

# Federal Register

Tuesday  
March 27, 1984

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## Selected Subjects

- Air Carriers**  
Civil Aeronautics Board
- Air Pollution Control**  
Environmental Protection Agency
- Authority Delegations (Government Agencies)**  
Agriculture Department
- Aviation Safety**  
Federal Aviation Administration
- Banks, Banking**  
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- Cargo Vessels**  
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- Electric Utilities**  
Rural Electrification Administration
- Employment**  
Wage and Hour Division
- Energy Conservation**  
Conservation and Renewable Energy Office
- Fisheries**  
National Oceanic and Atmospheric Administration
- Freedom of Information**  
Justice Department  
Peace Corps
- Grant Programs—Education**  
Human Development Services Office

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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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Agricultural Marketing Service

### Mortgage Insurance

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### Motor Carriers

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### Oil and Gas Reserves

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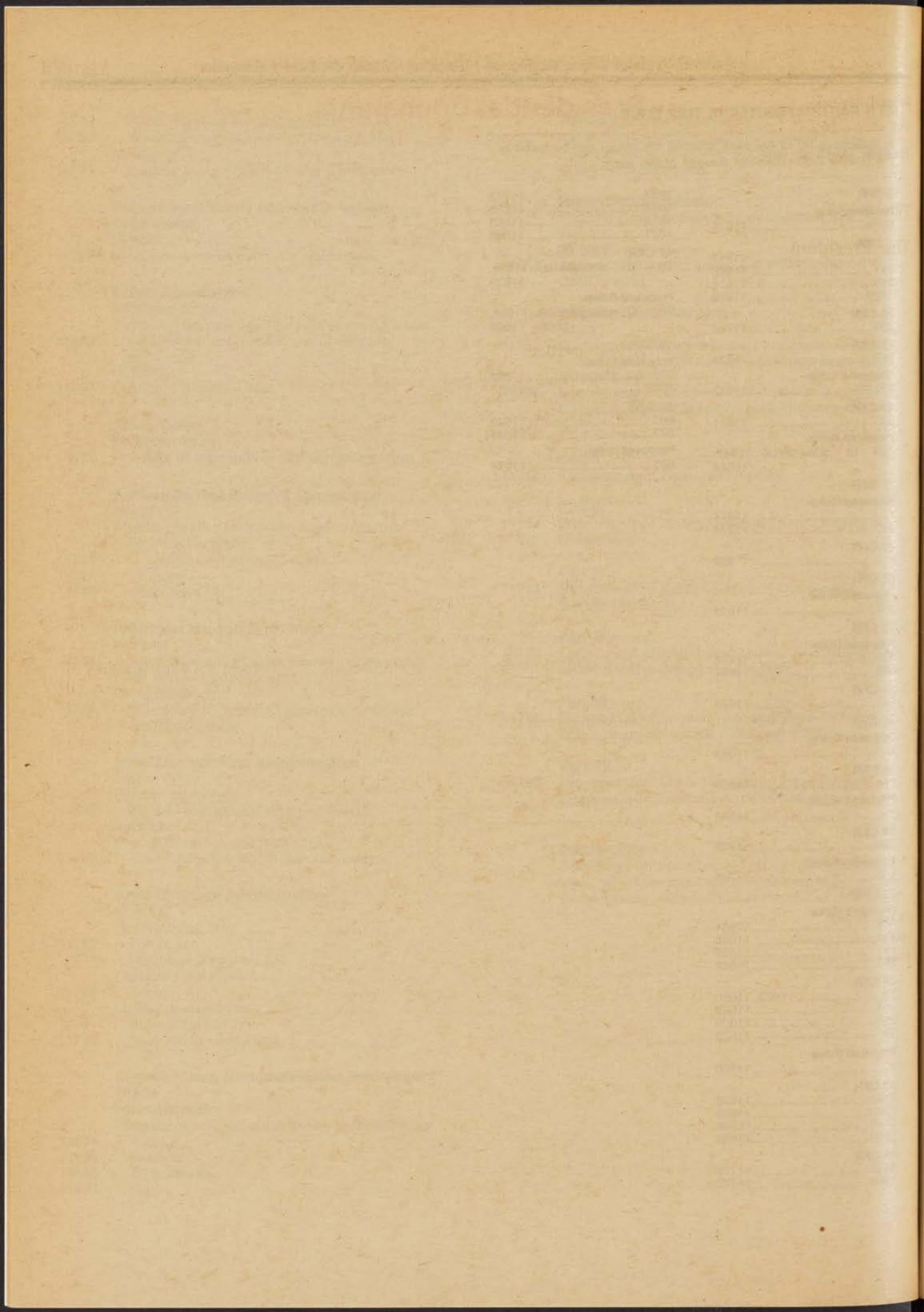
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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# Presidential Documents

Title 3—

Proclamation 5169 of March 22, 1984

The President

Loyalty Day, 1984

By the President of the United States of America

### A Proclamation

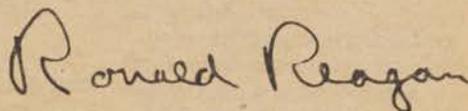
As Americans, we enjoy a rich heritage of freedom. How fortunate we are that the founders of this great country were committed to the ideal that all people share inalienable rights to life, liberty, and the pursuit of happiness. This ideal has been the inspiration for many generations of Americans in the building of what is today the greatest and most prosperous Nation in the world.

The people of the United States cherish their liberties and recognize that our freedoms of conscience and action are at the heart of the unique American tradition. To preserve this great tradition, it is important for us all to pause from time to time to rededicate ourselves to the democratic ideals which have served us so well.

For this purpose, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369, 36 U.S.C. 162), has designated May 1 of each year as Loyalty Day, a day for the reaffirmation of loyalty to the United States of America and for the recognition of the heritage of American freedom.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1, 1984, as Loyalty Day and call upon all Americans and patriotic, civic, and educational organizations to observe that day with appropriate ceremonies. I also call upon all government officials to display the flag of the United States on all government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd 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.



London, 18th May 1841

My dear Mother

I have just received your kind letter of the 14th and am glad to hear that you are all well. I am well at present and hope these few lines will find you all the same. I have not much news to write at present.

I have just received your kind letter of the 14th and am glad to hear that you are all well. I am well at present and hope these few lines will find you all the same. I have not much news to write at present.

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I have just received your kind letter of the 14th and am glad to hear that you are all well. I am well at present and hope these few lines will find you all the same. I have not much news to write at present.

Yours affectionately  
Edward Rogers

# Rules and Regulations

Federal Register

Vol. 49, No. 60

Tuesday, March 27, 1984

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

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Revision of Delegations of Authority; Procurement Executive

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document revises the delegations of authority of the Department of Agriculture to designate a Procurement Executive.

**EFFECTIVE DATE:** March 27, 1984.

#### FOR FURTHER INFORMATION CONTACT:

Anthony E. Cooch, Procurement Analyst, Procurement Division, Office of Operations, U.S. Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-6864.

**SUPPLEMENTARY INFORMATION:** On March 17, 1982, the President issued Executive Order 12352 calling for significant Federal procurement reforms. The Executive Order mandated that the heads of Executive Agencies buying products and services from the private sector designate a Procurement Executive. This document makes that designation within the Department of Agriculture to the Director of the Office of Operations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public rulemaking procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory

Flexibility Act, and thus is exempt from the provisions of that Act.

#### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

#### PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

#### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding paragraph (c)(8) to read as follows:

#### § 2.25 Delegations of authority to the Assistant Secretary for Administration.

\* \* \* \* \*

(c) \* \* \*

(8) Pursuant to Executive Order 12352, designate a Procurement Executive for the Department and delegate responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures.

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(iii) Designating contracting officers.

