pollution Control Act. Accordingly, the Commission designates Category 17 as a categorical exclusion, and directs that Category 17 be listed in § 51.22(c) as a categorical exclusion.

Category of Actions

18. Issuance of amendments or orders authorizing licensees of production or utilization facilities to resume operation, provided the basis for the authorization rests solely on a determination or redetermination by the Commission that applicable emergency planning requirements are met.

Discussion and Finding

The Commission published its final emergency planning rule amending 10 CFR Parts 50 and 70 on August 19, 1980 (45 FR 55402). As part of its deliberations on the rule, the Commission evaluated the environmental impact of the proposed changes and provided the public an opportunity to comment on the draft environmental assessment and draft negative declaration. See 45 FR 3913 at 3915, January 21, 1980, and 45 FR 55413–55415, August 19, 1980. After considering the public comments, the Commission determined that the changes in emergency planning requirements would not have a significant effect on the human environment. Accordingly, an environmental impact statement was not prepared. A key assumption in the Commission's decision not to prepare an environmental impact statement for the emergency planning rule was that shutdowns of nuclear power plants as a result of actions taken under the rule are expected to be infrequent and of short duration. Therefore, it is very unlikely that the resumption of operation of a particular facility would have a significant effect on the human environment. Moreover, the Commission retains discretion to require an environmental assessment or an environmental impact statement in special circumstances.

Accordingly, the Commission finds that issuance of amendments or orders authorizing licensees of production or utilization facilities to resume operation, provided the basis for the authorization rests solely on a determination or redetermination by the Commission that applicable emergency planning requirements are met (Category 18) comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 18. as a categorical exclusion and directs that Category 18. be listed in § 51.22(c) as a categorical exclusion.

CEQ Review and Approval

On October 19, 1982, the General Counsel of CEQ advised the Executive Legal Director of NRC that the Council had completed its review of NRC's draft final NEPA procedures (revised 10 CFR Part 51) as provided by 40 CFR 1507.3(a), and had determined, based on that review, that NRC's NEPA procedures address all of the sections of the CEQ regulations required to be addressed by 40 CFR 1507.3(b) and that the NRC procedures may take effect after they are published in final form in the **Federal Register.**

Paperwork Reduction Act Review

The Nuclear Regulatory Commission will submit this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812, 44 U.S.C. 3501 et seq. The date on which the rule becomes

effective includes the 90-day period which that Act allows for review by the Office of Management and Budget.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 552 and 553, the following revision of 10 CFR Part 51 and related conforming amendments to 10 CFR Parts 2, 30, 40, 50, 61, 70, 72 and 110 are published as a document subject to codification. Amendments to all parts except revised 10 CFR Part 51 issued pursuant to citations of authority presently codified.

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

1. 10 CFR Part 51 is revised to read as follows:

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

Sec.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

§ 51.1 Scope.

This part contains environmental protection regulations applicable to NRC's domestic licensing and related regulatory functions. These regulations do not apply to export licensing matters within the scope of Part 110 of this chapter or to any environmental effects which NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations. Subject to these limitations, the regulations in this part implement:

(a) Section 102(2) of the National Environmental Policy Act of 1969, as amended.

(b) [Reserved].

§ 51.2 Subparts.

(a) The regulations in Subpart A of this part implement section 102(2) of the National Environmental Policy Act of 1969, as amended.

(b) [Reserved].

§ 51.3 Resolution of conflict.

In any conflict between a general rule in Subpart A of this part and a special rule in another subpart of this part or another part of this chapter applicable to a particular type of proceeding, the special rule governs.

§ 51.4 Definitions.

As used in this part:

"Act" means the Atomic Energy Act of 1954 (Pub. L. 83–703, 68 Stat. 919) including any amendments thereto.

"Commission" means the Nuclear Regulatory Commission or its authorized representatives.

"NRC" means the Nuclear Regulatory Commission, the agency established by Title II of the Energy Reorganization Act of 1974, as amended.

"NRC staff" means any NRC officer or employee or his/her authorized representative, except a Commissioner, a member of a Commissioner's immediate staff, an Atomic Safety and Licensing Board, an Atomic Safety and Licensing Appeal Board, a presiding officer, an administrative judge, an administrative law judge, or any other officer or employee of the Commission who performs adjudicatory functions.

"NRC staff director" means:

Executive Director for Operations;
Director, Office of Nuclear Reactor Regulation;
Director, Office of Nuclear Material Safety and Safeguards;
Director, Office of Nuclear Regulatory Research;
Director, Office of Inspection and Enforcement;
Director, Office of State Programs; or
Executive Legal Director; and
The designee of any NRC staff director.

§ 51.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 51.6 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and are otherwise in the public interest.

Subpart A—National Environmental Policy Act—Regulations Implementing Section 102(2)

§ 51.10 Purpose and scope of subpart; Application of regulations of Council on Environmental Quality.

(a) The National Environmental Policy Act of 1969, as amended (NEPA) directs that, to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA, and (2) all agencies of the Federal Government shall comply with the procedures in section 102(2) of NEPA except where compliance would be inconsistent with other statutory requirements. The regulations in this subpart implement section 102(2) of NEPA in a manner which is consistent with the NRC's domestic licensing and related regulatory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, and which reflects the Commission's announced policy to take account of the regulations of the Council on Environmental Quality published November 29, 1978 (43 FR 55978–56007) voluntarily, subject to certain conditions. This subpart does not apply to export licensing matters within the scope of Part 110 of this chapter nor does it apply to any environmental effects which NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations.

(b) The Commission recognizes a continuing obligation to conduct its domestic licensing and related regulatory functions in a manner which is both receptive to environmental concerns and consistent with the Commission's responsibility as an independent regulatory agency for protecting the radiological health and safety of the public. Accordingly, the Commission will:

(1) Examine any future interpretation or change to the Council's NEPA regulations;

(2) Follow the provisions of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies,

except that the Commission reserves the right to prepare an independent environmental impact statement whenever the NRC has regulatory jurisdiction over an acitivity even though the NRC has not been designated as lead agency for preparation of the statement; and

(3) Reserve the right to make a final decision on any matter within the NRC's regulatory authority even though another agency has made a predecisional referral of an NRC action to the Council under the procedures of 40 CFR Part 1504.

(c) The regulations in this subpart[24] also address the limitations imposed on NRC's authority and responsibility under the National Environmental Policy Act of 1969, as amended, by the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92–500, 86 Stat. 816 et seq. (33 U.S.C. 1251 et seq.) In accordance with section 511(c)(2) of the Federal Water Pollution Control Act (86 Stat. 893, 33 U.S.C 1371(c)(2)) the NRC recognizes that responsibility for Federal regulation of nonradiological pollutant discharges[25] into receiving waters rests by statute with the Environmental Protection Agency.

(d) Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to section 102(2) of NEPA. These actions include issuance of notices, orders, and denials of requests for action pursuant to Subpart B of Part 2 of this chapter, and matters covered by Part 15 and 160 of this chapter.

§ 51.11 Relationship to other subparts. [Reserved]

§ 51.12 Application of subpart to ongoing environmental work.

(a) Except as otherwise provided in this section, the regulations in this subpart shall apply to the fullest extent practicable to NRC's ongoing environmental work.

(b) No environmental report or any supplement to an environmental report filed with the NRC and no environmental assessment, environmental impact statement or finding of no significant impact or any supplement to any of the foregoing issued by the NRC before the effective date of these regulations need be redone and no notice of intent to prepare an environmental impact statement or notice of availability of these environmental documents need be republished solely by reason of the promulgation on March 12, 1984 of this revision of Part 51.

§51.13 Emergencies.

Whenever emergency circumstances make it necessary and whenever, in other situations, the health and safety of the public may be adversely affected if mitigative or remedial actions are delayed, the Commission may take an action with significant environmental impact without observing the provisions of these regulations. In taking an action covered by this section, the Commission will consult with the Council as soon as feasible concerning appropriate alternative NEPA arrangements.

§ 51.14 Definitions.

(a) As used in this subpart:

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect in accordance with procedures set out in § 51.22, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

"Cooperating Agency" means any Federal agency other than the NRC which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. By agreement with the Commission, a State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may become a cooperating agency.

"Council" means the Council on Environmental Quality (CEQ) established by Title II of NEPA.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Environmental Assessment" means a concise public document for which the Commission is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of an environmental impact statement when one is necessary.

"Environmental document" includes an environmental assessment, an environmental impact statement, a finding on no significant impact, an environmental report and any supplements to or comments upon those documents, and a notice of intent.

"Environmental Impact Statement" means a detailed written statement as required by section 102(2)(C) of NEPA.

"Environmental report" means a document submitted to the Commission by an applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission, or by a petitioner for rulemaking, in order to aid the Commission in complying with section 102(2) of NEPA.

"Finding of No Significant Impact" means a concise public document for which the Commission is responsible that briefly states the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which therefore an environmental impact statement will not be prepared.

"NEPA" means the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 83 Stat. 852, 856, as amended by Pub. L. 94–83, 89 Stat. 424, 42 U.S.C. 4321, et seq.).

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered.

(b) The definitions in 40 CFR 1508.3, 1508.7, 1508.8, 1508.14, 1508.15, 1508.16, 1508.17, 1508.18, 1508.20, 1508.23, 1508.25, 1508.26, and 1508.27, will also be used in implementing section 102(2) of NEPA.

§ 51.15 Time schedules.

Consistent with the purposes of NEPA, the Administrative Procedure Act, the Commission's rules of practice in Part 2 of this chapter, §§ 51.100 and 51.101, and with other essential considerations of national policy:

(a) The appropriate NRC staff director may, and upon the request of an applicant for a proposed action or a petitioner for rulemaking shall, establish a time schedule for all or any constituent part of the NRC staff NEPA process. To the maximum extent practicable, the NRC staff will conduct its NEPA review in accordance with any time schedule established under this section.

(b) Pursuant to Subpart G of Part 2 of this chapter, the presiding officer, the

[24] See also Second Memorandum of Understanding Regarding Implementation of Certain NRC and EPA Responsibilities and Policy Statement on Implementation of Section 511 of the Federal Water Pollution Control Act (FWPCA) attached as Appendix A thereto, which were published in the **Federal Register** on December 31, 1975 (40 FR 60115) and became effective January 30, 1976.

[25] On June 1, 1976, the U.S. Supreme Court held that "'pollutants' subject to regulation under the FWPCA [Federal Water Pollution Control Act] do not include source, byproduct, and special nuclear materials. . . ." *Train* v. *Colorado PIRG*, 426 U.S. 1 at 25.

Atomic Safety and Licensing Appeal Board or the Commissioners acting as a collegial body may establish a time schedule for all or any part of an adjudicatory or rulemaking proceeding to the extent that each has jurisdiction.

§ 51.16 Proprietary information.

(a) Proprietary information, such as trade secrets or privileged or confidential commercial or financial information, will be treated in accordance with the procedures provided in § 2.790, "Public Inspections, Exemptions, Requests for Withholding," of Part 2, "Rules of Practice," of this chapter.

(b) Any proprietary information which a person seeks to have withheld from public disclosure shall be submitted in accordance with § 2.790 of this chapter. When submitted, the proprietary information should be clearly identified and accompanied by a request, containing detailed reasons and justifications, that the proprietary information be withheld from public disclosure. A non-proprietary summary describing the general content of the proprietary information should also be provided.

§ 51.17 Information collection requirements; OMB approval. [Reserved]

Preliminary Procedures

Classification of Licensing and Regulatory Actions

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

(a) Licensing and regulatory actions requiring an environmental impact statement shall meet at least one of the following criteria:

(1) The proposed action is a major Federal action significantly affecting the quality of the human environment.

(2) The proposed action involves a matter which the Commission, in the exercise of its discretion, has determined should be covered by an environmental impact statement.

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

(1) Issuance of a limited work authorization or a permit to construct a nuclear power reactor, testing facility on fuel reprocessing plant pursuant to Part 50 of this chapter.

(2) Issuance or renewal of a full power or design capacity license to operate a nuclear power reactor, testing facility, or fuel reprocessing plant pursuant to Part 50 of this chapter.

(3) Issuance of a permit to construct or a design capacity license to operate or renewal of a design capacity license to operate an isotopic enrichment plant pursuant to Part 50 of this chapter.

(4) Conversion of a provisional operating license for a nuclear power reactor, testing facility or fuel reprocessing plant to a full term or design capacity license pursuant to Part 50 of this chapter if a final environmental impact statement covering full term or design capacity operation has not been previously prepared.

(5) Issuance of a license amendment authorizing the decommissioning of a nuclear power reactor, testing facility, fuel reprocessing plant, or isotopic enrichment plant pursuant to Part 50 of this chapter.

(6) Issuance of a license to manufacture pursuant to Appendix M of Part 50 of this chapter.

(7) Issuance of a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery, or conversion of uranium hexafluoride pursuant to Part 70 of this chapter.

(8) Issuance of a license to possess and use source material for uranium milling or production of uranium hexafluoride pursuant to Part 40 of this chapter.

(9) Issuance of a license pursuant to Part 72 of this chapter for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor.

(10) Issuance of a license amendment authorizing the decommissioning of an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter.

(11) Issuance of renewal of a license authorizing receipt and disposal of radioactive waste from other persons pursuant to Part 61 of this chapter.