(iv) Establishing clear lines of contracting authority.

(v) Evaluating and monitoring the performance of the Department's procurement system.

(vi) Managing and enhancing career development of the procurement work force.

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance

standards should be established and applied.

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards.

(ix) Acting as the advocate for competition.

(x) Certifying to the Secretary that the procurement system meets approved standards.

(xi) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met.

(xii) Redelegating, as appropriate, the authority in § 2.25(c)(8)(i) to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation.

(xiii) Redelegating the authorities in § 2.25(c)(8) (ii), (iii), (iv), (vi), (vii), and (ix) to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

\* \* \* \* \*

#### Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.76 is amended by adding paragraph (a)(10) to read as follows:

#### § 2.76 Director, Office of Operations.

(a) \* \* \*

(10) Pursuant to Executive Order 12352, the Director, Office of Operations, is designated as Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures.

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(iii) Designating contracting officers.

(iv) Establishing clear lines of contracting authority.

(v) Evaluating and monitoring the performance of the Department's procurement system.

(vi) Managing and enhancing career development of the procurement work force.

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and

determining specific areas where Government-wide performance standards should be established and applied.

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards.

(ix) Acting as the advocate for competition.

(x) Certifying to the Secretary that the procurement system meets approved standards.

(xi) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met.

(xii) Redelegating, as appropriate, the authority in § 2.76(a)(10)(i) to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation.

(xiii) Redelegating the authorities in § 2.76(a)(10) (ii), (iii), (iv), (vi), (vii), and (ix) to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

Dated: March 21, 1984.

For Subpart C:

John R. Block,  
Secretary of Agriculture.

Date: March 21, 1984.

For Subpart J:

John J. Franke, Jr.,  
Assistant Secretary for Administration.

[FR Doc. 84-8188 Filed 3-26-84; 8:45 am]  
BILLING CODE 3410-01-M

## Agricultural Marketing Service

### 7 CFR Parts 911 and 915

#### Limes Grown in Florida; Avocados Grown in South Florida; Amendment of Subparts—Rules and Regulations

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the rules and regulations issued under these marketing orders to require that handlers provide adequate facilities for the grading and preparation of limes and avocados for market as a condition for registration with the committees. The rule is designed to facilitate proper inspection and certification procedures under these orders and improve administrative operations.

**DATES:** Effective date: April 1, 1984. Comments due: April 26, 1984.

**ADDRESS:** Send two copies of comments to the Hearing Clerk, U.S. Department of

Agriculture, Room 1077, South Building, Washington, D.C. 20250.

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

**SUPPLEMENTARY INFORMATION:** This interim rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This interim rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida, and under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Florida Lime Administrative Committee, and the Avocado Administrative Committee and upon other available information. It is hereby found that this action would tend to effectuate the declared policy of the Act.

This interim rule would require any person applying to either committee for certification as a registered handler to agree to provide facilities which the committees determine to be adequate for the grading and preparation of limes and avocados for market. In addition, handlers currently certified by the committees desiring to maintain their registered handler status would also be required to agree to provide such facilities. Under the marketing orders, inspection and certification of limes and avocados by Federal-State inspectors is mandatory whenever grade, size, and other requirements are in effect. The rule is designed to assure the adequacy of facilities for grading and preparing fruit for market and thereby facilitate the required inspection.

Under § 911.10 and § 915.10 of the orders, the sale or delivery of limes and avocados to handlers for preparation of the fruit for market is exempt from regulations if such handlers are registered with the committees. The purpose of registration is to aid the committees in the effective administration of the provisions of these orders. The rule requiring handlers to maintain adequate facilities for grading

and preparing fruit for market is consistent with that purpose.

The Secretary finds that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the *Federal Register* (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the modification of handler registration requirements at an open meeting, at which the committees, without opposition, recommended issuance of the requirements specified in the interim rule to become effective April 1, 1984. Handlers have been apprised of this rule's provisions and the effective date. To effectuate the declared purposes of the Act it is necessary to make the interim rule effective as specified. The interim rule provides a 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need to be received within 30 days, so that any necessary changes can be made promptly in the handler registration requirements. All comments received will be considered prior to finalization of this interim rule.

#### List of Subjects

##### 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

##### 7 CFR Part 915

Marketing Agreements and orders, Avocados, Florida.

#### PART 911—[AMENDED]

#### PART 915—[AMENDED]

The interim rule amends § 911.120 by revising paragraphs (a)(10), (b), and (e); and amends § 915.120 by revising paragraphs (a)(11), (b), and (e), to read as follows:

##### § 911.120 Handler registration.

(a) \* \* \*

(10) An agreement to provide adequate facilities for the grading and preparation of limes for market, and to comply with all other requirements of this part, including rules and regulations issued thereunder.

(b) Upon receipt of an application for registration, the Florida Lime

Administrative Committee shall make such investigation as may be appropriate, and shall issue the applicant a certificate of registration, if the applicant has facilities determined by the committee to be adequate for the grading and preparation of limes for market, and if it appears that the applicant may reasonably be expected to handle limes in accordance with the requirements of this part, including all rules and regulations issued thereunder.

(e) The committee shall suspend the certificate of registration issued pursuant to this section of any handler who (1) fails to provide facilities determined by the committee to be adequate for the grading and preparation of limes for market, (2) fails to pay assessments as required under the provisions of this part, or (3) fails to render reports as prescribed pursuant to the provisions of this part. The committee shall advise the handler in writing of the pending suspension and shall specify the time such suspension shall become effective. Upon determination by the committee that the handler has satisfied the requirements with respect to providing adequate facilities, paying assessments, and filing reports, and it appears to the committee that the handler may reasonably be expected thereafter to handle limes in accordance with the provisions of this part, including all rules and regulations thereunder, the committee shall lift such suspension.

#### § 915.120 Handler registration.

(a) \* \* \*

(11) An agreement to provide adequate facilities for the grading and preparation of avocados for market, and to comply with all other requirements of this part, including rules and regulations issued thereunder.

(b) Upon receipt of an application for registration, the Avocado Administrative Committee shall make such investigation as may be appropriate, and shall issue the applicant a certificate of registration, if the applicant has facilities determined by the committee to be adequate for the grading and preparation of avocados for market, and if it appears that the applicant may reasonably be expected to handle avocados in accordance with the requirements of this part, including all rules and regulations issued thereunder.

(e) The committee shall suspend the certificate of registration issued pursuant to this section of any handler who (1) fails to provide facilities

determined by the committee to be adequate for the grading and preparation of avocados for market, (2) fails to pay assessments as required under the provisions of this part, or (3) fails to render reports as prescribed pursuant to the provisions of this part. The committee shall advise the handler in writing of the pending suspension and shall specify the time such suspension shall become effective. Upon determination by the committee that the handler has satisfied the requirements with respect to providing adequate facilities, paying assessments, and filing reports, and it appears to the committee that the handler may reasonably be expected thereafter to handle avocados in accordance with the provisions of this part, including all rules and regulations thereunder, the committee shall lift such suspension.

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

Dated: March 22, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-8200 Filed 3-26-84; 8:45 am]

BILLING CODE 3410-02-M

## Rural Electrification Administration

### 7 CFR Part 1729

#### Electric System Planning and Design

**AGENCY:** Rural Electrification Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule amends 7 CFR Chapter XVII, Rural Electrification Administration (REA) Regulations, Electric System Design and Construction, by adding Part 1729, Electric System Planning and Design. Sections 1729.6, Compliance with National Electrical Safety Code, and 1729.10, Permitted Deviations from REA Construction Standards, are covered by this action.

This action is part of REA's ongoing effort to codify all of the agency's regulations into the Code of Federal Regulations. Sections 1729.6 and 1729.10 contain rules which are presently contained in REA Bulletin 40-7, National Electrical Safety Code—ANSI C2, 1981 Edition, and REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds. This action will consolidate REA's rules on electric system planning and design into a single, more usable document. This action will reduce the paperwork burden on REA borrowers and consulting engineering firms. This will be accomplished by eliminating the

requirement for REA to grant specific approval for deviations by borrowers from REA construction standards under two specific circumstances.

REA Bulletin 40-7 and REA Bulletin 61-10 are rescinded by this action.

**EFFECTIVE DATE:** March 24, 1984—The incorporation by reference of the publication mentioned in this rule has been approved by the Director, Office of the Federal Register, effective March 24, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. James C. Dedman, Engineering Standards Division, Rural Electrification Administration, Room 1263-S, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-9086. The Final Impact Statement describing the options considered in developing this rule and the impact of implementing the chosen option is available on request from Mr. Dedman at the above address.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.), the Rural Electrification Administration (REA) is amending 7 CFR Chapter XVII, REA Regulations, Electric System Design and Construction, by adding Part 1729, Electric System Planning and Design. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

#### Background

The Rural Electrification Administration (REA) maintains regulations pertaining to system design and construction for REA electric borrowers. These regulations are contained in 7 CFR Chapter XVII, Part 1729, Electric System Planning and Design, contains rules, policies, requirements and procedures to be followed in the planning and design of electric distribution, transmission, and generation systems or facilities financed with assistance from REA.

Section 1729.6, Compliance with National Electrical Safety Code, requires REA borrowers to construct their electric systems in accordance with the latest effective edition of the National Electrical Safety Code (NESC). REA rules concerning the NESC have been contained in REA Bulletin 40-7, National Electrical Safety Code, Bulletin 40-7 historically has been revised, upon the publication of each new edition of the NESC, to require REA borrowers to construct and operate their systems in accordance with that individual edition of the NESC. This rule rescinds Bulletin 40-7.

Section 1729.10, Permitted Deviations from REA Construction Standards, sets out two specific circumstances under which REA borrowers may deviate from REA construction standards without being required to seek specific approval from REA. When required by REA or other authorities, borrowers may make specific modifications to distribution line structures to protect raptors from contact with energized wires. REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, presently contains REA rules on raptor protection. This rule rescinds REA Bulletin 61-10. Also, when necessary, borrowers may modify the REA standard transformer connections in accordance with Rule 97D2 of the NESC.

Interested parties were given sixty (60) days in which to express their views on the proposed rule. The December 16, 1983, notice in the *Federal Register* elicited one comment on the proposed rule.

An REA electric borrower commented that, "Part 1729.10(a) has the potential to cause undue costs to the borrower when it appears that Federal, state and local authorities would have the veto power over any project unless built to raptor specifications. I feel a more realistic approach would be to have REA create a rule which would define 'areas frequented by eagles' to take care of any problem in this area."

In § 1729.10, REA is not defining environmental policy or requirements. REA's environmental regulations are proposed for codification in 7 CFR Part 1794, Environmental Policies and Procedures. Section 1729.10 merely relieves borrowers from seeking REA approval for the use of nonstandard structures for raptor protection when such protection is required by other agencies having permit or license authority over the proposed construction. An appropriate change is being made in § 1729.10(a) to clarify this point.

In view of the above, Part 1729 is added to 7 CFR Chapter XVII to read as follows:

## **PART 1729—ELECTRIC SYSTEM PLANNING AND DESIGN**

### **Subparts A-B [Reserved]**

#### **Subpart C—Electric System Design**

Sec.

1729.6 Compliance with National Electrical Safety Code.

1729.7-9 [Reserved]

1729.10 Permitted Deviations from REA Construction Standards.

Authority: 7 U.S.C. 901 et seq. and 7 U.S.C. 1921 et seq.

### **Subparts A-B [Reserved]**

#### **Subpart C—Electric System Design**

##### **§ 1729.6 Compliance with National Electrical Safety Code.**

(a) All borrowers' new lines and substations shall be constructed and operated in accordance with the requirements of the National Electrical Safety Code (NESC). The applicable edition of the NESC to be followed shall be the latest edition which is effective in accordance with the provisions of that edition. Where local regulations or other REA requirements are more stringent, those requirements shall govern.

(b) The Administrator of REA will consider specific requests to approve construction which is not in accordance with the NESC if the borrower provides evidence satisfactory to the Administrator that an exception is necessary or desirable and in the interests of the Government and the borrower.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B, C, and D. Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

##### **§§ 1729.7-9 [Reserved]**

##### **§ 1729.10 Permitted deviations from REA construction standards.**

(a) *Structures for Raptor Protection.* Standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large birds (raptors) to protect such birds from electric shock due to physical contact with energized wires. Borrowers are allowed to deviate from REA construction standards to provide for raptor protection in the

design of overhead line structures in those cases where such protection is required by (1) REA or (2) a Federal, state or local authority with permit or license authority over the proposed construction. Structures which are designed for raptor protection shall be in accordance with *Suggested Practices for Raptor Protection on Powerlines—The State of the Art in 1981*, published by the Raptor Research Foundation, Inc., provided, however, that such structures shall be in accordance with the National Electrical Safety Code unless a specific waiver has been granted by the REA Administrator. Copies of this publication may be purchased from the Raptor Research Foundation, Inc., c/o Department of Veterinary Biology, University of Minnesota, St. Paul, Minnesota 55101. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference has been approved by the Director of the Office of the Federal Register. Any deviation from the REA construction standards for the purpose of raptor protection, which is not in accordance with the above report, must be approved by REA prior to construction.

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the REA standard transformer connections may be modified in accordance with Rule 97D2 of the National Electrical Safety Code.

#### **List of Subjects in 7 CFR 1729**

Electric utilities, Engineering standards, Incorporation by reference.

Dated: March 8, 1984.

Harold V. Hunter,  
Administrator.

[FR Doc. 84-3201 Filed 3-26-84; 8:45 am]  
BILLING CODE 3410-15-M

## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 217**

#### **Interest on Deposits; Advertising of Multiple Rate Accounts**

[Docket No. R-0513]

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Policy statement.

**SUMMARY:** The Board of Governors has issued a policy statement concerning potentially misleading advertising practices for time deposits used as investments for Individual Retirement

Accounts. The Board believes that advertisements for time deposits that state in large type an initial rate that is effective for a period of a few months and then state in smaller type a lower rate that will be effective for the remaining term of the time deposit can be misleading to consumers. Such advertisements should state both rates in type of equal size in order not to be regarded as misleading, and include a conspicuous statement of the average effective annual yield. In addition, advertisements for deposits to be used in connection with Individual Retirement Accounts should not refer to contributions to such accounts as "tax-free" or "tax-exempt." This action was taken to assure that depository institutions provide meaningful and accurate information and to assist consumers to make comparisons of interest rates being offered on time deposits.

**EFFECTIVE DATE:** March 22, 1984.

**FOR FURTHER INFORMATION CONTACT:** Gilbert T. Schwartz, Associate General Counsel (202-452-3625), or Paul S. Pilecki, Senior Counsel (202-452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The Federal Reserve Board has issued the following policy statement concerning advertisements for time deposits that have split, fixed interest rates and for accounts to be used as investments for Individual Retirement Accounts.

#### Advertising of Multiple Rate Time Deposits and Individual Retirement Accounts

(a) The following advertising practice for deposits or accounts to be used as investments for Individual Retirement Accounts (IRAs) has come to the attention of the federal financial institution regulatory agencies with specific statutory authority to regulate advertising for deposits or other accounts. The advertisements display a rate of, perhaps, 15 percent in two to three inch type. In smaller, usually standard size, type, the advertisements state that the rate is paid only through a fixed date two or three months hence or for the first two or three months of the term of the account. For the remaining term of the account, which typically will be two to three years, the rate to be paid will be much lower, for example, 10.5 or 11 percent. In some cases, the maturity of the account is stated in bold type of a size similar to the higher interest rate.