(12) Issuance of a license amendment pursuant to Part 61 of this chapter authorizing (i) closure of a land disposal site, (ii) transfer of the license to the disposal site owner for the purpose of institutional control, or (iii) termination of the license at the end of the institutional control period.

(13) Any other action which the Commission determines is a major Commission action significantly affecting the quality of the human environment. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental impact statement on an action covered by a categorical exclusion.

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement and those identified in § 51.22(c) as categorical exclusions. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

§ 51.22 Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.

(a) Licensing and regulatory actions eligible for categorical exclusion shall meet the following criterion: The proposed action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment.

(b) Except in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraph (c) of this section. Special circumstances include the circumstance where the proposed action involves unresolved conflicts concerning alternative uses of available resources within the meaning of section 102(2)(E) of NEPA.

(c) The following categories of actions are categorical exclusions:

(1) Amendments to Part 0, 1, 2, 4, 7, 8, 9, 10, 11, 14, 19, 21, 25, 55, 75, 95, 110, 140, 150, or 170 of this chapter, and actions on petitions for rulemaking relating to these amendments.

(2) Amendments to the regulations in this chapter which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations, and actions on petitions for rulemaking relating to these amendments.

(3) Amendments to Parts 20, 30, 31, 32, 33, 34, 35, 40, 50, 51, 60, 61, 70, 71, 72, 73, 81, or 100 of this chapter which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission or for amendments to or renewals of licenses or construction permits or other forms of permission; (ii) recordkeeping requirements; or (iii) reporting

requirements; and actions on petitions for rulemaking relating to these amendments.

(4) Entrance into or amendment, suspension, or termination of all or part of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

(5) Procurement of general equipment and supplies.

(6) Procurement of technical assistance, confirmatory research provided that the confirmatory research does not involve any significant construction impacts, and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

(7) Personnel actions.

(8) Issuance, amendment, or renewal of operators' licenses pursuant to Part 55 of this chapter.

(9) Issuance of an amendment to a permit or license for a reactor pursuant to Part 50 of this chapter which changes a requirement with respect to installation or use of a facility component located within the restricted area, as defined in Part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that (i) the amendment involves no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and (iii) there is no significant increase in individual or cumulative occupational radiation exposure.

(10) Issuance of an amendment to a permit or license pursuant to Parts 30, 31, 32, 33, 34, 35, 40, 50, 60, 61, 70, or 72 of this chapter which (i) changes surety, insurance and/or indemnity requirements, or (ii) changes recordkeeping, reporting, or administrative procedures or requirements.

(11) Issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites and amendments to materials licenses identified in § 51.60(b)(1) which are administrative, organizational, or procedural in nature, or which result in a change in process operations or equipment, provided that (i) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for or consequences from radiological accidents.

(12) Issuance of an amendment to a license pursuant to Parts 50, 60, 61, 70, 72, or 75 of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to Parts 50, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to (i) organizational and procedural matters, (ii) modifications to systems used for security and/or materials accountability, (iii) administrative changes, and (iv) review and approval of transportation routes pursuant to 10 CFR 73.37.

(13) Approval of package designs for packages to be used for the transportation of licensed materials.

(14) Issuance, amendment, or renewal of materials licenses issued pursuant to 10 CFR Parts 30, 31, 32, 33, 34, 35, 40, or 70 authorizing the following types of activities:

(i) Distribution of radioactive material and devices or products containing radioactive material to general licensees and to persons exempt from licensing.

(ii) Distribution of radiopharmaceuticals, generators, reagent kits and/or sealed sources to persons licensed pursuant to 10 CFR 35.14 and 35.100.

(iii) Nuclear pharmacies.

(iv) Medical and veterinary.

(v) Use of radioactive materials for research and development and for educational purposes.

(vi) Industrial radiography.

(vii) Irradiators.

(viii) Use of sealed sources and use of gauging devices, analytical instruments and other devices containing sealed sources.

(ix) Use of uranium as shielding material in containers or devices.

(x) Possession of radioactive material incident to performing services such as installation, maintenance, leak tests and calibration.

(xi) Use of sealed sources and/or radioactive tracers in well-logging procedures.

(xii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities provided the interim storage period for any package does not exceed 180 days and the total possession limit for all packages held in interim storage at the same time does not exceed 50 curies.

(xiii) Manufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees, except processing of source material for extraction of rare earth and other metals.

(xiv) Nuclear laundries.

(xv) Possession, manufacturing, processing, shipment, testing, or other use of depleted uranium military munitions.

(xvi) Any use of source, byproduct, or special nuclear material not listed above which involves quantities and forms of source, byproduct, or special nuclear material similar to those listed in paragraphs (c)(14) (i) through (xv) of this section (Category 14).

(15) Issuance, amendment or renewal of licenses for import of nuclear facilities and materials pursuant to Part 110 of this chapter, except for import of spent power reactor fuel.

(16) Issuance or amendment of guides for the implementation of regulations in this chapter, and issuance or amendment of other informational and procedural documents that do not impose any legal requirements.

(17) Issuance of an amendment to a permit or license pursuant to Parts 30, 40, 50, or 70 of this chapter which deletes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.

(18) Issuance of amendments or orders authorizing licensees of production or utilization facilities to resume operation, provided the basis for the authorization rests solely on a determination or redetermination by the Commission that applicable emergency planning requirements are met.

Determinations To Prepare Environmental Impact Statements, Environmental Assessments or Findings of No Significant Impact, and Related Procedures

§ 51.25 Determination to prepare environmental impact statement or environmental assessment; eligibility for categorical exclusion.

Before taking a proposed action subject to the provisions of this subpart, the appropriate NRC staff director will determine on the basis of the criteria and classifications of types of actions in §§ 51.20, 51.21 and 51.22 of this subpart whether the proposed action is of the type listed in § 51.22(c) as a categorical exclusion or whether an environmental impact statement or an environmental assessment should be prepared. An

environmental assessment is not necessary if it is determined that an environmental impact statement will be prepared.

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

(a) Whenever the appropriate NRC staff director determines that an environmental impact statement will be prepared in connection with a proposed action, a notice of intent will be prepared as provided in § 51.27, and will be published in the **Federal Register** as provided in § 51.116, and an appropriate scoping process (see §§ 51.27, 51.28 and 51.29) will be conducted.

(b) The scoping process may include a public scoping meeting.

§ 51.27 Notice of intent.

(a) The notice of intent required by § 51.26 shall:

(1) State that an environmental impact statement will be prepared;

(2) Describe the proposed action and, to the extent sufficient information is available, possible alternatives;

(3) State whether the applicant or petitioner for rulemaking has filed an environmental report, and, if so, where copies are available for public inspection;

(4) Describe the proposed scoping process, including the role of participants, whether written comments will be accepted, the last date for submitting comments and where comments should be sent, whether a public scoping meeting will be held, the time and place of any scoping meeting or when the time and place of the meeting will be announced; and

(5) State the name, address and telephone number of an individual in NRC who can provide information about the proposed action, the scoping process, and the environmental impact statement.

Scoping

§ 51.28 Scoping—Participants.

(a) The appropriate NRC staff director shall invite the followng persons to participate in the scoping process:

(1) The applicant or the petitioner for rulemaking;

(2) Any person who has petitioned for leave to intervene in the proceeding or who has been admitted as a party to the proceeding;

(3) Any other Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce relevant environmental standards;

(4) Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards;

(5) Any affected Indian tribe; and

(6) Any person who has requested an opportunity to participate in the scoping process.

(b) The appropriate NRC staff director may also invite any other appropriate person to participate in the scoping process.

(c) Participation in the scoping process for an environmental impact statement does not entitle the participant to become a party to the proceeding to which the environmental impact statement relates. Participation in an adjudicatory proceeding is governed by the procedures in 10 CFR 2.714 and 2.715. Participation in a rulemaking proceeding in which the Commission has decided to have a hearing is governed by the provisions in the notice of hearing.

§ 51.29 Scoping—Environmental impact statement.

(a) The scoping process for an environmental impact statement shall begin as soon as practicable after publication of the notice of intent as provided in § 51.116, and shall be used to:

(1) Define the proposed action which is to be the subject of the statement. The provisions of 40 CFR 1502.4 will be used for this purpose.

(2) Determine the scope of the statement and identify the significant issues to be analyzed in depth.

(3) Identify and eliminate from detailed study issues which are peripheral or are not significant or which have been covered by prior environmental review. Discussion of these issues in the statement will be limited to a brief presentation of why they are peripheral or will not have a significant effect on the quality of the human environment or a reference to their coverage elsewhere.

(4) Identify any environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the statement under consideration.

(5) Identify other environmental review and consultation requirements related to the proposed action so that other required analyses and studies may be prepared concurrently and integrated with the environmental impact statement.

(6) Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

(7) Identify any cooperating agencies, and as appropriate, allocate assignments for preparation and schedules for completion of the statement to the NRC and any cooperating agencies.

(8) Describe the means by which the environmental impact statement will be prepared, including any contractor assistance to be used.

(b) At the conclusion of the scoping process, the appropriate NRC staff director will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process.

(c) At any time prior to issuance of the draft environmental impact statement, the appropriate NRC staff director may revise the determinations made under paragraph (b) of this section, as appropriate, if substantial changes are made in the proposed action, or if significant new circumstances or information arise which bear on the proposed action or its impacts.

Environmental Assessment

§ 51.30 Environmental assessment.

(a) An environmental assessment shall identify the proposed action and include:

(1) A brief discussion of:

(i) The need for the proposed action;

(ii) Alternatives as required by section 102(2)(E) of NEPA;

(iii) The environmental impacts of the proposed action and alternatives as appropriate; and

(2) A list of agencies and persons consulted, and identification of sources used.

§ 51.31 Determinations based on environmental assessment.

Upon completion of an environmental assessment, the appropriate NRC staff director will determine whether to prepare an environmental impact statement or a finding of no significant impact on the proposed action. As provided in § 51.33, a determination to prepare a draft finding of no significant impact may be made.

Finding of No Significant Impact

§ 51.32 Finding of no significant impact.

(a) A finding of no significant impact will:

(1) Identify the proposed action;

(2) State that the Commission has determined not to prepare an environmental impact statement for the proposed action;

(3) Briefly present the reasons why the proposed action will not have a significant effect on the quality of the human environment;

(4) Include the environmental assessment or a summary of the environmental assessment. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference;

(5) Note any other related environmental documents; and

(6) State that the finding and any related environmental documents are available for public inspection and where the documents may be inspected.

§ 51.33 Draft finding of no significant impact; distribution.

(a) As provided in paragraph (b) of this section, the appropriate NRC staff director may make a determination to prepare and issue a draft finding of no significant impact for public review and comment before making a final determination whether to prepare an environmental impact statement or a final finding of no significant impact on the proposed action.

(b) Circumstances in which a draft finding of no significant impact may be prepared will ordinarily include the following:

(1) A finding of no significant impact appears warranted for the proposed action but the proposed action is (i) closely similar to one which normally requires the preparation of an environmental impact statement, or (ii) without precedent; and

(2) The appropriate NRC staff director determines that preparation of a draft finding of no significant impact will further the purposes of NEPA.

(c) A draft finding of no significant impact will (1) be marked "Draft", (2) contain the information specified in § 51.32, (3) be accompanied by or include a request for comments on the proposed action and on the draft finding within thirty (30) days, or such longer period as may be specified in the notice of the draft finding, and (4) be published in the **Federal Register** as required by §§ 51.35 and 51.119.

(d) A draft finding will be distributed as provided in § 51.74(a). Additional copies will be made available in accordance with § 51.123.

(e) When a draft finding of no significant impact is issued for a proposed action, a final determination to prepare an environmental impact statement or a final finding of no significant impact for that action shall not be made until the last day of the public comment period has expired.

§ 51.34 Preparation of finding of no significant impact.

(a) Except as provided in paragraph (b) of this section, the finding of no significant impact will be prepared by the NRC staff director authorized to take the action.

(b) When a hearing is held on the proposed action under the regulations in Subpart G of Part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the appropriate NRC staff director will prepare a proposed finding of no significant impact which may be subject to modification as a result of review and decision as appropriate to the nature and scope of the proceeding. In such cases, the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, will issue the final finding of no significant impact.

§ 51.35 Requirement to publish finding of no significant impact; limitation on Commission action.

(a) Whenever the Commission makes a draft or final finding of no significant impact on a proposed action, the finding will be published in the **Federal Register** as provided in § 51.119.

(b) Except as provided in § 51.13, the Commission shall not take the proposed action until after the final finding has been published in the **Federal Register**.

Environmental Reports and Information—Requirements Applicable to Applicants and Petitioners for Rulemaking

General

§ 51.40 Consultation with NRC Staff.

(a) A prospective applicant or petitioner for rulemaking is encouraged to confer with NRC staff as early as possible in its planning process before submitting environmental information or filing an environmental report.

(b) Requests for guidance or information on environmental matters may include inquiries relating to:

(1) Applicable NRC rules and regulations;

(2) Format, content and procedures for filing environmental reports and other environmental information, inlcuding the type and quantity of environmental information likely to be needed to address issues and concerns identified in the scoping process described in § 51.29 in a manner appropriate to their relative significance;

(3) Availability of relevant environmental studies and environmental information;

(4) Need for, appropriate level and scope of any environmental studies or information which the Commission may require to be submitted in connection with an application or petition for rulemaking;

(5) Public meetings with NRC staff.

(c) Questions concerning environmental matters should be addressed to the following NRC staff offices as appropriate:

Utilization facilities: Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492–7691.