(b) The Board believes that such advertisements are misleading and are

in violation of § 217.6(g) of Regulation Q (12 CFR 217.6(g)), which states that a member bank shall not make any advertisement related to interest paid on deposits that is inaccurate or misleading or that misrepresents its deposit contracts. In this regard, the display of a rate in substantially larger type than the rate that will apply for the predominant part of the term of the account is confusing to depositors and misrepresentative of the deposit contract. Moreover, such advertisements do not give meaningful information to consumers because the annual average effective yield over the life of the instrument will differ from the rates stated. (The staff of the Board has previously advised member banks that it regards any advertisement for a time deposit that states an annual rate of simple interest in excess of the average effective annual yield as inaccurate, misleading, and misrepresentative of their deposit contracts. ¶ 2-411.1 *Federal Reserve Regulatory Services*.)

(c)(1) Advertisements for time deposits where more than one rate is paid would not be regarded as misleading if each rate to be paid on the account is stated in the advertisement in type of equal size together with a conspicuous statement as to the length of time for which each rate is effective. This applies to accounts where: (i) It is known in advance what the rates to be paid throughout the life of the account will be; and (ii) the initial rate to be paid is higher than subsequent rates. In addition, such advertisements must include a conspicuous statement of the average effective annual yield for the deposit which assumes compounding of interest at least annually.

(2) For accounts subject to a variable interest rate that is determined by an index, the initial interest rate may be advertised; however, the advertisement must also include a conspicuous statement as to: (i) The time period for which such rate applies; and (ii) the method by which the rates will be determined for future periods and the time period for which such rates will apply.

(3) For accounts that offer an initial fixed rate to be followed by a variable rate determined by an index during the remainder of the term of the account, the method of determining the variable rate shall be stated in type of the same size as the fixed rate. In addition, the time periods for which the initial fixed rate and subsequent rates apply must be conspicuously stated.

(d) It is also misleading and inaccurate for advertisements to refer to an IRA as a tax-free investment. Contributions to, and earnings on, IRAs

are deferred from federal income taxes rather than exempt from taxes. Accordingly, such advertisements should not use the terms "tax-free" or "tax-exempt," or other similar language.

By order of the Board of Governors, March 22, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8223 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 83-ASW-56; Amdt. 39-4826; Predecessor Docket No. 69-EA-151]

#### Airworthiness Directive; Sikorsky S-61 Series Helicopters Certificated in All Categories

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the *Federal Register* and makes effective to all known persons a new airworthiness directive (AD), which was previously made effective to all known operators of the Sikorsky S-61 series helicopters, by individual telegrams. This AD supersedes an existing airworthiness directive, AD 69-25-05, Amendment 39-889, effective December 10, 1969. This new AD incorporates the requirements of the original AD and adds requirements. The AD is needed because of a recent report from a user of this type helicopter that a rotary wing head shaft nut was found cracked during a routine inspection and was not within the approved Rockwell hardness range. Also, investigation revealed that one vendor failed to properly stress relieve bake the nuts after cadmium plating.

**DATES:** Effective March 27, 1984, to all persons except those persons to whom it was made immediately effective by telegram dated December 30, 1983.

*Compliance schedule*—As prescribed in body of AD.

Incorporation by reference of certain publications in 14 CFR 39.13 approved by the Director of the Federal Register on March 19, 1984.

**ADDRESSES:** The applicable service bulletin may be obtained from United Technologies Corporation, (Sikorsky Aircraft), North Main Street, Stratford, Connecticut 06602, ATTN: S-61

Commercial Product Support  
Department.

Copies of the service bulletin are contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:**

Cheryl McCabe, Airframe Section, Boston Aircraft Certification Branch, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7335.

**SUPPLEMENTARY INFORMATION:**

On December 30, 1983, telegraphic AD T-84-01-51 was issued and made effective immediately upon receipt to all known operators of the Sikorsky S-61 series helicopters certificated in all categories. This AD was issued because of a recent report received from a military user of this type helicopter that a Sikorsky rotary wing head shaft nut was found cracked during a routine inspection and was not within the approved Rockwell hardness range. Also, investigation revealed that one vendor failed to properly stress relieve bake the nuts after cadmium plating. This AD supersedes an existing airworthiness directive, AD 69-25-05, Amendment 39-889 (34 FR 19545), effective December 10, 1969. AD 69-25-05 was issued to inspect nuts for cracks and for proper hardness on Sikorsky Model S-61 helicopters. This new AD incorporates the requirements of the original AD and adds a requirement to bake certain nuts at 375 F ± 25° for a minimum of 3 hours, provided no cracks are found during an inspection and a proper Rockwell hardness is found. Failure of the nut due to cracks may eventually lead to loss of the main rotor head.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, good cause existed for making the AD effective immediately to all known U.S. operators of Sikorsky Model S-61 series helicopters by individual telegrams dated December 30, 1983.

Since the situation still exists, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations.

Approximately 12 U.S. aircraft could be affected by the requirements of this

AD for an estimated one-time cost impact of \$1,550 per aircraft.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

**Sikorsky Aircraft:** Applies to Model S-61 series aircraft certificated in all categories.

Compliance required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

As a result of finding a crack in a rotary wing head shaft nut and finding the nut had improper Rockwell hardness and because of possible incomplete processing of these nuts, P/N S6110-21082-0, accomplish the following:

(a) Fluorescent magnetic particle inspect and Rockwell hardness test the rotary wing head shaft nut, in accordance with Section B of Sikorsky Service Bulletin No. 61B10-14, dated November 3, 1969, as revised by Sikorsky Message Number CST-P-83-171, Revision 2, dated December 5, 1983. Visible magnetic particle inspection and Rockwell hardness test in accordance with Section B of the service bulletin may be used as an alternate to fluorescent magnetic particle inspection and Rockwell hardness test.

(b) Any nut with cracks or not within the proper hardness range specified in Sikorsky service documents specified in paragraph (a) of this AD must be replaced before further flight with a nut that has been inspected in accordance with paragraph (a) of this AD and baked and marked in accordance with paragraph (c) of this AD, or with a Sikorsky provided nut inspected and marked in accordance with this AD.

(c) Any nut not cracked and with proper hardness as specified in the Sikorsky service documents must be baked at 375° F ± 25° F for a minimum of 3 hours and marked in accordance with the Sikorsky service documents specified in paragraph (a) of this AD.

(d) Alternate inspections, processes, or other means of compliance which provide an equivalent level of safety to this AD must be approved by the Manager, Boston Aircraft Certification Branch, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. In accordance with FAR 21.197, flight is permitted to a base where the requirements of this AD may be accomplished.

Sikorsky Service Bulletin No. 61B10-14, dated November 3, 1969, and Sikorsky message Number CST-P-83-171, Revision 2, dated December 5, 1983, identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to United Technologies Corporation, Sikorsky Aircraft,

North Main Street, Stratford, Connecticut 06602. ATTN: S-61 Commercial Product Support Department. These documents also may be examined in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective Mar. 27, 1984 as to all persons except those persons to whom it was made immediately effective by the telegram dated December 30, 1983, which contained this amendment.

This amendment supersedes Amendment 39-889 (34 FR 19545), AD 69-25-05, which became effective December 10, 1969.

(Sec. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.)

**Note.**—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

**Note.**—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on Mar. 19, 1984. The referenced documents are available at the Federal Register.

Issued in Fort Worth, Texas, on March 1, 1984.

C. R. Melugin, Jr.

Director, Southwest Region.