Production facilities: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427–4063.

Materials licenses: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427–4063.

Rulemaking: Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427–4341.

General Environmental Matters: Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492–7511.

§ 51.41 Requirement to submit environmental information.

The Commission may require an applicant for a permit, license, or other form of permission, or amendment to or renewal of a permit, license or other form of permission, or a petitioner for rulemaking to submit such information to the Commission as may be useful in aiding the Commission in complying with section 102(2) of NEPA. The Commission will independently evaluate and be responsible for the reliability of any information which it uses.

Environmental Reports—General Requirements

§ 51.45 Environmental Report.

(a) *General.* As required by §§ 51.50, 51.53, 51.54, 51.60, 51.61, 51.62 or 51.68, as appropriate, each applicant or petitioner for rulemaking shall submit with its application or petition for rulemaking one signed original of a separate document entitled "Applicant's" or "Petitioner's Environmental Report," as appropriate, and the number of copies specified in §§ 51.55, 51.66 or 51.69. An applicant or petitioner for rulemaking may submit a supplement to an environmental report at any time.

(b) *Environmental considerations.* The environmental report shall contain a

description of the proposed action, a statement of its purposes, a description of the environment affected, and discuss the following considerations:

(1) The impact of the proposed action on the environment. Impacts shall be discussed in proportion to their significance;

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(3) Alternatives to the proposed action. The discussion of alternatives shall be sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, "appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." To the extent practicable, the environmental impacts of the proposal and the alternatives should be presented in comparative form;

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(c) *Analysis.* The environmental report shall include an analysis which considers and balances the environmental effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental effects, as well as the environmental, economic, technical and other benefits of the proposed action. The analysis shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

(d) *Status of compliance.* The environmental report shall list all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action and shall describe the status of compliance with these requirements. The environmental report shall also include a discussion of the status of compliance with applicable environmental quality standards and requirements including, but not limited to, applicable zoning and land-use regulations, and thermal and other water pollution limitations or requirements which have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection. The discussion of alternatives in the report shall include a discussion of whether the alternatives will comply with such applicable environmental quality standards and requirements.

(e) *Adverse information.* The information submitted pursuant to paragraphs (b)–(d) of this section should not be confined to information supporting the proposed action but should also include adverse information.

Environmental Reports—Production and Utilization Facilities

§ 51.50 Environmental Report—Construction permit stage.

Each applicant for a permit to construct a production or utilization facility covered by § 51.20 shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Applicant's Environmental Report—Construction Permit Stage," which shall contain the information specified in §§ 51.45, 51.51 and 51.52. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter.

§ 51.51 Uranium Fuel Cycle Environmental Data—Table S-3.

(a) Every environmental report prepared for the construction permit stage of a light-water-cooled nuclear power reactor, and submitted on or after September 4, 1979, shall take Table S-3, Table of Uranium Fuel Cycle Environmental Data, as the basis for evaluating the contribution of the environmental effects of uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, reprocessing of irradiated fuel, transportation of radioactive materials and management of low level wastes and high level wastes related to uranium fuel cycle activities to the environmental costs of licensing the nuclear power reactor. Table S-3 shall be included in the environmental report and may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighed in the analysis for the proposed facility.

(b) * * *

TABLE S-3—TABLE OF URANIUM FUEL CYCLE ENVIRONMENTAL DATA [1]

[Normalized to model LWR annual fuel requirement [WASH-1248] or reference reactor year [NUREG-0116]]

[See footnotes at end of this table]

Environmental considerations	Total	Maximum effect per annual fuel requirement or reference reactor year of model 1,000 MWe LWR
NATURAL RESOURCE USE		
Land (acres):		
Temporarily committed [2]	100	
Undisturbed area	79	
Disturbed area	22	Equivalent to a 110 MWe coal-fired power plant.
Permanently committed	13	
Overburden moved (millions of MT)	2.8	Equivalent to 95 MWe coal-fired power plant
Water (millions of gallons):		
Discharged to air	160	=2 percent of model 1,000 MWe LWR with cooling tower.
Discharged to water bodies	11,090	
Discharged to ground	127	
Total	11,377	<4 percent of model 1,000 MWe LWR with once-through cooling.
Fossil fuel:		
Electrical energy (thousands of MW-hour)	323	<5 percent of model 1,000 MWe LWR output.
Equivalent coal (thousands of MT)	118	Equivalent to the consumption of a 45 MWe coal-fired power plant.
Natural gas (millions of scf)	135	<0.4 percent of model 1,000 MWe energy output.
EFFLUENTS—CHEMICAL (MT)		
Gases (including entrainment): [3]		
SO_x	4,400	
NO_x [4]	1,190	Equivalent to emissions from 45 MWe coal-fired plant for a year.
Hydrocarbons	14	
CO	29.6	
Particulates	1,154	
Other gases:		
F	.67	Principally from UF_6 production, enrichment, and reprocessing. Concentration within range of state standards—below level that has effects on human health.
HCl	.014	

TABLE S-3—TABLE OF URANIUM FUEL CYCLE ENVIRONMENTAL DATA [1]—Continued

[Normalized to model LWR annual fuel requirement [WASH-1248] or reference reactor year [NUREG-0116]]

[See footnotes at end of this table]

Environmental considerations	Total	Maximum effect per annual fuel requirement or reference reactor year of model 1,000 MWe LWR
Liquids:		
$SO_4^{=}$	9.9	From enrichment, fuel fabrication, and reprocessing steps. Components that constitute a potential for adverse environmental effect are present in dilute concentrations and receive additional dilution by receiving bodies of water to levels below permissible standards. The constituents that require dilution and the flow of dilution water are: NH_3—600 cfs., NO_3—20 cfs., Fluoride—70 cfs.
NO_3^-	25.8	
Fluoride	12.9	
Ca^{++}	5.4	
Cl^-	8.5	
Na^+	12.1	
NH_3	10.0	
Fe	.4	
Tailings solutions (thousands of MT)	240	From mills only—no significant effluents to environment.
Solids	91,000	Principally from mills—no significant effluents to environment.
Effluents—Radiological (curies)		
Gases (including entrainment):		
Rn-222		Presently under reconsideration by the Commission.
Ra-226	.02	
Th-230	.02	
Uranium	.034	
Tritium (thousands)	18.1	
C-14	24	
Kr-85 (thousands)	400	
Ru-106	.14	Principally from fuel reprocessing plants.
I-129	1.3	
I-131	.83	
Tc-99		Presently under consideration by the Commission.
Fission products and transuranics	.203	
Liquids:		
Uranium and daughters	2.1	Principally from milling—included tailings liquor and returned to ground—no effluents; therefore, no effect on environment.
Ra-226	.0034	From UF_6 production.
Th-230	.0015	
Th-234	.01	From fuel fabrication plants—concentration 10 percent of 10 CFR 20 for total processing 26 annual fuel requirements for model LWR.
Fission and activation products	5.9×10^{-6}	
Solids (buried on site):		
Other than high level (shallow)	11,300	9,100 Ci comes from low level reactor wastes and 1,500 Ci comes from reactor decontamination and decommissioning—buried at land burial facilities. 600 Ci comes from mills—included in tailings returned to ground. Approximately 60 Ci comes from conversion and spent fuel storage. No significant effluent to the environment.
TRU and HLW (deep)	[11] 1.1×10	Buried at Federal Repository.
Effluents—thermal (billions of British thermal units)	4,063	<5 percent of model 1,000 MWe LWR.
Transportation (person-rem):		
Exposure of workers and general public	2.5	
Occupational exposure (person-rem)	22.6	From reprocessing and waste management.

[1] In some cases where no entry appears it is clear from the background documents that the matter was addressed and that, in effect, the Table should be read as if a specific zero entry had been made. However, there are other areas that are not addressed at all in the Table. Table S-3 does not include health effects from the effluents described in the Table, or estimates of releases of Radon-222 from the uranium fuel cycle or estimates of Technetium-99 released from waste management or reprocessing activities. These issues may be the subject of litigation in the individual licensing proceedings.

Data supporting this table are given in the "Environmental Survey of the Uranium Fuel Cycle," WASH-1248, April 1974; the "Environmental Survey of the Reprocessing and Waste Management Portion of the LWR Fuel Cycle," NUREG-0116 (Supp.1 to WASH-1248); the "Public Comments and Task Force Responses Regarding the Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," NUREG-0216 (Supp. 2 to WASH-1248); and in the record of the final rulemaking pertaining to Uranium Fuel Cycle Impacts from Spent Fuel Reprocessing and Radioactive Waste Management, Docket RM-50-3. The contributions from reprocessing, waste management and transportation of wastes are maximized for either of the two fuel cycles (uranium only and no recycle). The contribution from transportation excludes transportation of cold fuel to a reactor and of irradiated fuel and radioactive wastes from a reactor which are considered in Table S-4 of § 51.20(g). The contributions from the other steps of the fuel cycle are given in columns A-E of Table S-3A of WASH-1248.

[2] The contributions to temporarily committed land from reprocessing are not prorated over 30 years, since the complete temporary impact accrues regardless of whether the plant services one reactor for one year or 57 reactors for 30 years.

[3] Estimated effluents based upon combustion of equivalent coal for power generation.

[4] 1.2 percent from natural gas use and process.

§ 51.52 Environmental effects of transportation of fuel and waste—Table S-4.

Every environmental report prepared for the construction permit stage of a light-water-cooled nuclear power reactor, and submitted after February 4, 1975, shall contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor. That statement shall indicate that the reactor and this transportation either meet all of the conditions in paragraph (a) of this section or all of the conditions in paragraph (b) of this section.

(a)(1) The reactor has a core thermal power level not exceeding 3,800 megawatts;

(2) The reactor fuel is in the form of sintered uranium dioxide pellets having a uranium-235 enrichment not exceeding 4% by weight, and the pellets are encapsulated in zircaloy rods;

(3) The average level of irradiation of the irradiated fuel from the reactor does not exceed 33,000 megawatt-days per metric ton, and no irradiated fuel assembly is shipped until at least 90 days after it is discharged from the reactor;

(4) With the exception of irradiated fuel, all radioactive waste shipped from the reactor is packaged and in a solid form;

(5) Unirradiated fuel is shipped to the reactor by truck; irradiated fuel is shipped from the reactor by truck, rail, or barge; and radioactive waste other than irradiated fuel is shipped from the reactor by truck or rail; and

(6) The environmental impacts of transportation of fuel and waste to and from the reactor, with respect to normal conditions of transport and possible accidents in transport, are as set forth in Summary Table S-4 in paragraph (c) of this section; and the values in the table represent the contribution of the transportation to the environmental costs of licensing the reactor.

(b) For reactors not meeting the conditions of paragraph (a) of this section, the statement shall contain a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor, including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport. The statement shall indicate that the values determined by the analysis represent the contribution of such effects to the environmental costs of licensing the reactor.

(c) * * *

SUMMARY TABLE S-4—ENVIRONMENTAL IMPACT OF TRANSPORTATION OF FUEL AND WASTE TO AND FROM ONE LIGHT-WATER-COOLED NUCLEAR POWER REACTOR [1]

Normal Conditions of Transport

	Environmental impact
Heat (per irradiated fuel cask in transit	250,000 Btu/hr.
Weight (governed by Federal or State restrictions)	73,000 lbs. per truck; 100 tons per cask per rail car.
Traffic density:	
Truck	Less than 1 per day.
Rail	Less than 3 per month

Exposed population	Estimated number of persons exposed	Range of doses to exposed individuals [2] (per reactor year)	Cumulative dose to exposed population (per reactor year) [3]
Transportation workers	200	0.01 to 300 millirem	4 man-rem.
General public:			
Onlookers	1,100	0.003 to 1.3 millirem	3 man-rem.
Along Route	600,000	0.0001 to 0.06 millirem	

Accidemts in Transport

	Environmental risk
Radiological effects	Small [4]
Common (nonradiological) causes	1 fatal injury in 100 reactor years; 1 nonfatal injury in 10 reactor years; $475 property damage per reactor year.

[1] Data supporting this table are given in the Commission's "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants," WASH-1238, December 1972, and Supp. 1 NUREG-75/038 April 1975. Both documents are available for inspection and copying at the Commission's Public Document Room, 1717 H St. NW., Washington, D.C. and may be obtained from National Technical Information Service, Springfield, Va. 22161. WASH-1238 is available from NTIS at a cost of $5.45 (microfiche, $2.25) and NUREG-75/038 is available at a cost of $3.25 (microfiche, $2.25).

[2] The Federal Radiation Council has recommended that the radiation doses from all sources of radiation other than natural background and medical exposures should be limited to 5,000 millirem per year for individuals as a result of occupational exposure and should be limited to 500 millirem per year for individuals in the general population. The dose to individuals due to average natural background radiation is about 130 millirem per year.

[3] Man-rem is an expression for the summation of whole body doses to individuals in a group. Thus, if each member of a population group of 1,000 people were to receive a dose of 0.001 rem (1 millirem), or if 2 people were to receive a dose of 0.5 rem (500 millirem) each, the total man-rem dose in each case would be 1 man-rem.

[4] Athough the environmental risk of radiological effects stemming from transportation accidents is currently incapable of being numerically quantified, the risk remains small regardless of whether it is being appiled to a single reactor or a multireactor site.

§ 51.53 Supplement to Environmental Report—Operating license stage.

Each applicant for a license or for renewal of a license to operate a production or utilization facility covered by § 51.20 shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Operating License Stage," which will update "Applicant's Environmental Report—Construction Permit Stage." Unless the applicant requests the renewal of an operating license or unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51 and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit. Unless otherwise required by the Commission, no discussion of need for power or alternative energy sources or alternative sites for the facility is required in this report. The "Supplement to Applicant's Environmental Report—Operating License Stage" may incorporate by reference any information contained in the "Applicant's Environmental Report—Construction Permit Stage," final environmental impact statement or record of decision previously prepared in connection with the construction permit.

§ 51.54 Environmental Report—Manufacturing license.

Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture seeking approval of the final design of the nuclear power reactor, pursuant to Appendix M of Part 50 of this chapter shall submit with its application to the Director of Nuclear Reactor Regulation the number of copies, as specified in § 51.55, of a separate document, entitled "Applicant's Environmental Report—Manufacturing License," or "Supplement to Applicant's Environmental Report—Manufacturing License." The environmental report shall address the environmental matters specified in Appendix M of Part 50 of this chapter, and shall contain the information specified in § 51.45, as appropriate.

§ 51.55 Environmental Report—Number of copies; Distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3) or (b)(4) of § 51.20 or for a license amendment covered by paragraph (b)(5) of § 51.20 shall submit to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, in accordance with § 50.30(c)(1)(iv) of Part 50 of this chapter, forty-one (41) copies of an environmental report, or any supplement to an environmental report. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate.

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture seeking approval of the final design of the nuclear power

reactor, pursuant to Appendix M of Part 50 of this chapter shall submit forty-one (41) copies of an environmental report or any supplement to an environmental report to the Director of Nuclear Reactor Regulation. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation.

Environmental Reports—Materials Licenses

§ 51.60 Environmental Report—Materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1)–(b)(6) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations.

(b) As required by paragraph (a) of this section, each applicant shall prepare an environmental report for the following types of actions:

(1) Issuance or renewal of a license or other form of permission for:

(i) Possession and use of special nuclear material for processing and fuel fabrication, scrap recovery, or conversion of uranium hexafluoride pursuant to Part 70 of this chapter.

(ii) Possession and use of source material for uranium milling or production of uranium hexafluoride pursuant to Part 40 of this chapter.

(iii) Storage of spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter.

(iv) Receipt and disposal of radioactive waste from other persons pursuant to Part 61 of this chapter.

(v) Processing of source material for extraction of rare earth and other metals.

(vi) Use of radioactive tracers in field flood studies involving secondary and tertiary oil and gas recovery.

(2) Issuance of an amendment that would authorize or result in (i) a significant expansion of a site, (ii) a significant change in the types of effluents, (iii) a significant increase in the amounts of effluents, (iv) a significant increase in individual or cumulative occupational radiation exposure, (v) a significant increase in the potential for or consequences from radiological accidents, or (vi) a significant increase in spent fuel storage capacity, in a license or other form of permission to conduct an activity listed in paragraph (b)(1) of this section.

(3) Termination of a license for the possession and use of source material for uranium milling.

(4) Amendment of a license to authorize the decommissioning of an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter.

(5) Issuance of a license amendment pursuant to Part 61 of this chapter authorizing (i) closure of a land disposal site, (ii) transfer of the license to the disposal site owner for the purpose of institutional control, or (iii) termination of the license at the end of the institutional control period.

(6) Any other licensing action for which the Commission determines an Environmental Report is necessary.

§ 51.61 Environmental report—Independent spent fuel storage installation (ISFSI) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled "Applicant's Environmental Report—ISFSI License." The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in subpart E of Part 72 of this chapter.

§ 51.62 Environmental report—Land disposal of radioactive waste licensed under 10 CFR Part 61.

(a) Each applicant for issuance of a license for land disposal of radioactive waste pursuant to Part 61 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled "Applicant's Environmental Report—License for Land Disposal of Radioactive Waste." The environmental report and any supplement to the environmental report may incorporate by reference information contained in the application or in any previous application, statement or report filed with the Commission *provided* that such references are clear and specific and that copies of the information so incorporated are available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C. and in any public document room established by the Commission near the proposed land disposal site.

(b) The environmental report shall contain the information specified in § 51.45, shall address the applicant's environmental monitoring program required by §§ 61.12(l), 61.53 and 61.59(b) of this chapter, and shall be as complete as possible in the light of information that is available at the time the environmental report is submitted.

(c) The applicant shall supplement the environmental report in a timely manner as necessary to permit the Commission to review, prior to issuance, amendment or renewal of a license, new information regarding the environmental impact of previously proposed activities, information regarding the environmental impact of any changes in previously proposed activities, or any significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

§ 51.66 Environmental Report—Number of copies; Distribution.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1)-(b)(6) of § 51.60; or by §§ 51.61 or 51.62 shall submit to the Director of Nuclear Material Safety and Safeguards an environmental report of any supplement to an environmental report in the number of copies specified. The applicant shall retain additional copies

of the environmental report or any supplement to the environmental report in the number of copies specified for distribution to Federal, State, and local officials and any affected Indian tribes in accordance with written instructions issued by the Director of Nuclear Material Safety and Safeguards.

(b)

ENVIRONMENTAL REPORT

Type of licensing action	Number of copies to be submitted with application	Number of copies to be retained by applicant for subsequent distribution
Licensing actions requiring environmental impact statements pursuant to § 51.20(b).	25 copies	125 copies.
Licensing actions requiring environmental assessments pursuant to § 51.21.	15 copies	None.

Environmental Reports—Rulemaking

§ 51.68 Environmental Report—Rulemaking.

Petitioners for rulemaking requesting amendments of Parts 30, 31, 32, 33, 34, 35, 40 or 70 of this chapter concerning the exemption from licensing and regulatory requirements of or authorizing general licenses for any equipment, device, commodity or other product containing byproduct material, source material or special nuclear material shall submit with the petition the number of copies, as specified in § 51.69, of a separate document entitled "Petitioner's Environmental Report," which shall contain the information specified in § 51.45.

§ 51.69 Environmental Report—Number of copies.

Petitioners for rulemaking covered by § 51.68 shall submit fifty (50) copies of an environmental report or any supplement to an environmental report.

Environmental Impact Statements

Draft Environmental Impact Statements—General Requirements

§ 51.70 Draft Environmental Impact Statement—General.

(a) The NRC staff will prepare a draft environmental impact statement as soon as practicable after publication of the notice of intent to prepare an environmental impact statement and completion of the scoping process. To the fullest extent practicable, environmental impact statements will be prepared concurrently or integrated with environmental impact analyses and related surveys and studies required by other Federal law.

(b) The draft environmental impact statement will be concise, clear and analytic, will be written in plain language with appropriate graphics, will state how alteratives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA and of any other relevant and applicable environmental laws and policies, will identify any methodologies used and sources relied upon, and will be supported by evidence that the necessary environmental analyses have been made. The format provided in section 1(a) of Appendix A of this subpart should be used. The NRC staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement.

(c) The Commission will cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, in accordance with 40 CFR 1506.2 (b) and (c).

§ 51.71 Draft Environmental Impact Statement—Contents.

(a) *Scope.* The draft environmental impact statement will be prepared in accordance with the scope decided upon in the scoping process required by §§ 51.26 and 51.29. As appropriate and to the extent required by the scope, the draft statement will address the topics in paragraphs (b), (c), (d) and (e) of this section and the matters specified in §§ 51.45, 51.50, 51.51, 51.52, 51.53, 51.54, 51.61 and 51.62.

(b) *Analysis of major points of view.* To the extent sufficient information is available, the draft environmental impact statement will include consideration of major points of view concerning the environmental impacts of the proposed action and the alternatives, and contain an analysis of significant problems and objections raised by other Federal, State, and local agencies, by any affected Indian tribes, and by other interested persons.

(c) *Status of compliance.* The draft environmental impact statement will list all Federal permits, licenses, approvals, and other entitlements which must be obtained in implementing the proposed action and will describe the status of compliance with those requirements. If it is uncertain whether a Federal permit, license, approval, or other entitlement is necessary, the draft environmental impact statement will so indicate.

(d) *Analysis.* The draft environmental impact statement will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action. The analysis will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms. The analysis will indicate what other interests and considerations of Federal policy, including factors not related to environmental quality, are thought to offset any adverse environmental effects of the proposed action identified pursuant to paragraph (a) of this section. Due consideration will be given to compliance with environmental quality standards and requirements which have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements promulgated or imposed pursuant to the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by such standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.[26] While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

(e) *Preliminary recommendation.* The draft environmental impact statement normally will include a preliminary recommendation by the NRC staff

[26] Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action which are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority then the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance. When no such assessment of aquatic impacts is available from the permitting authority, then NRC will establish on its own or in conjunction with the permitting authority and other agencies having relevant expertise the magnitude of potential impacts for striking an overall cost-benefit balance for the facility.

respecting the proposed action. This preliminary recommendation will be based on the information and analysis described in paragraphs (a)–(d) of this section and §§ 51.75, 51.76, 51.80 and 51.85, as appropriate, and will be reached after weighing the costs and benefits of the proposed action and considering reasonable alternatives. In lieu of a preliminary recommendation, the NRC staff may indicate in the draft statement that two or more alternatives remain under consideration.

§ 51.72 Supplement to draft environmental impact statement.

(a) The NRC staff will prepare a supplement to a draft environmental impact statement for which a notice of availability has been published in the **Federal Register** as provided in § 51.117, if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) The NRC staff may prepare a supplement to a draft environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA.

(c) The supplement to a draft environmental impact statement will be prepared and noticed in the same manner as the draft environmental impact statement except that a scoping process need not be used.

§ 51.73 Request for comments on draft environmental impact statement.

Each draft environmental impact statement and each supplement to a draft environmental impact statement distributed in accordance with § 51.74, and each news release provided pursuant to § 51.74(d) will be accompanied by or include a request for comments on the proposed action and on the draft environmental impact statement or any supplement to the draft environmental impact statement and will state where comments should be submitted and the date on which the comment period closes. A minimum comment period of 45 days will be provided. The comment period will be calculated from the date on which the Environmental Protection Agency notice stating that the draft statement or the supplement to the draft statement has been filed with EPA is published in the **Federal Register.** If no comments are provided within the time specified, it will be presumed, unless the agency or person requests and extension of time, that the agency or person has no comment to make. To the extent practicable, NRC staff will grant reasonable requests for extensions of time of up to fifteen (15) days.

§ 51.74 Distribution of draft environmental impact statement and supplement to draft environmental impact statement; News releases.

(a) A copy of the draft environmental impact statement will be distributed to:

(1) The Environmental Protection Agency.

(2) Any other Federal agency which has special expertise or jurisdiction by law with respect to any environmental impact involved or which is authorized to develop and enforce relevant environmental standards.

(3) The applicant or petitioner for rulemaking and any other party to the proceeding.

(4) Appropriate State and local agencies authorized to develop and enforce relevant environmental standards.

(5) Appropriate State, regional and metropolitan clearinghouses.

(6) Appropriate Indian tribes when the proposed action may have an environmental impact on a reservation.

(7) Upon written request, any organization or group included in the master list of interested organizations and groups maintained under § 51.122.

(8) Upon written request, any other person to the extent available.

(b) Additional copies will be made available in accordance with § 51.123.

(c) A supplement to a draft environmental impact statement will be distributed in the same manner as the draft environmental impact statement to which it relates.

(d) News releases stating the availability for comment and place for obtaining or inspecting a draft environmental statement or supplement will be provided to local newspapers and other appropriate media.

(e) A notice of availability will be published in the **Federal Register** in accordance with § 51.117.

Draft Environmental Impact Statements—Production and Utilization Facilities

§ 51.75 Draft environmental impact statement—Construction permit.

A draft environmental impact statement relating to issuance of a construction permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72 and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicity in the Table shall be required.[27] The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and such other fuel cycle impacts as may reasonably appear significant.

§ 51.76 Draft enviornmental impact statement—Manufacturing license.

A draft environmental impact statement relating to issuance of a license to manufacture a nuclear power reactor will address the environmental matters specified in Appendix M of Part 50 of this chapter. The draft environmental impact statement will include a request for comments as provided in § 51.73.

§ 51.77 Distribution of draft environmental impact statement.

(a) In addition to the distribution authorized by § 51.74, a copy of a draft environmental statement for a licensing action for a production or utilization facility, except an action authorizing issuance, amendment or renewal of a license to manufacture a nuclear power reactor pursuant to 10 CFR Part 50, Appendix M will also be distributed to:

(1) The chief executive of the municipality or county identified in the draft environmental impact statement as the preferred site for the proposed facility or activity.

(2) Upon request, the chief executive of each municipality or county identified in the draft environmental impact statement as an alternative site.

(b) Additional copies will be made available in accordance with § 51.123.

Draft Environmental Impact Statement—Materials Licenses

§ 51.80 Draft environmental impact statement—Materials license.

The NRC staff will either prepare a draft environmental impact statement or as provided in § 51.92, a supplement to a

[27] Values for releases of Rn-222 and Tc-99 are not given in the Table. The amount and significance of Rn-222 releases from the fuel cycle and Tc-99 releases from waste management or reprocessing activities shall be considered in the draft environmental impact statement and may be the subject of litigation in individual licensing proceedings.

final environmental impact statement for each type of action identified in § 51.20(b)(7)–(12). Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.70, 51.71, 51.72 and 51.73 will be followed.