[FR Doc. 84-8089 Filed 3-26-84; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 4**

[T.D. 84-63]

**Adding St. Vincent and The Grenadines to the List of Nations Entitled to Special Tonnage Tax Exemption**

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Customs Regulations by adding St. Vincent and The Grenadines to the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or imposts are being imposed in ports of St. Vincent and The Grenadines upon vessels belonging to citizens of the U.S. Or on their cargoes. Therefore, privileges regarding exemption from the payment of discriminatory duties upon vessels registered in St. Vincent and The Grenadines which enter U.S. ports are granted by the U.S. to take effect retroactively to October 27, 1979, the date that St. Vincent and The Grenadines became independent.

**EFFECTIVE DATE:** October 27, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

**SUPPLEMENTARY INFORMATION:**

**Background**

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

By letters dated September 23, and December 7, 1983, the Department of State informed the Customs Service that the Government of St. Vincent and The Grenadines has not imposed any discriminatory duties or imposts on either U.S. vessels or their cargoes since that nation gained independence on October 27, 1979. The Department of State is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.22,

Customs Regulations. Therefore, the State Department recommended that St. Vincent and The Grenadines be added, effective retroactively to October 27, 1979, to the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money. On January 10, 1984, the Director, Carriers, Drawback and Bonds Division, determined that, effective October 27, 1979, St. Vincent and The Grenadines should be added to the list in § 4.22.

By virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), the President has delegated the authority to grant this exemption to the Secretary of the Treasury by E.O. 10289, September 17, 1951, as amended by E.O. No. 10882, July 18, 1960 (3 CFR, 1959-1963 Comp., Ch. II). By Treasury Department Order 165-25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to sections 4.22 and other sections of the Customs Regulations relating to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated authority to grant this exemption and to amend these sections to the Assistant Commissioner (Commercial Operations), who re delegated this authority to the Director, Office of Regulations and Rulings, who then re delegated it to the Director, Regulations Control and Disclosure Law Division.

**Finding**

On the basis of the information received from the Secretary of State, as described above, it has been determined that the United States is in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts imposed on U.S. vessels in ports of St. Vincent and The Grenadines. Therefore, St. Vincent and The Grenadines is added to the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money as of October 27, 1979.

**List of Subjects in 19 CFR Part 4**

Customs duties and inspection, cargo vessels, maritime carriers, vessels.

**Regulations Amendment**

To reflect this change, § 4.22, Customs

Regulations (19 CFR 4.22), is amended by inserting, in alphabetical order between "Sri Lanka" and "Surinam, Republic of", the words "St. Vincent and The Grenadines." To the list of nations entitled to exemptions from special tonnage taxes.

(R.S. 251, as amended, 4219, as amended, 4228, as amended, 4255, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759, (19 U.S.C. 86, 1624, 46 U.S.C. 5, 121, 128, 141))

**Inapplicability of Public Notice and Delayed Effective Date Requirements**

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

**Inapplicability of the Regulatory Flexibility Act**

This document is not subject to the provisions of section 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

**Executive Order 12291**

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

**Drafting Information**

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

Dated: March 19, 1984.

**B. James Fritz,**

*Director, Regulations Control and Disclosure Law Division.*

[FR Doc. 84-8159 Filed 3-20-84; 8:45 am]

**BILLING CODE 4820-02-M**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Housing-Federal Housing  
Commissioner**

**24 CFR Part 235**

[Docket No. R-84-1160; FR-1958]

**Mortgage Insurance; Changes in  
Interest Rates**

**AGENCY:** Office of the Assistant  
Secretary for Housing-Federal Housing  
Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This change in the regulations increases the maximum allowable interest rate on Section 235 insured loans for lower income families. This final rule is designed to bring the maximum permissible financing charges in this program into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

**EFFECTIVE DATE:** March 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** John N. Dickie, Chief, Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-7270. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The following amendment to 24 CFR Chapter II has been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 home mortgage insurance program has been raised from 12.50 percent to 13.00 percent.

The amendment is reflected in the addition of a new section under Part 235—24 CFR 235.9. Section 203.20, which was incorporated by reference in Part 235, is no longer included in that Part because the interest rate under 24 CFR 203.20 is now agreed upon by the mortgagor and mortgagee, in accordance with section 404 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (1983 Act). The 1983 Act provided, however, at section 404(b)(12)(C), that a mortgage to be insured under section 235 of the National Housing Act shall "bear interest at a rate not to exceed such percent per annum \* \* \* as the Secretary finds necessary to meet the mortgage market, \* \* \*". The Secretary

has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 58266 (December 15, 1982), amending 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendment made by this rule falls within the categorical exclusion set forth in paragraph (7) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for small increase in the mortgage interest rate in a program of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

**List of Subjects in 24 CFR Part 235**

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

**PART 235—MORTGAGE INSURANCE  
AND ASSISTANCE PAYMENTS FOR  
HOME OWNERSHIP AND PROJECT  
REHABILITATION**

Accordingly, the Department amends 24 CFR Part 235 as follows:

1. In Part 235, add a new § 235.9 to read as follows:

**§ 235.9 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages insured on or after March 21, 1984.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the date of each installment.

**Authority:** (Section 3(a), 82 Stat. 113; 12 U.S.C. 1709-1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Dated: March 20, 1984.

**Shirley M. Wiseman,**  
*General Deputy Assistant Secretary for  
Housing Federal Housing Commissioner.*

[FR Doc. 84-8225 Filed 3-26-84; 8:45 am]

**BILLING CODE 4210-27-M**

**DEPARTMENT OF JUSTICE**

**Executive Office for United States  
Attorneys**

**28 CFR Part 16**

**Production or Disclosure of Material or  
Information**

**AGENCY:** Executive Office for United States Attorneys, Justice.

**ACTION:** Final rule.

**SUMMARY:** These directives delegate authority to respond to requests pursuant to the Freedom of Information Act and the Privacy Act of 1974 to the United States Attorney for District of Columbia, from the Director, Executive Office for United States Attorneys, for those records in the custody and control of the United States Attorney for the District of Columbia.

**EFFECTIVE DATE:** March 27, 1984.

**FOR FURTHER INFORMATION CONTACT:** Susan A. Nellor, Assistant Director, Legal Services, Executive Office for United States Attorneys, Room 1627.

Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530 (202-633-4024).

#### List of Subjects in 28 CFR Part 16

Administrative practice and procedure; Freedom of information.

#### PART 16—[AMENDED]

1. Part 16, Subpart A, Title 28 of the Code of Federal Regulations is amended by designating the title to the existing Appendix to Subpart A as Appendix A, and by adding an additional Appendix to Subpart A to read as follows:

##### Appendix B to Subpart A—Delegation of Authority

(a) By virtue of the authority vested in me by Section 16.5(b) of Title 28 of the Code of Federal Regulations, I hereby delegate authority to the United States Attorney for the District of Columbia to:

- (1) Respond initially to requests;
- (2) Grant and deny access to records;
- (3) Communicate directly with the Office of Information and Privacy concerning administrative appeals; and
- (4) Prepare affidavits, litigation reports, and other necessary documents in preparation for civil litigation in suits pursuant to 5 U.S.C. 552(4)(B).

(b) This authority is limited to those records which are under the custody and control of the United States Attorney for the District of Columbia. The authority delegated herein may be redelegated.

(c) This directive is effective immediately.

2. Part 16, Subpart D, Title 28 of the Code of Federal Regulations is amended by designating the title to the existing Appendix to Subpart D as Appendix A, and adding an additional Appendix to Subpart D to read as follows:

##### Appendix B to Subpart D—Delegation of Authority

(a) By virtue of the authority vested in me by Section 16.45(a) of Title 28 of the Code of Federal Regulations, I hereby delegate authority to the United States Attorney for the District of Columbia to:

- (1) Respond initially to requests;
- (2) Grant and deny access to records;
- (3) Communicate directly with the Office of Information and Privacy concerning administrative appeals; and
- (4) Prepare affidavits, litigation reports, and other necessary documents in preparation for civil litigation in suits pursuant to 5 U.S.C. 552a(g)(1)(B).