§ 51.81 Distribution of draft environmental impact statement.

Copies of the draft environmental impact statement and any supplement to the draft environmental impact statement will be distributed in accordance with the provisions of § 51.74.

Draft Environmental Impact Statements—Rulemaking

§ 51.85 Draft environmental impact statement—Rulemaking.

Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.70, 51.71, 51.72 and 51.73 will be followed in proceedings for rulemaking for which the Commission has determined to prepare an environmental impact statement.

§ 51.86 Distribution of draft environmental impact statement.

Copies of the draft environmental impact statement and any supplement to the draft environmental impact statement will be distributed in accordance with the provisions of § 51.74.

Legislative Environmental Impact Statements—Proposals for Legislation

§ 51.88 Proposals for legislation.

The Commission will, as a matter of policy, follow the provisions of 40 CFR 1506.8 regarding the NEPA process for proposals for legislation.

Final Environmental Impact Statements—General Requirements

§ 51.90 Final environmental impact statement—General.

After receipt and consideration of comments requested pursuant to §§ 51.73 and 51.117, the NRC staff will prepare a final environmental impact statement in accordance with the requirements in §§ 51.70(b) and 51.71 for a draft environmental impact statement. The format provided in section 1(a) of Appendix A of this subpart should be used.

§ 51.91 Final environmental impact statement—Contents.

(a)(1) The final environmental impact statement will include responses to any comments on the draft environmental impact statement or on any supplement to the draft environmental impact statement. Responses to comments may include:

(i) Modification of alternatives, including the proposed action;

(ii) Development and evaluation of alternatives not previously given serious consideration;

(iii) Supplementation or modification of analyses;

(iv) Factual corrections;

(v) Explanation of why comments do not warrant further response, citing sources, authorities or reasons which support this conclusion.

(2) All substantive comments received on the draft environmental impact statement or any supplement to the draft environmental impact statement (or summaries thereof where the response has been exceptionally voluminous) will be attached to the final statement, whether or not each comment is discussed individually in the text of the statement.

(3) If changes in the draft environmental impact statement in response to comments are minor and are confined either to factual corrections or to explanations of why the comments do not warrant further response, the changes may be made by attaching errata sheets to the draft statement. The entire document with a new cover may then be issued as the final environmental impact statement.

(b) The final environmental impact statement will discuss any relevant responsible opposing view not adequately discussed in the draft environmental impact statement or in any supplement to the draft environmental impact statement, and respond to the issues raised.

(c) The final environmental impact statement will state how the alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA and of any other relevant and applicable environmental laws and policies.

(d) The final environmental impact statement will include a final analysis and a final recommendation on the action to be taken.

§ 51.92 Supplement to final environmental impact statement.

(a) If the proposed action has not been taken, the NRC staff will prepare a supplement to a final environmental impact statement for which a notice of availability has been published in the **Federal Register** as provided in § 51.118, if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) The NRC staff may prepare a supplement to a final environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA.

(c) The supplement to a final environmental impact statement will be prepared in the same manner as the final environmental impact statement except that a scoping process need not be used.

(d)(1) A supplement to a final environmental impact statement will be accompanied by or will include a request for comments as provided in § 51.73 and a notice of availability will be published in the **Federal Register** as provided in § 51.117 if the conditions described in paragraph (a) of this section apply.

(2) If comments are not requested, a notice of availability of a supplement to a final environmental impact statement will be published in the **Federal Register** as provided in § 51.118.

§ 51.93 Distribution of final environmental impact statement and supplement to final environmental impact statement; News releases.

(a) A copy of the final environmental impact statement will be distributed to:

(1) The Environmental Protection Agency.

(2) The applicant or petitioner for rulemaking and any other party to the proceeding.

(3) Appropriate State, regional and metropolitan clearinghouses.

(4) Each commenter.

(b) Additional copies will be made available in accordance with § 51.123.

(c) If the final environmental impact statement is unusually long or there are so many comments on a draft environmental impact statement or any supplement to a draft environmental impact statement that distribution of the entire final statement to all commenters is impracticable, a summary of the final statement and the substantive comments will be distributed. When the final environmental impact statement has been prepared by adding errata sheets to the draft environmental impact statement as provided in § 51.91(a)(3), only the comments, the responses to the comments and the changes to the

environmental impact statement will be distributed.

(d) A supplement to a final environmental impact statement will be distributed in the same manner as the final environmental impact statement to which it relates.

(e) News releases stating the availability and place for obtaining or inspecting a final environmental impact statement or supplement will be provided to local newspapers and other appropriate media.

(f) A notice of availability will be published in the **Federal Register** in accordance with § 51.118.

§ 51.94 Requirement to consider final environmental impact statement.

The final environmental impact statement, together with any comments and any supplement, will accompany the application or petition for rulemaking through, and be considered in, the Commission's decisionmaking process. The final environmental impact statement, together with any comments and any supplement, will be made a part of the record of the appropriate adjudicatory or rulemaking proceeding.

Final Environmental Impact Statements—Production and Utilization Facilities

§ 51.95 Supplement to final environmental impact statement—Operating license.

In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. The supplement may incorporate by reference any information contained in the final environmental impact statement or in the record of decision prepared in connection with the construction permit for that facility. The supplement will include a request for comments as provided in § 51.73. The supplement will only cover matters which differ from, or which reflect significant new information concerning matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power reactor will not include discussion of need for power or alternative energy sources or alternative sites and will only be prepared in connection with the first licensing action authorizing full power operation.

Final Environmental Impact Statements—Materials Licenses

§ 51.97 [Reserved]

Final Environmental Impact Statements—Rulemaking

§ 51.99 [Reserved]

NEPA Procedure and Administrative Action

General

§ 51.100 Timing of Commission action.

(a)(1) Except as provided in § 51.13 and paragraph (b) of this section, no decision on a proposed action, including the issuance of a permit, license, or other form of permission, or amendment to or renewal of a permit, license, or other form of permission, or the issuance of an effective regulation, for which an environmental impact statement is required, will be made and no record of decision will be issued until the later of the following dates:

(i) Ninety (90) days after publication by the Environmental Protection Agency of a **Federal Register** notice stating that the draft environmental impact statement has been filed with EPA.

(ii) Thirty (30) days after publication by the Environmental Protection Agency of a **Federal Register** notice stating that the final environmental impact statement has been filed with EPA.

(2) If a notice of filing of a final environmental impact statement is published by the Environmental Protection Agency within ninety (90) days after a notice of filing of a draft environmental impact statement has been published by EPA, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently to the extent they overlap.

(b) In any rulemaking proceeding for the purpose of protecting the public health or safety or the common defense and security, the Commission may make and publish the decision on the final rule at the same time that the Environmental Protection Agency publishes the **Federal Register** notice of filing of the final environmental impact statement.

§ 51.101 Limitations on actions.

(a) Until a record of decision is issued in connection with a proposed licensing or regulatory action for which an environmental impact statement is required under § 51.20, or until a final finding of no significant impact is issued in connection with a proposed licensing or regulatory action for which an environmental assessment is required under § 51.21:

(1) No action concering the proposal may be taken by the Commission which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives.

(2) Any action concerning the proposal taken by an applicant which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license. In the case of an application covered by §§ 30.32(f), 40.31(f), 50.10(c), 70.21(f), or 72.11 and 72.20 of this chapter, the provisions of this paragraph will be applied in accordance with §§ 30.33(a)(5), 40.32(e), 50.10 (c) and (e), 70.23(a)(7), or 72.31(b) of this chapter, as appropriate.

(b) While work on a required program environmental impact statement is in progress, the Commission will not under take in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Absent any satisfactory explanation to the contrary, interim action which tends to determine subsequent development or limit reasonable alternatives, will be considered prejudicial.

(c) This section does not preclude any applicant for an NRC permit, license, or other form of permission, or amendment to or renewal of an NRC permit, license, or other form of permission, (1) from developing any plans or designs necessary to support an application; or (2) after prior notice and consultation with NRC staff, (i) from performing any physical work necessary to support an application, or (ii) from performing any other physical work relating to the proposed action if the adverse environmental impact of that work is de minimis.

§ 51.102 Requirement to provide a record of decision; preparation.

(a) A Commission decision on any action for which a final environmental impact statement has been prepared shall be accompanied by or include a concise public record of decision.

(b) Except as provided in paragraph (c) of this section, the record of decision will be prepared by the NRC staff director authorized to take the action.

(c) When a hearing is held on the proposed action under the regulations in

Subpart G of Part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the initial decision of the presiding officer or the final decision of the Atomic Safety and Licensing Appeal Board or the final decision of the Commissioners acting as a collegial body will constitute the record of decision. An initial or final decision constituting the record of decision will be distributed as provided in § 51.93.

§ 51.103 Record of decision—General.

(a) The record of decision required by § 51.102 shall be clearly identified and shall:

(1) State the decision.

(2) Identify all alternatives considered by the Commission in reaching the decision, state that these alternatives were included in the range of alternatives discussed in the environmental impact statement, and specify the alternative or alternatives which were considered to be environmentally preferable.

(3) Discuss preferences among alternatives based on relevant factors, including economic and technical considerations, the NRC's statutory mission, and any essential considerations of national policy, which were balanced by the Commission in making the decision and state how these considerations entered into the decision.

(4) State whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted. Summarize any license conditions and monitoring programs adopted in connection with mitigation measures.

(b) The record of decision may be integrated into any other record prepared by the Commission in connection with the action.

(c) The record of decision may incorporate by reference material contained in a final environmental impact statement.

§ 51.104 NRC proceeding using public hearings; Consideration of environmental impact statement.

(a)(1) In any proceeding in which (i) a hearing is held on the proposed action, (ii) a final environmental impact statement has been prepared in connection with the proposed action, and (iii) matters within the scope of NEPA and this subpart are in issue, the NRC staff may not offer the final environmental impact statement in evidence or present the position of the NRC staff on matters within the scope of NEPA and this subpart until the final environmental impact statement is filed with the Environmental Protection Agency, furnished to commenting agencies and made available to the public.

(2) Any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of Part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing.

(3) In the proceeding the presiding officer will decide those matters in controversy among the parties within the scope of NEPA and this subpart.

(b) In any proceeding in which a hearing is held where the NRC staff has determined that no environmental impact statement need be prepared for the proposed action, unless the Commission orders otherwise, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of Part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

Production and Utilization Facilities

§ 51.105 Public hearings in proceedings for issuance of construction permits or licenses to manufacture.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a construction permit for a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, or for the issuance of a license to manufacture, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or license to manufacture should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or license to manufacture should be issued as proposed.

§ 51.106 Public hearings in proceedings for issuance of operating licenses.

(a) Consistent with the requirements of this section and as appropriate, the presiding officer in an operating license hearing shall comply with any applicable requirements of §§ 51.104 and 51.105.

(b) During the course of a hearing on an application for issuance of an operating license for a nuclear power reactor, or a testing facility, the presiding officer may authorize, pursuant to § 50.57(c) of this chapter, the loading of nuclear fuel in the reactor core and limited operation within the scope of § 50.57(c) of this chapter, upon compliance with the procedures described therein. In any such hearing, where any party opposes such authorization on the basis of matters covered by Subpart A of this part, the provisions of §§ 51.104 and 51.105 will apply, as appropriate.

(c) The presiding officer in an operating license hearing shall not admit contentions proffered by any party concerning need for power or alternative energy sources or alternative sites for the facility for which an operating license is requested.

(d) The presiding officer in an operating license hearing shall not raise issues concerning alternative sites for the facility for which an operating license is requested *sua sponte*.

Materials Licenses

§ 51.108 [Reserved]

Rulemaking

§ 51.110 [Reserved]

Public Notice of and Access to Environmental Documents

§ 51.116 Notice of intent.

(a) In accordance with § 51.26, the appropriate NRC staff director will publish in the **Federal Register** a notice of intent stating that an environmental impact statement will be prepared. The notice will contain the information specified in § 51.27.

(b) Copies of the notice will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses and to interested persons

upon request. A public announcement of the notice of intent will also be made.

§ 51.117 Draft environmental impact statement—Notice of availability.

(a) Upon completion of a draft environmental impact statement or any supplement to a draft environmental impact statement, the appropriate NRC staff director will publish a notice of availability of the statement in the **Federal Register.**

(b) The notice will request comments on the proposed action and on the draft statement or any supplement to the draft statement and will specify where comments should be submitted and when the comment period expires.

(c) The notice will (1) state that copies of the draft statement or any supplement to the draft statement are available for public inspection; (2) state where inspection may be made, and (3) state that any comments of Federal, State, and local agencies, Indian tribes or other interested persons will be made available for public inspection when received.

(d) Copies of the notice will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses, and to interested persons upon request.

§ 51.118 Final Environmental Impact Statement—Notice of Availability.

Upon completion of a final environmental impact statement or any supplement to a final environmental impact statement, the appropriate NRC staff director will publish a notice of availability of the statement in the **Federal Register.** The notice will state that copies of the final statement or any supplement to the final statement are available for public inspection and where inspection may be made. Copies of the notice will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses and to interested persons upon request.

§ 51.119 Publication of Finding of No Significant Impact; distribution.

(a) As required by § 51.35, the appropriate NRC staff director will publish the finding of no significant impact in the **Federal Register.** The finding of no significant impact will be identified as a draft or final finding, and will contain the information specified in §§ 51.32 or 51.33, as appropriate. A draft finding of no significant impact will include a request for comments which specifies where comments should be submitted and when the comment period expires.