(b) This authority is limited to those records which are in the systems of records under the custody and control of the United States Attorney for the District of Columbia. The authority delegated herein may be redelegated.

(c) This directive is effective immediately.

Dated: March 8, 1984.

William P. Tyson,

Director, Executive Office for United States Attorneys.

[FR Doc. 84-8109 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-V-FRL 2553-3]

#### Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rulemaking.

**SUMMARY:** As required by Section 110(a) of the Clean Air Act and the October 5, 1978, promulgation of National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258) the State of Illinois has submitted the State ambient lead standard as a revision to the State Implementation Plan.

The purpose of this notice is to announce receipt of the State lead standard and take final rulemaking action.

**DATE:** This action is effective May 29, 1984, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Maggie J. Greene, at (312) 886-6029, before visiting the Region V Office).

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

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

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Written comments should be sent to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

**FOR FURTHER INFORMATION CONTACT:** Maggie J. Greene, Air Programs Branch, EPA, Region V, Chicago, Illinois 60604, (312) 886-6029

**SUPPLEMENTARY INFORMATION:** On October 5, 1978, National Ambient Air Quality Standard (NAAQS) for lead were promulgated by the U.S. Environmental Protection Agency

(USEPA) (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms lead per cubic meter of air ( $\mu\text{g lead}/\text{m}^3$ ) maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (the Act), requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The State of Illinois submitted the State ambient lead standard as a proposed revision to the State Implementation Plan on August 19, 1983. In so doing, the State has treated lead consistently with other criteria pollutants that are subject to enforceable state regulations. EPA published final rulemaking on the Illinois lead SIP except for the Granite City area on March 22, 1982 (47 FR 12164) and proposed approval of the lead SIP for the Granite City area on December 29, 1983 (48 FR 57324). Further, such rulemaking is required for approval of the Illinois lead SIP for the entire State including the Granite City area which does not yet have a fully approved lead SIP.

The ambient lead standard was adopted as Illinois Pollution Control Board (IPCB) Rule 313 in a July 26, 1983, Opinion and Order of the Board. Rule 313 provides as follows:

(a) *Standard.* The ambient air quality standards for lead and its compounds are 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter.

(b) *Measurement Method.* For determining conformance with the ambient air quality standards for lead and its compounds, lead and its compounds shall be measured by the atomic absorption spectrometry or equivalent method as described in 40 CFR Part 50, Appendix G (1982).

The State lead air quality standard is as stringent as the Federal standard and the measurement method to determine compliance with the standard is equivalent to the Federal method described in 40 CFR Part 50, Appendix G, for the determination of lead in suspended particulates matter collected from ambient air. USEPA, therefore, approves it for incorporation in the Illinois SIP.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on May 29, 1984. However, if we receive notice by April 26, 1984 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new

rulemaking by proposing the action and establishing a comment period.

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

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1983.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: March 21, 1984.

William D. Ruckelshaus,  
Administrator.

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

##### Subpart O—Illinois

1. Section 52.720 is amended by adding subparagraph (c)(45) as follows:

##### § 52.720 Identification of plan.

(c) \* \* \*

(45) On August 19, 1983, the State of Illinois submitted a revision to the Illinois State Implementation Plan in the form of a July 26, 1983, Order of the Illinois Pollution Control Board (R82-12). This Order creates Rule 313 which establishes 1.5 micrograms per cubic meter, maximum arithmetic mean, averaged over a calendar quarter as the State's ambient air quality standard for lead. The Board also adopted, as part of Rule 313, a measurement method for

determining compliance with the standard.

[FR Doc. 84-8145 Filed 3-26-84; 8:45 am]

BILLING CODE 5560-50-M

#### 40 CFR Part 52

[A-IX-FRL 2553-5]

#### Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to approve changes to the State of Nevada Department of Conservation and Natural Resources (NDCNR) rules and regulations for air pollution control submitted by the Governor of Nevada as revisions to the Nevada State Implementation Plan (SIP). These revisions are administrative and retain the previous emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

**DATE:** This action is effective May 29, 1984.

**ADDRESSES:** A copy of the revisions is available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

Public Information Reference Unit,  
Environmental Protection Agency,  
Library, 401 "M" Street, S.W., Room  
2404, Washington, D.C. 20460  
Library, Office of the Federal Register,  
1100 "L" Street, N.W., Room 8401,  
Washington, D.C. 20460

**FOR FURTHER INFORMATION CONTACT:**  
Thomas Rarick, Chief, State  
Implementation Plan Section, Air  
Programs Branch, Air Management  
Division, Environmental Protection  
Agency, Region 9, 215 Fremont Street,  
San Francisco, CA 94105, (415) 974-7641.

**SUPPLEMENTARY INFORMATION:** On October 26, 1982 and September 14, 1983, the NDCNR submitted the Nevada Administrative Code "Air Pollution Control" to EPA as a SIP revision. The revision submitted on October 26, 1982 represents a codification of the previously approved "Nevada Air Quality Regulations." The revised rules are as follows and were submitted on the indicated dates:

October 26, 1982

445.430 Definitions.

445.431 "Acid mist".  
445.432 "Act".  
445.433 "Administrator".  
445.434 "Affected facility".  
445.435 "Air-conditioning equipment".  
445.436 "Air contaminant".  
445.437 "Air pollution".  
445.439 "Alternative method".  
445.440 "Aluminum equivalent".  
445.441 "Ambient air".  
445.442 "Anode bake plant".  
445.443 "Asphalt concrete plant".  
445.444 "Atmosphere".  
445.445 "Barite".  
445.446 "Barite Dryer".  
445.447 "Barite Grinding Mill".  
445.451 "Basic oxygen process furnace".  
445.453 "Bituminous coal".  
445.454 "Blast furnace".  
445.455 "Blowing tap".  
445.456 "Brass or bronze".  
445.457 "British thermal units".  
445.458 "Calcine".  
445.459 "Calcium carbide".  
445.460 "Calcium silicon".  
445.461 "Capture system".  
445.462 "Charge chrome".  
445.463 "Charge Period".  
445.464 "Coal".  
445.465 "Coal preparation plant".  
445.466 "Coal processing and conveying equipment".  
445.467 "Coal refuse".  
445.468 "Coal storage system".  
445.469 "Coke burn-off".  
445.470 "Colemanite".  
445.471 "Colemanite Processing Plant".  
445.472 "Combustible refuse".  
445.474 "Commercial-fuel oil".  
445.475 "Complex source".  
445.476 "Condensate".  
445.477 "Confidential information".  
445.480 "Continuous monitoring system".  
445.481 "Control device".  
445.482 "Converter".  
445.483 "Copper converter".  
445.484 "Custody transfer".  
445.485 "Cyclonic flow".  
445.486 "Day".  
445.487 "Diesel fuel".  
445.488 "Director".  
445.489 "Direct shell evacuation system".  
445.490 "Drilling and production facility".  
445.491 "Dross reverberatory furnace".  
445.492 "Dryer".  
445.493 "Dust handling equipment".  
445.494 "Dusts".  
445.495 "Electric arc furnace".  
445.496 "Electric furnace".  
445.497 "Electric smelting furnace".  
445.498 "Electric submerged arc furnace".  
445.499 "Emission".  
445.500 "Emission Unit".  
445.501 "Equivalent method".  
445.502 "Equivalent P<sub>2</sub>O<sub>5</sub> feed".  
445.503 "Equivalent P<sub>2</sub>O<sub>5</sub> stored".  
445.504 "Excess Emissions".  
445.509 "Ferrosilicon".  
445.510 "Ferromanganese silicon".  
445.511 "Ferrosilicon".  
445.512 "Floating roof".  
445.513 "Fossil-fuel".  
445.514 "Fossil fuel-fired steam generating unit".