(b) The finding will state that copies of the finding, the environmental assessment setting forth the basis for the finding and any related environmental documents are available for public inspection and where inspection may be made.

(c) A copy of a final finding will be sent to appropriate Federal, State, and local agencies, and Indian tribes, appropriate State, regional, and metropolitan clearinghouses, the applicant or petitioner for rulemaking and any other party to the proceeding, and if a draft finding was issued, to each commenter. Additional copies will be made available in accordance with § 51.123.

§ 51.120 Availability of environmental documents for public inspection.

Copies of environmental reports, draft and final environmental impact statements, environmental assessments, and findings of no significant impact, together with any related comments and environmental documents, will be placed in the NRC's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in any public document room established by the Commission in the vicinity of the site of the proposed facility or licensed activity where a file of documents pertaining to such proposed facility or activity is maintained.

§ 51.121 Status of NEPA actions.

Individuals or organizations desiring information on the NRC's NEPA process or on the status of specific NEPA actions should address inquiries to:

Utilization facilities: Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–7691.

Production facilities: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 427–4063.

Materials licenses: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 427–4063.

Rulemaking: Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 427–4341.

General Environmental Matters: Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–7511.

§ 51.122 List of interested organizations and groups.

The NRC Office of Administration will maintain a master list of organizations and groups, including relevant conservation commissions, known to be interested in the Commission's licensing and regulatory activities. The NRC Office of Administration with the assistance of the appropriate NRC staff director will select from this master list those organizations and groups that may have an interest in a specific NRC NEPA action and will promptly notify such organizations and groups of the availability of a draft environmental impact statement or a draft finding of no significant impact.

§ 51.123 Charges for environmental documents; distribution to public; distribution to governmental agencies.

(a) *Distribution to public.* Upon written request to the Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the extent available, single copies of draft environmental impact statements and draft findings of no significant impact will be made available to interested persons without charge. Single copies of final environmental impact statements and final findings of no significant impact will also be provided without charge to the persons listed in § 51.93(a) and § 51.119(c), respectively. When more than one copy of an environmental impact statement or a finding of no significant impact is requested or when available NRC copies have been exhausted, the requestor will be advised that the NRC will provide copies at the charges specified in paragraph (c) of this section.

(b) *Distribution to governmental agencies.* Upon written request to the Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the extent available, copies of draft and final environmental impact statements and draft and final findings of no significant impact will be made available in the number requested to Federal, State and local agencies, Indian tribes, and State, regional, and metropolitan clearinghouses. When available NRC copies have been exhausted, the requestor will be advised that the NRC will provide copies at the charges specified in paragraph (c) of this section.

(c) *Charges.* (1) Charges for the reproduction of environmental

documents at the NRC Public Document Room located in Washington, D.C. are as follows:

(i) Paper to paper in sizes up to 8½ x 14 inches made on office copying machines—$0.05 per page copy. Larger sizes—$0.50 to $1.00 per square foot per page copy depending on size.

(ii) Microform to paper—$0.05 per page copy for pages on microfiche $0.20 square foot for a full size print or $0.25 for a reduced 18" x 24" size print of a drawing on an aperture card.

(iii) Microform to microform—$0.10 per microfiche and $0.20 per aperture card.

(iv) The charge for reproducing environmental documents other than those specified above will be computed on the basis of NRC's direct costs.

(v) Shipping, mailing or special delivery costs will be added to all mail orders. A handling fee will not be charged unless the user requests special packing materials.

(2) Charges for the reproduction of environmental documents by the NRC at locations other than the NRC Public Document Room located in Washington, D.C. vary according to location.

Commenting

§ 51.124 Commission duty to comment.

It is the policy of the Commission to comment on draft environmental impact statements prepared by other Federal agencies, consistent with the provisions of 40 CFR 1503.2 and 1503.3.

Responsible Official

§ 51.125 Responsible official.

The Executive Director for Operations shall be responsible for overall review of NRC NEPA compliance, except for matters under the jurisdiction of a presiding officer, administrative judge, administrative law judge, Atomic Safety and Licensing Board, Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body.

Appendix A to Subpart A—Format for Presentation of Material in Environmental Impact Statements

1. General
2. Cover sheet
3. Summary
4. Purpose of and need for action
5. Alternatives including the proposed action
6. Affected environment
7. Environmental consequences and mitigating actions
8. List of preparers
9. Appendices

1. *General.*

(a) The Commission will use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless there is a compelling reason to do otherwise:

(1) Cover sheet*
(2) Summary*
(3) Table of Contents
(4) Purpose of and Need for Action*
(5) Alternatives including the proposed action*
(6) Affected Environment*
(7) Environmental Consequences and Mitigating Actions*
(8) List of Preparers*
(9) List of Agencies, Organizations and Persons to Whom Copies of the Statement are Sent
(10) Substantive Comments Received and NRC Staff Responses
(11) Index
(12) Appendices (if any)*

If a different format is used, it shall include paragraphs (1), (2), (3), (8), (9), (10), and (11) of this section and shall include the substance of paragraphs (4), (5), (6), (7), and (12) of this section, in any appropriate format.

Additional guidance on the presentation of material under the format headings identified by an asterisk is set out in sections 2.–9. of this appendix.

(b) The techniques of tiering and incorporation by reference described respectively in 40 CFR 1502.20 and 1508.28 and 40 CFR 1502.21 [28] of CEQ's NEPA regulations may be used as appropriate to aid in the presentation of issues, eliminate repetition or reduce the size of an environmental impact statement. In appropriate circumstances, draft or final environmental impact statements prepared by other Federal agencies may be adopted in whole or in part in accordance with the procedures outlined in 40 CFR 1506.3 [29] of CEQ's NEPA regulations. In final environmental impact statements, material under the following format headings will normally be presented in less than 150 pages: Purpose of and Need for Action, Alternatives Including the Proposed Action, Affected Environment, and Environmental Consequences and Mitigating Actions. For proposals of unusual scope or complexity, the material presented under these format headings may extend to 300 pages.

2. *Cover sheet.*

The cover sheet will not exceed one page. It will include:

(a) The name of the NRC office responsible for preparing the statement and a list of any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement with a list of the states, counties or municipalities where the facility or other subject of the action is located, as appropriate.

(c) The name, address, and telephone number of the individual in NRC who can supply further information.

(d) A designation of the statement as a draft or final statement, or a draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) For draft environmental impact statements, the date by which comments must be received. This date may be specified in the form of the following or a substantially similar statement:

"Comments should be filed no later than * days after the date on which the Environmental Protection Agency notice stating that the draft environmental impact statement has been filed with EPA is published in the **Federal Register.** Comments received after the expiration of the comment period will be considered if it is practical to do so but assurance of consideration of late comments cannot be given."

3. *Summary.*

Each environmental impact statement will contain a summary which adequately and accurately summarizes the statement. The summary will stress the major issues considered. The summary will discuss the areas of controversy, will identify any remaining issues to be resolved, and will present the major conclusions are recommendations. The summary will normally not exceed 15 pages.

4. *Purpose of and need for action.*

The statement will briefly describe and specify the purpose of the need for the proposed action. The alternative of no action will be discussed. In the case of nuclear power plants, consideration will be given to the potential impact of conservation measures in determining the demand for power and consequent need for additional generating capacity.

5. *Alternatives including the proposed action.*

This section is the heart of the environmental impact statement. It will present the environmental impacts of the proposal and the alternatives in comparative form. Where important to the comparative evaluation of alternatives, appropriate mitigating measures of the alternatives will be discussed. All reasonable alternatives will be identified. The range of alternatives discussed will encompass those proposed to be considered by the ultimate decisionmaker. An otherwise reasonable alternative will not be excluded from discussion solely on the ground that it is not within the jurisdiction of the NRC.[30] The discussion of alternatives will take into accounts, without duplicating, the environmental information and analyses included in sections, 4., 6. and 7. of this appendix.

In the draft environmental impact statement, this section will either include a preliminary recommendation on the action to be taken, or identify the alternatives under consideration.

In the final environmental impact statement, this section will include a final recommendation on the action to be taken.

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[28] *Tiering*—40 CFR 1502.20, 40 CFR 1508.28; *Incorporation by reference*—40 CFR 1502.21.

[29] *Adoption*—40 CFR 1506.3.

* The number of days in the comment period should be inserted. The minimum comment period is 45 days (see § 51.73.)

[30] With respect to limitations on NRC's NEPA authority and responsibility imposed by the Federal Water Pollution Control Act Amendments of 1972, see §§ 51.10(c), 51.22(c)(17) and 51.71(d).

6. *Affected environment.*

The environmental impact statement will succinctly describe the environment to be affected by the proposed action. Data and analyses in the statement will be commensurate with the importance of the impact, with less important material summarized, conolidated, or simply referenced. Effort and attention will be concentrated on important issues; useless bulk will be eliminated.

7. *Environmental consequences and mitigating actions.*

This section discusses the environmental consequences of alternatives, including the proposed actions and any mitigating actions which may be taken. Alternatives eliminated from detailed study will be identified and a discussion of those alternatives will be confined to a brief statement of the reasons why the alternatives were eliminated. The level of information for each alternative considered in detail will reflect the depth of analysis required for sound decisionmaking.

The discussion will include any adverse environmental effects which cannot be avoided should the alternative be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the alternative should it be implemented. This section will include discussions of:

(a) Direct effects and their significance.

(b) Indirect effects and their significance.

(c) Possible conflicts between the alternative and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.

(d) Means to mitigate adverse environmental impacts.

8. *List of preparers.*

The environmental impact statement will list the names and qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers. Persons responsible for making an independent evaluation of information submitted by the applicant or petitioner for rulemaking or others will be included in the list. Where possible, the persons who are responsible for a particular analysis, including analyses in background papers, will be identified.

9. *Appendices.*

An appendix to an environmental impact statement will:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (40 CFR 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement. Discussion of methodology used may be placed in an appendix.

(c) Normally be analytic.

(d) Be relevant to the decision to be made.

(e) Be circulated with the environmental impact statement or be readily available on request.

Discussion of Footnotes

28. *Tiering.*

40 CFR 1502.20 states:

"Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28)."

40 CFR 1508.28 states:

" 'Tiering' refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

"(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

"(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe."

Incorporation by reference. 40 CFR 1502.21 states:

"Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference."

29. *Adoption.*

40 CFR 1506.3 states:

"(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

"(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

"(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

"(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify."

Conforming Amendments

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

2. Section 2.101 is amended by revising the introductory text of paragraph (a)(3), paragraphs (a)(3)(i) and (a)(5), the introductory text of paragraph (a–1), paragraphs (f)(1), (f)(4) and (f)(5) and paragraph (g)(2) to read as follows:

§ 2.101 Filing of application.

(a) * * *

(3) If the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a construction permit or operating license for a production of utilization facility, and/or any environmental report required pursuant to Subpart A of Part 51 of this chapter, or part thereof as provided in paragraphs (a)(5) or (a–1) of this section are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination. With respect to the tendered application and/or environmental report or part thereof that is acceptable for docketing, the applicant will be requested to:

(i) Submit to the Director of Nuclear reactor Regulation of Director of Nuclear Material Safety and Safeguards, as appropriate, such additional copies as the regulations in Part 50 and Subpart A of Part 51 require;

* * * * *

(5) An applicant for a construction permit for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 of this chapter or is a testing facility may submit the information required of applicants by Part 50 of the chapter in three parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, another part shall include any information required by § 50.34(a) and, if applicable, § 50.34a of this chapter and a third part shall include any information required by § 50.33a. One part may precede or follow other parts by no longer than six (6) months except that the part including information required by § 50.33a shall be submitted in accordance with time periods specified in § 50.33a. If an applicant for a construction permit for a nuclear power reactor is exempted pursuant to § 50.33a of this chapter from filing the information described by § 50.33a of this chapter, such applicant shall file with the first part of its application an affidavit setting forth facts as to the electrical generating capacity of its system. If it is determined that any one of the parts as described above is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of thirty (30) days. Except for the part including information required by § 50.33a, whichever part is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§50.33,50.34((a)(1), and 50.37 of this chapter. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of Part 50 of this chapter. Additional parts will be docketed upon a determination by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, that they are complete.

(a–1) *Early consideration of site suitability issues.* An applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 of this chapter or is a testing facility, may request that the Commission conduct an early review and hearing and render an early partial decision in accordance with Subpart F on issues of site suitability within the purview of the applicable provisions of Parts 50, 51 and 100 of this chapter. In such cases, the applicant for the construction permit may submit the information required of applicants by the provisions of this chapter in three or (in the case of nuclear power reactors) four parts:

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental report required in connection therewith pursuant to Subpart A of Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

* * * * *

(4) The Director may determine the environmental report to be not complete and therefore not acceptable for processing if it fails to include the required site characterization data, including the results of appropriate in situ testing at depth for each site characterized, with respect to the number of sites and media specified in section 114(f) of the Nuclear Waste Policy Act of 1982. If such a determination is made, the Director shall request the DOE to submit, within a specified time, such characterization data as the Director determines to be necessary. If the DOE fails to provide the requested data within the time specified, the application shall be subject to denial under § 2.108.

(5) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Part 60 and Subpart A of Part 51 of this chapter require, (ii) serve a copy on the chief executive of the municipality in which the geologic repository operations area is to be located or, if the geologic repository operations area is not to be located or, if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation), and (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

* * * * *

(g) * * *

(2) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Part 61 and Subpart A of Part 51 of this chapter require, (ii) serve a copy on the chief executive of the municipality in which the waste is to be disposed of or, if the waste is not to be disposed of within a municipality, serve a copy on the chief executive of the county in which the waste is to be disposed of, (iii) make direct distribution of additional copies to Federal State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards, and (iv) serve a notice of availability of the application and environmental report on the chief executives or governing bodies of the municipalities or counties which have been identified in the application and environmental report as the location of all or part of the alternative sites if copies are not distributed under paragraph (g)(2)(iii) of this section to the executives or bodies. All distributed copies shall be completely assembled documens identified by docket number. Subsequently distributed amendments, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages. In complying with the requirements of paragraph (g) of this section the applicant shall not make public distribution of those parts of the application subject to § 2.790(d).

* * * * *

3. Section 2.104 is amended by revising paragraph (b)(1)(v), the introductory text of paragraph (b)(3), paragraph (b)(3)(i) and paragraph (c)(7) with its attendant footnote as follows:

§ 2.104 Notice of Hearing.

* * * * *

(b) * * *

(1)* * *

(v) If the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel reprocessing plant, or other facility whose construction or operation has been determined by the Commission to have a significant impact on the environment, whether, in accordance with the requirements of Subpart A of Part 51 of this chapter, the construction permit should be issued as proposed.

* * * * *

(3) That, regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with Subpart A of Part 51 of this chapter.

(i) Determine whether the requirements of section 102(2) (A), (C) and (E) of the National Environmental Policy Act and Subpart A of Part 51 of this chapter have been complied with in the proceeding;

* * * * *

(c) * * *

(7) If the application is for an operating license for a nuclear power reactor, a testing facility, or a fuel reprocessing plant, or other facility whose operation has been determined by the Commission to have a significant impact on the environment, whether, in accordance with the requirements of Subpart A of Part 51 of this chapter, the operating license should be issued as proposed.[3]

* * * * *

4. In § 2.501, paragraph (b)(1)(vii), the introductory text of paragraph (b)(3) and paragraph (b)(3)(i) is revised to read as follows:

§ 2.501 Notice of hearing on application pursuant to Appendix M of Part 50 for a license to manufacture nuclear power reactors.

* * * * *

(b) * * *

(1) * * *

(vii) Whether, in accordance with the requirements of Subpart A of Part 51 and Appendix M of Part 50 of this chapter, the license should be issued as proposed.

* * * * *

(3) That, regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with Subpart A of Part 51 and paragraph 3 of Appendix M of Part 50 of this chapter,

(i) Determine whether the requirements of section 102(2) (A), (C) and (E) of the National Environmental Policy Act and Subpart A of Part 51 of this chapter have been complied with in the proceeding;

* * * * *

5. Section 2.600 is revised to read as follows:

§ 2.600 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve an early submittal of site suitability information in accordance with § 2.101(a–1), and a hearing and early partial decision on issues of site suitability, in connection with an application for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 of this chapter or is a testing facility.

6. In § 2.603, paragraph (b)(1) is revised to read as follows:

§ 2.603 Acceptance and docketing of application for early review of site suitability issues.

* * * * *

(b)(1) The Director of Nuclear Reactor Regulation will accept for docketing an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 or is a testing facility where part one of the application as described in § 2.101(a–1) is complete. Part one of an application will not be considered complete unless it contains proposed findings as required by § 2.101(a–1)(1)(i) and unless it describes the applicant's site selection process, specifies the extent to which that process involves the consideration of alternative sites, explains the relationship between that process and the application for early review of site suitability issues, and briefly describes the applicant's long-range plans for ultimate development of the site. Upon assignment of a docket number, the procedures in § 2.101 (a)(3) and (a)(4) relating to formal docketing and the submission and distribution of additional copies of the application shall be followed.

* * * * *

7. In § 2.605, paragraph (b)(1) is revised to read as follows:

§ 2.605 Additional considerations.

* * * * *

(b) * * *

(1) In cases where no partial decision on the relative merits of the proposed site and alternative sites under Subpart A of Part 51 is requested, upon determination that there is a reasonable liklihood that further review would identify one or more preferable alternative sites and the partial decision on one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the remainder of the information required by § 50.30(f) of this chapter that would prejudice the later review and decision on such alternative sites; or

* * * * *

8. In § 2.606, paragraphs (a) and (b)(1) are revised to read as follows:

§ 2.606 Partial decisions on site suitability issues.

(a) The provisions of §§ 2.754, 2.755, 2.760, 2.761, 2.762, 2.763, and 2.764(a) shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.764(b) shall not apply to any partial initial decision rendered in accordance with this subpart. No limited work authorization may be issued pursuant to § 50.10(e) of Part 50 of this chapter and no construction permit may be issued without completion of the full review required by section 102(2) of the National Environmental Policy Act of 1969, as amended, and Subpart A of Part 51 of this chapter. The authority of the Commission and/or Appeal Board to review such a partial initial decision *sua sponte*, or to raise *sua sponte* an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

(b)(1) A partial decision on one or more site suitability issues pursuant to the applicable provisions of Part 50, Subpart A of Part 51, and Part 100 of this chapter issued in accordance with this subpart shall (i) clearly identify the site to which the partial decision applies and (ii) indicate to what extent additional information may be needed and additional review may be required to enable the Commission to determine in accordance with the provisions of the Act and the applicable provisions of the regulations in this chapter whether a construction permit for a facility to be located on the site identified in the partial decision should be issued or denied.

* * * * *

9. In § 2.746, paragraph (g) is revised to read as follows:

§ 2.743 Evidence.

* * * * *

(g) *Proceedings involving applications.* In any proceeding involving an application, there shall be

[3] Issues (1) to (6) are the issues pursuant to the Atomic Energy Act of 1954, as amended. Issue (7) is the issue pursuant to the National Environmental Policy Act of 1969.

offered in evidence by the staff any report submitted by the ACRS in the proceeding in compliance with section 182b. of the Act, any safety evaluation prepared by the staff and any environmental impact statement prepared by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his designee in the proceeding pursuant to Subpart A of Part 51 of this chapter.

* * * * *

10. Section 2.761a is revised to read as follows:

§ 2.761a Separate hearings and decisions.

In a proceeding on an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 51.21(b) (2) or (3) or 50.22 of this chapter or is a testing facility, the presiding officer shall unless the parties agree otherwise or the rights of any party would be prejudiced thereby, commence a hearing on issues covered by § 50.10(e)(2)(ii) and Subpart A of Part 51 of this chapter as soon as practicable after issuance of the staff of its final environmental impact statement, but no later than thirty (30) days after issuance of such statement, and complete such a hearing and issue an initial decision on such matters. Pehearing procedures regarding issues covered by Subpart A of Part 51 and § 51.10(e)(2)(ii) of this chapter, including any discovery and special prehearing conferences and prehearing conferences as provided in §§ 2.740, 2.740a, 2.740b, 2.741, 2.742, 2.751a, and 2.752, shall be scheduled accordingly. The provisions of §§ 2.754, 2.755, 2.760, 2,762, 2.763, and 2.764(a) shall apply to any proceeding conducted and any initial decision rendered in accordance with this section. Paragraph 2.764(b) shall not apply to any partial initial decision rendered in accordance with this section. This section shall not preclude separate hearings and decisions on other particular issues.

Appendix A—[Amended]

11. In Appendix A to Part 2, sections I(a), I(c)(2), and I(d) are revised to read as follows:

I. Preliminary Matters

(a) A public hearing is announced by the issuance of a notice of hearing, published in the **Federal Register** as soon as practicable after the application has been docketed, signed by the Secretary of the Commission stating the nature of the hearing and the issues to be considered. The time and place of the first prehearing conference pursuant to § 2.751a will ordinarily be stated in the notice of hearing. Unless the initial notice of hearing states the time and place of the hearing, and the Chairman and other members of the Atomic Safety and Licensing Board that will conduct the hearing, those matters will be the subject of further notice in the **Federal Register** after publication of the initial notice of hearing. It is the Commission's policy and practice to begin the evidentiary hearing in the vicinity of the site of the proposed facility. The notice of hearing also states the procedures whereby persons may seek to intervene or make a limited appearance and explains the differences between those forms of participation in the proceeding, and states the times and places of the availability, in an appropriate office near the site of the proposed facility, of the notice of hearing, an updated copy of the application, the report of the Advisory Committee on Reactor Safeguards (ACRS), the staff safety evaluation, the applicant's environmental report, the Commission's environmental impact statement, the proposed construction permit or operating license and the transcripts of the prehearing conference and the hearing.

* * * * *

(c) * * *

(2) In a proceeding relating to the issuance of a construction permit for a facility which is subject to the environmental impact statement requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 and subpart A of Part 51 of this chapter and which is a utilization facility for industrial or commercial purposes or is a testing facility, separate hearings may be held and decisions may be issued on National Environmental Policy Act and site suitability issues and other specified issues as provided by subpart F and § 2.761a.

(d) Prior to a hearing, board members should review and become familiar with: The record of any relevant prior proceedings in the case, including initial decisions and Commission orders, the application, the ARCS report, the staff safety evaluation, the applicant's environmental report, the Commission's environmental impact statement, all other papers filed in the proceeding, the Commission's rules of practice, and other regulations or published statements of policy of the Commission as may be pertinent to the proceeding.

* * * * *

12. In Appendix A to Part 2, sections V(d)(2), V(f)(1) and V(f)(3) are revised to read as follows:

V. The Hearing

* * * * *

(d) Evidence * * *

(2) The parties are required to submit direct testimony in written form and serve copies of such prepared written testimony on all parties pursuant to the schedule established at the second prehearing conference—in any event, at least 15 days in advance of the session of the hearing at which such testimony is to be presented, as provided by § 2.743(b), unless the board orders otherwise on the basis of objections presented. The staff's position is reflected primarily in the safety evaluation and final environmental impact statement. Consequently, the staff will not present its case until these documents are available. The use of such advance written testimony is expected to expedite the hearing process.

* * * * *

(f) Participation by board members:

(1) In contested proceedings, the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made and whether, in accordance with subpart A of Part 51, the construction permit should be issued as proposed.

Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters pertaining to radiological health and safety which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the staff and ACRS, and they are authorized to rely upon the testimony of the staff, the applicant, and the conclusions of the ACRS, which are not controverted by any party.

* * * * *

(3) Whether the construction permit proceeding is contested or uncontested, the board will, as to environmental impact matters, (a) determine whether the requirements of section 102(2) (A), (C) and (E) of the National Environmental Policy Act of 1969 and subpart A of Part 51 of this chapter have been complied with; (b) independently consider the final balance among conflicting factors contained in the record, with a view to determining the appropriate action to be taken; and (c) determine whether the construction permit should be granted, denied, or appropriately conditioned to protect environmental values.

* * * * *

13. In Appendix A, Part 2, VI(c)(1)(v) and VI(c)(3) are revised to read as follows:

VI. Posthearing Proceedings Including the Initial Decision

* * * * *

(c) * * *

(1) * * *

(v) Whether, with respect to the requirements of section 102(2) (A), (C) and (E) of the National Environmental Policy Act, in accordance with Subpart A of Part 51 of this chapter, the construction permit should be issued as proposed.

* * * * *

(3) Regardless of whether the proceeding is contested or uncontested, the board will, in its initial decision, in accordance with Subpart A of Part 51 of this chapter:

(i) Determine whether the requirements of section 102(2)(A), (C) and (E) of the National Environmental Policy Act and Subpart A of Part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and

(iii) Determine whether the construction permit should be issued, denied, or

appropriately conditioned to protect environmental values.

* * * * *

14. In Appendix A of Part 2, section VIII(b)(7) is revised to read:

VIII Procedures Applicable to Operating License Proceedings

* * * * *

(b) * * *

(7) Whether, with respect to the requirements of section 102(2) (A), (C), and (E) of the National Environmental Policy Act, in accordance with Subpart A of Part 51, the operating license should be issued as proposed.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

15. In § 30.32, paragraph (f) is revised to read:

§ 30.32 Application for specific licenses.

* * * * *

(f) An application for a license to receive and possess byproduct material for the conduct of any activity which the Commission has determined pursuant to Subpart A of Part 51 of this chapter will significantly affect the quality of the environment shall be filed at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by any Environmental Report required pursuant to Subpart A of Part 51 of this chapter.

16. In § 30.33, paragraph (a)(5) is revised to read:

§ 30.33 General requirements for issuance of specific licenses.

(a) * * *

(5) In the case of an application for a license to receive and possess byproduct material for the conduct of any activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess byproduct material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

17. In § 40.31, paragraph (f) is revised to read:

§ 40.31 Applications for specific licenses.

* * * * *

(f) An application for a license to possess and use source material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the Commission has determined pursuant to Subpart A of Part 51 of this chapter will significantly affect the quality of the environment shall be filed at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by any Environmental Report required pursuant to Subpart A of Part 51 of this chapter.

* * * * *

18. In § 40.32, paragraph (e) is revised to read:

§ 40.32 General requirements for issuance of specific licenses.