- 445.515 "Fresh granular triple superphosphate".
- 445.516 "Fuel".
- 445.517 "Fuel-burning equipment".
- 445.518 "Fuel gas".
- 445.519 "Fuel gas combustion device".
- 445.522 "Furnace charge".
- 445.523 "Furnace cycle".
- 445.524 "Furnace power input".
- 445.525 "Garbage".
- 445.526 "Granular diammonium phosphate plant".
- 445.527 "Granular triple superphosphate storage facility".
- 445.528 "Heat time".
- 445.529 "High-carbon ferrochrome".
- 445.530 "High level of volatile impurities".
- 445.531 "High Terrain".
- 445.532 "Hydrocarbon".
- 445.533 "Incinerator".
- 445.534 "Isokinetic sampling".
- 445.535 "Kilogram-calorie".
- 445.536 "Lead".
- 445.537 "Local air pollution control agency".
- 445.539 "Low Terrain".
- 445.542 "Malfunction".
- 445.543 "Meltdown and refining".
- 445.544 "Meltdown and refining period".
- 445.546 "Molybdenum".
- 445.547 "Molybdenum Processing Plant".
- 445.548 "Monitoring device".
- 445.549 "Multiple chamber incinerator".
- 445.551 "Nitric acid production unit".
- 445.552 "Nitrogen oxides".
- 445.554 "Nuisance".
- 445.555 "Odor".
- 445.556 "One-hour period".
- 445.557 "Opacity".
- 445.558 "Open burning".
- 445.559 "Operating permit".
- 445.560 "Ore".
- 445.561 "Owner or operator".
- 445.562 "Particular matter".
- 445.563 "Pathological wastes".
- 445.564 "Person".
- 445.565 "Petroleum".
- 445.566 "Petroleum liquids".
- 445.567 "Petroleum refinery".
- 445.568 "Pneumatic coal-cleaning equipment".
- 445.570 "Portland cement plant".
- 445.572 "Potroom".
- 445.573 "Potroom group".
- 445.574 "Precious Metal".
- 445.575 "Precious Metal Processing Plant".
- 445.576 "Primary aluminum reduction plant".
- 445.577 "Primary control system".
- 445.578 "Primary copper smelter".
- 445.579 "Primary lead smelter".
- 445.580 "Primary zinc smelter".
- 445.581 "Process equipment".
- 445.582 "Process gas".
- 445.583 "Process upset gas".
- 445.584 "Process weight".
- 445.585 "Process weight rate".
- 445.586 "Product change".
- 445.587 "Proportional sampling".
- 445.589 "Reference conditions".
- 445.590 "Reference method".
- 445.591 "Refinery process unit".
- 445.592 "Registration certificate".
- 445.593 "Reid vapor pressure".
- 445.594 "Reverberatory furnace".
- 445.595 "Reverberatory smelting furnace".
- 445.596 "Ringelmann chart".
- 445.597 "Roaster".
- 445.598 "Roof monitor".
- 445.599 "Run".
- 445.600 "Run-of-pile triple superphosphate".
- 445.601 "Salvage operation".
- 445.602 "Secondary control system".
- 445.603 "Secondary lead smelter".
- 445.604 "Shop".
- 445.605 "Shop opacity".
- 445.608 "Silicomanganese".
- 445.609 "Silicomanganese zirconium".
- 445.610 "Silicon metal".
- 445.611 "Silvery iron".
- 445.612 "Single chamber incinerator".
- 445.614 "Sinter bed".
- 445.615 "Sintering machine".
- 445.616 "Sintering machine discharge end".
- 445.617 "Six-minute period".
- 445.618 "Slag".
- 445.619 "Smelting".
- 445.620 "Smelting furnace".
- 445.621 "Smoke".
- 445.622 "Solid waste".
- 445.624 "Stack, "chimney".
- 445.626 "Standard ferromanganese".
- 445.627 "Startup".
- 445.629 "Steel production cycle".
- 445.630 "Stop order".
- 445.631 "Storage vessel".
- 445.632 "Structure Building, Facility or Installation".
- 445.633 "Submerged fill pipe".
- 445.634 "Sulfuric acid plant".
- 445.635 "Sulfuric acid production unit".
- 445.636 "Superphosphoric acid plant".
- 445.637 "Tapping".
- 445.638 "Tapping period".
- 445.639 "Tapping station".
- 445.640 "Thermal dryer".
- 445.641 "Thermit process".
- 445.642 "Total flourides".
- 445.643 "Total smelter charge".
- 445.644 "Transfer and loading system".
- 445.645 "Triple superphosphate plant".
- 445.646 "True vapor pressure".
- 445.647 "Uncombined water".
- 445.648 "Vapor recovery system".
- 445.649 "Violation".
- 445.650 "Volatile organic compounds".
- 445.651 "Waste".
- 445.652 "Weak nitric acid".
- 445.653 "Wet garbage".
- 445.654 "Wet-process phosphoric acid plant".
- 445.655 "Abbreviations".
- 445.660 Severability.
- 445.662 Confidential information.
- 445.663 Concealment of emissions prohibited.
- 445.664 Pollution control equipment: Operation; modification; removal.
- 445.665 Hazardous emissions: Order for reduction or discontinuance.
- 445.666 Plan for reduction of emissions.
- 445.667 Excess emissions: Scheduled maintenance; testing; malfunctions.
- 445.682 Testing and sampling.
- 445.685 Monitoring systems: Verification of operation status.
- 445.686 Monitoring systems: Performance evaluations.
- 445.687 Monitoring systems: Components contracted for before September 11, 1979.
- 445.688 Monitoring systems: Adjustments.
- 445.689 Monitoring systems: Measurement of opacity.
- 445.690 Monitoring systems: Frequency of operation.
- 445.691 Monitoring systems: Recordation of data.
- 445.692 Monitoring systems: Records; reports.
- 445.693 Alternative monitoring procedures.
- 445.694 Emission discharge information.
- 445.695 Schedules for Compliance.
- 445.696 Notice of violations; appearance before commission.
- 445.697 Stop orders.
- 445.698 Appeal of director's decision: Application forms.
- 445.699 Violations: Administrative fines.
- 445.700 Violations: Manner of paying fines.
- Registration Certificates and Operating Permits*
- 445.704 Registration certificates and operating permits required.
- 445.705 Exemptions.
- 445.706 Application date; payment of fees.
- 445.707 Registration certificates: Prerequisite; application; fee; issuance; denial; expiration.
- 445.712 Operating permits: Prerequisite; application; fee; issuance; denial; posting.
- 445.713 Operating permits: Renewal.
- 445.714 Operating permits: Replacement of lost or damaged permits.
- 445.715 Operating permits: Revocation.
- 445.716 Operating permits: Change of location.
- Visible Emissions*
- 445.721 Maximum opacity of emissions.
- 445.723 Existing copper smelter.
- Emissions of Particulate Matter*
- 445.729 Process weight rate for calculating emission rates.
- 445.730 Colemanite flotation processing plants.
- 445.731 Fuel-burning equipment using indirect heat transfer.
- 445.732 Industrial sources.
- 445.734 Fugitive dust.
- Sulfur Emissions*
- 445.742 Sulfur emission.
- 445.743 Calculation of total feed sulfur.
- 445.746 Other sulfur emitting processes.
- Open and Incinerator Burning*
- 445.753 Open burning.
- 445.754 Incinerator burning.
- Supplementary Control Systems*
- 445.764 Reduction of employees' pay because of use of system prohibited.
- Miscellaneous Provisions*
- 445.844 Odors.
- 445.845 Reduction of animal matter.
- September 14, 1983*
- 445.732 Industrial sources.
- 445.808 Barite grinding mills.
- 445.815 Molybdenum processing plants.
- 445.816 Processing plants for precious metal.
- 445.843 Standards of quality for ambient air.
- 445.846 Organic solvents and other volatile compounds.