* * * * *

(e) In the case of an application for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such a conclusion shall be grounds for denial of a license to possess and use source and byproduct material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

19. In § 50.10, the introductory text of paragraph (c), and paragraphs (e)(1), (e)(2), and (e)(3)(i) are revised to read as follows:

§ 50.10 License required

* * * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, and subject to paragraphs (d) and (e) of this section, no person shall effect commencement of construction of a production or utilization facility subject to the provisions of § 51.20(b) of this chapter on a site on which the facility is to be operated until a construction permit has been issued. As used in this paragraph, the term "commencement of construction" means any clearing of land, excavation or other substantial action that would adversely affect the environment of a site, but does not mean:

* * * * *

(e)(1) The Director of Nuclear Reactor Regulation may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 or is a testing facility to conduct the following activities: (i) Preparation of the site for construction of the facility (including such activities as clearing, grading, construction of temporary access roads and borrow areas); (ii) installation of temporary construction support facilities (including such items as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings); (iii) excavation for facility structures; (iv) construction of service facilities

(including such facilities as roadways, paving, railroad spurs, fencing, exterior utility and lighting systems, transmission lines, and sanitary sewerage treatment facilities); and (v) the construction of structures, systems and components which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. No such authorization shall be granted unless the staff has completed a final environmental impact statement on the issuance of the construction permit as required by Subpart A of Part 51 of this chapter.

(2) Such an authorization shall be granted only after the presiding officer in the proceeding on the construction permit application (i) has made all the findings required by §§ 51.104(b) and 51.105 of this chapter to be made prior to issuance of the construction permit for the facility, and (ii) has determined that, based upon the available information and review to date, there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations under the Act and rules and regulations promulgated by the Commission pursuant thereto.

(3)(i) The Director of Nuclear Reactor Regulation may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 or is a testing facility to conduct, in addition to the activities described in paragraph (e)(1) of this section, the installation of structural foundations, including any necessary subsurface preparation, for structures, systems and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

* * * * *

20. In § 50.230, paragraphs (c)(1)(iv), (c)(3)(iii) and (f) are revised to read as follows:

§ 50.30 Filing of applications for licenses; oath or affirmation.

* * * * *

(c) *Number of copies of application.*

(1) * * *

(iv) For an application for a license for a production or utilitization facility: Forty-one (41) copies of any applicant's environmental report required by subpart A of Part 51 of this chapter.

* * * * *

(3) * * *

(iii) Twenty (20) copies of any environmental report required by subpart A of Part 51 of this chapter.

* * * * *

(f) *Environmental report.* An application for a construction permit or an operating license for a nuclear power reactor, testing facility, fuel reprocessing plant, or such other production or utilization facility whose construction or operation may be determined by the Commission to have a significant impact on the environment shall be accompanied by any Environmental Report required pursuant to Subpart A of Part 51 of this chapter.

21. A new § 50.36b is added to read as follows:

§ 50.36b Environmental conditions.

Each license authorizing operation of a production or utilization facility which is of a type described in § 50.21(b) (2) or (3) or § 50.22 or is a testing facility may include conditions to protect the environment to be set out in an attachment to the license which is incorporated in and made a part of the license. These conditions will be derived from information contained in the environmental report and the supplement to the environmental report submitted pursuant to §§ 51.50 and 51.53 of this chapter as analyzed and evaluated in the NRC record of decision, and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirements for the protection of the nonaquatic environment.

22. In § 50.40, paragraph (d) is revised to read as follows:

§ 50.40 Common standards.

* * * * *

(d) Any applicable requirements of subpart A of Part 51 have been satisfied.

23. In § 50.54, a new paragraph (aa) is added to read as follows. The introductory test of the section is shown for the convenience of the reader.

§ 50.54 Conditions of licenses.

Whether stated therein or not, the following shall be deemed conditions in every license issued:

* * * * *

(aa) The license shall be subject to all conditions deemed imposed as a matter of law by sections 401(a)(2) and 401(d) of the Federal Water Pollution Control Act, as amended (33 U.S.C.A. 1341(a)(2) and (d).)

* * * * *

24. Appendix M to Part 50 is amended by revising paragraphs 3, 5(g) and 11 to read as follows:

Appendix M—Standardization of Design; Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors Manufactured Pursuant to Commission License

* * * * *

3. An applicant for a manufacturing license pursuant to this Appendix M shall submit with his application an environmental report as required of applicants for construction permits in accordance with Subpart A of Part 51 of this chapter, provided, however, that such report shall be directed at the manufacture of the reactor(s) at the manufacturing site; and, in general terms, at the construction and operation of the reactor(s) at an hypothetical site or sites having characteristics that fall within the postulated site parameters. The related draft and final environmental impact statement prepared by the Commission's regulatory staff will be similarly directed.

* * * * *

5. * * *

(g) On the basis of the evaluations and analyses of the environmental effects of the proposed action required by subpart A of Part 51 of this chapter and paragraph 3 of this Appendix, the action called for is the issuance of the license.

Note.—When an applicant has supplied initially all of the technical information required to complete the application, including the final design of the reactor(s), the findings required for the issuance of the license will be appropriately modified to reflect that fact.

* * * * *

11. An operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued pursuant to this Appendix M may be issued by the Commission pursuant to § 50.57 and Subpart A of Part 51 of this chapter except that the Commission shall find, pursuant to § 50.57(a)(1), that construction of the reactor(s) has been substantially completed in conformity with both the manufacturing license and the construction permit and the applications therefor, as amended, and the provisions of the Act, and the rules and regulations of the Commission. Notwithstanding the other provisions of this paragraph, no application for an operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued pursuant to this Appendix M will be docketed until the application for an amendment to the relevant manufacturing license required by paragraph 7 has been docketed.

* * * * *

25. In Appendix N to Part 50, section 2, with its attendant footnote and section 3 are revised to read as follows:

Appendix N—Standardization of Nuclear Power Plant Designs: Licenses To Construct and Operate Nuclear Power Reactors of Duplicate Design at Multiple Sites

* * * * *

2. Applications for construction permits submitted pursuant to this Appendix N shall include the information required by §§ 50.33, 50.33a, 50.34(a) and 50.34a (a) and (b). The applicant shall also submit the information required by § 51.50 of this chapter.

For the technical information required by §§ 50.34(a) (1)–(5) and (8) and 50.34a (a) and (b), reference may be made to a single preliminary safety analysis of the design[2] which, for the purposes of § 50.34(a)(1) includes one set of site parameters postulated for the design of the reactors, and an analysis and evaluation of the reactors in terms of such postulated site parameters. Such single preliminary safety analysis shall also include information pertaining to design features of the proposed reactors that affect plans for coping with emergencies in the operation of the reactors, and shall describe the quality assurance program with respect to aspects of design, fabrication, procurement and construction that are common to all of the reactors.

3. Applications for operating licenses submitted pursuant to this Appendix N shall include the information required by §§ 50.33, 50.34(b) and (c), and 50.34a(c). The applicant shall also submit the information required by § 51.53 of this chapter. For the technical information required by §§ 50.34(b)(2)–(5) and 50.34a(c), reference may be made to a single final safety analysis of the design.

26. In Appendix O to Part 50, section 7 is revised to read as follows:

Appendix O—Standardization of Design: Staff Review of Standard Designs

* * * * *

7. The Commission may, on its own initiative or in response to a petition for rule making, approve the design in a rule making proceeding and in that event, the approved design will be subject to challenge only as provided in § 2.758 of this chapter. An environmental impact statement may be prepared for such a rule making action in accordance with §§ 51.20(b)(13) and 51.85 of this chapter. If an environmental impact statement is prepared, the Commission may require the petitioner for rule making to submit information to the Commission to aid the Commission in the preparation of the environmental impact statement.

27. In Appendix Q to Part 50, the introductory paragraph and sections 5 and 7 are revised to read as follows:

Appendix Q—Pre-Application Early Review of Site Suitability Issues

This appendix sets out procedures for the filing, Staff review, and referral to the Advisory Committee on Reactor Safeguards of requests for early review of one or more site suitability issues relating to the construction and operation of certain utilization facilities separately from and prior to the submittal of applications for construction permits for the facilities. The appendix also sets out procedures for the preparation and issuance of Staff Site Reports and for their incorporation by reference in applications for the construction and operation of certain utilization facilities. The utilization facilities are those which are subject to § 51.20(b) of this chapter and are of the type specified in § 50.21(b) (2) or (3) or § 50.22 or are testing facilities. This appendix does not apply to proceedings conducted pursuant to Subpart F of Part 2 of this chapter.

* * * * *

5. Any Staff Site Report prepared and issued in accordance with this appendix may be incorporated by reference, as appropriate, in an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in §§ 50.21(b) (2) or (3) or 50.22 of this chapter or is a testing facility. The conclusions of the Staff Site Report will be reexamined by the staff where five years or more have elapsed between the issuance of the Staff Site Report and its incorporation by reference in a construction permit application.

* * * * *

7. The staff will not conduct more than one review of site suitability issues with regard to a particular site prior to the full construction permit review required by Subpart A of Part 51 of this chapter. The staff may decline to prepare and issue a Staff Site Report in response to a submittal under this Appendix where it appears that, (a) in cases where no review of the relative merits of the submitted site and alternative sites under Subpart A of Part 51 of this chapter is requested, there is a reasonable likelihood that further Staff review would identify one or more preferable alternative sites and the Staff review of one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the analysis of alternative sites in the Environmental Report that would prejudice the later review and decision on alternative sites under Subpart F and/or G of Part 2 and Subpart A of Part 51 of this chapter; or (b) in cases where, in the judgment of the Staff, early review of any site suitability issue or issues would not be in the public interest, considering (1) the degree of likelihood that any early findings on those issues would retain their validity in later reviews, (2) the objections, if any, of cognizant state or local government agencies to the conduct of an early review on those issues, and (3) the possible effect on the public interest of having an early, if not necessarily conclusive, resolution of those issues.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

28. Section 61.10 is revised to read as follows:

§ 61.10 Content of application.

An application to receive from others, possess and dispose of wastes containing or contaminated with source, byproduct or special nuclear material by land disposal must consist of general information, specific technical information, institutional information, and financial information as set forth in §§ 61.11 through 61.16. An environmental report prepared in accordance with Subpart A of Part 51 of this chapter must accompany the application.

29. In § 61.20, paragraph (b) is revised to read as follows:

§ 61.20 Filing and distribution of application.

* * * * *

(b) Another 85 copies of the application must be retained by the applicant for distribution in accordance with written instructions from the Director or designee.

* * * * *

30. Section 61.21 revised to read as follows:

§ 61.21 Elimination of repetition.

In its application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission if these references are clear and specific.

31. Section 61.22 is revised to read as follows:

§ 61.22 Updating of application.

(a) The application must be as complete as possible in the light of information that is available at the time of submittal.

(b) The applicant shall supplement its application in a timely manner, as necessary, to permit the Commission to review, prior to issuance of a license, any changes in the activities proposed to be carried out or new information regarding the proposed activities.

32. In § 61.23, paragraph (l) is revised to read as follows:

§ 61.23 Standards for issuance of a license.

* * * * *

(l) The requirements of Subpart A of Part 51 of this chapter have been met.

[2] As used in this Appendix, the design of a nuclear power reactor included in a single referenced safety analysis report means the design of those structures, systems and components important to radiological health and safety and the common defense and security.

33. In § 61.28, paragraph (a)(4) is redesignated as paragraph (b) and revised to read as follows and existing paragraph (b) is redesignated as paragraph (c).

§ 61.28 Contents of application for closure.

* * * * *

(b) An environmental report or a supplement to an environmental report prepared in accordance with Subpart A of Part 51 of this chapter must accompany the application.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

34. In § 70.21, paragraph (f) is revised to read as follows:

§ 70.21 Filing.

* * * * *

(f) An application for a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery or conversion of uranium hexafluoride, or for the conduct of any other activity which the Commission has determined pursuant to Subpart A of Part 51 of this chapter will significantly affect the quality of the environment shall be filed at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted, and shall be accompanied by an Environmental Report required under Subpart A of Part 51 of this chapter.

* * * * *

35. In § 70.23, paragraph (a)(7) is revised to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) * * *

(7) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, or any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental value. Commencement of construction prior to such conclusion shall be grounds for denial to possess and use special nuclear material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

36. Section 72.20 is revised to read as follows:

§ 72.20 Environmental report.

Each application for a license under this part shall be accompanied by an Environmental Report which meets the requirements of Subpart A of Part 51 of this chapter.

37. In § 72.31, paragraph (b) is revised to read as follows:

§ 72.31 Issuance of licenses.

* * * * *

(b) Grounds for denial of a license to store spent fuel in the proposed ISFSI may be commencement of construction prior to a conclusion or finding by the Director of the Office of Nuclear Material Safety and Safeguards or his designee, or after a public hearing by the presiding officer, Atomic Safety and Licensing Board, Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter, and after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values.

* * * * *

38. In § 72.61, paragraph (e) is revised to read as follows:

§ 72.61 General considerations.

* * * * *

(e) For each proposed site, pursuant to Subpart A of Part 51 of this chapter, the potential for radiological and other environmental impacts on the region shall be evaluated with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIALS

39. In § 110.44, paragraph (d) is revised to read as follows:

§ 110.44 Issuance or denial of licenses.

* * * * *

(d) The Commission will issue an import license if it determines that the proposed import would not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and that any applicable requirements of Subpart A of Part 51 of this chapter have been satisfied.

Dated at Washington, D.C. this 2nd day of March 1984.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-6324 Filed 3-9-84; 8:45 am]

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[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).