These rules revisions are administrative and do not affect current emission control requirements. The above mentioned rules reflect (1) a renumbering change, (2) expanded procedures for the issuance of a notice of violation, (3) maximum visible emission limits at 20% opacity not to exceed three minutes in any one hour, (4) process weight rates, (5) emission limits for particulate matter and sulfur compounds, and (6) guidelines for the prevention and control of fugitive dust and for open and incinerator burning.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. All rules submitted have been evaluated and found to be in accordance with EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available at the Region 9 office.

It is the purpose of this notice to approve all the rule revisions listed above and to incorporate them into the Nevada SIP. This is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, the approval will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601(a)).

#### List of Subjects in 40 CFR Part 52

Intergovernmental relations. Air pollution control. Ozone. Sulfur oxides.

Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by Reference.

Dated: March 21, 1984.  
William D. Ruckelshaus,  
Administrator.

#### PART 52—[AMENDED]

Suppart DD of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

##### Subpart DD—Nevada

1. Section 52.1470 is amended by adding paragraphs (c)(25) and (c)(26) to read as follows:

##### § 52.1470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(25) The following amendments to the plan were submitted on October 26, 1982, by the Governor.

(i) Amendments of Chapter 445 of the Nevada Administrative Code.

(A) New or amended Sections 445.430-445.437, 445.439-445.447, 445.451, 445.453-445.472, 445.474-445.477, 445.480-445.504, 445.509-445.519, 445.522-445.537, 445.539, 445.542-445.544, 445.546-445.549, 445.551, 445.552, 445.554-445.568, 445.570, 445.572-445.587, 445.589-445.605, 445.608-445.612, 445.614-445.622, 445.624, 445.626, 445.627, 445.629-445.655, 445.660, 445.662-445.667, 445.682, 445.685-445.700, 445.704-445.707, 445.712-445.716, 445.721, 445.723, 445.729-445.732, 445.734, 445.742, 445.743, 445.746, 445.753, 445.754, 445.764, 445.844, and 445.845.

(26) The following amendments to the plan were submitted on September 14, 1983, by the Governor.

(i) Amendments to Chapter 445 of the Nevada Administrative Code.

(A) New or amended Sections 445.732, 445.808 (paragraphs (1), (2) (a-c), and (3)-(5)), 445.815 (paragraphs (1), (2) (a) (1 & 2), and (3)-(5)), 445.816 (paragraphs (1), (2) (a-i), and (3)-(5)), 445.843, and 445.846 (paragraphs (1), (3), and (4)).

[FR Doc. 84-8143 Filed 3-26-84; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Parts 264 and 265

[SWH-FRL-2552-5]

#### Hazardous Waste Disposal Facilities; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

**SUMMARY:** The Environmental Protection Agency today notices the availability of two draft Technical Resource Documents for public comment. The documents are (1) *Solid Waste Leaching Procedural Manual* (SW-924), and (2) *Soil Properties, Classification, and Hydraulic Conductivity Testing* (SW-925). Technical Resource Documents provide state-of-the-art summaries of technologies and evaluation techniques determined by the Agency to constitute acceptance engineering designs, practices, and procedures. The documents may be used for information and guidance by owners and operators of facilities that treat, store, and dispose of hazardous and non-hazardous waste in landfills, surface impoundments waste piles, and land treatment facilities. These Technical Resource Documents will therefore assist in the implementation of 40 CFR Parts 264 and 265 hazardous waste management regulations by helping owner/operators and permit officials to identify and evaluate technologies that can be used to prevent potential harm to human health and the environment and to comply with the regulations.

**DATES:** Comments on the draft Technical Resource Documents must be submitted on or before June 25, 1984.

**ADDRESS:** Comments should be addressed to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. All communications should identify the document title and SW number, (e.g., *Solid Waste Leaching Procedure Manual* (SW-924)).

Copies of the draft reports are available for reading at the EPA Library Public Information Reference Unit (Room 2904) and Subtitle C Docket Room (Room S212), both located at 401 M Street, S.W., Washington, D.C. 20460, as well as at all Regional Office Libraries, Monday through Friday during the hours of 9:00 a.m. to 4:30 p.m. A limited number of personal copies of the documents may be obtained by calling the RCRA Hotline, at (800) 424-9346 (toll free) or at (202) 382-3000.

**FOR FURTHER INFORMATION CONTACT:** Arthur Day, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 382-4680.

**SUPPLEMENTARY INFORMATION:** Subtitle C of the Resource Conservation and Recovery Act (RCRA), Section 3004, required the Environmental Protection Agency (EPA) to promulgate regulations

setting performance standards for owners and operators of facilities that treat, store, and dispose of hazardous wastes. 40 CFR Part 265 addresses the standards applicable to owners and operators of interim status facilities, while 40 CFR Part 264 regulates new and existing facilities.

Both 40 CFR Parts 264 and 265 prescribe performance standards with which owners and operators must comply. In order to facilitate implementation of these standards, the EPA has developed a series of guidance documents. There are three types of documents including Technical Guidance Documents, Permit Guidance Manuals, and Technical Resource Documents. The latter present technologies and evaluation techniques which the EPA staff views as good engineering designs, practices, and procedures. Their focus is broad in scope, as they do not specifically interpret the design requirements as set forth in the regulations. The engineering techniques presented are merely suggestions.

Availability announcements of eight Technical Resources Documents were made in the May 6, 1983 Federal Register (40 FR 20440). Today's notice announces the availability of two additional Technical Resource Documents for public comment.

*A Solid Waste Leaching Procedure Manual* is a technical guide analyzing a batch leaching procedure for laboratory use with various kinds of waste that will help to predict the quality and composition of leachate from certain wastes under field conditions. *Soil Properties, Classification and Hydraulic Conductivity Testing* is a compilation of 16 available laboratory and field testing methods for the measurement of hydraulic conductivity (permeability) of both saturated and unsaturated soils and includes background information on soil classification, soil water, and soil compaction. The Technical Resource Document is intended to supplement Method 9100. The Agency requests comment on the accuracy and completeness of the information presented and encourages commenters to suggest remedies and alternatives should inaccuracy or incompleteness be identified.

Dated: February 22, 1984.

Jack McGraw,

Deputy Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 84-8144 Filed 3-28-84; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 467

[WH-FRL-2539-7]

#### Aluminum Forming Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** EPA is correcting several errors in the effluent limitations guidelines, pretreatment standards and new source performance standards for the aluminum forming point source category which appeared in the Federal Register on October 24, 1983 (48 FR 49126). This document corrects errors in both the preamble and 40 CFR part 467 including the compliance date for pretreatment standards for existing sources.

**EFFECTIVE DATE:** March 27, 1984.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet K. Goodwin at (202) 382-7126.

**SUPPLEMENTARY INFORMATION:** On October 24, 1983, EPA published final effluent limitations guidelines and standards for the aluminum forming point source category (40 CFR Part 467; 48 FR 49126). Both the preamble and regulation contained several errors. These errors are discussed briefly below and are corrected by this notice.

A typographical error was made in the compliance date for Pretreatment Standards for Existing Sources (PSES); the correct compliance date is October 24, 1986. Both the "DATES" section of the preamble and 40 CFR 467.04 are corrected by this notice.

An omission was made in the "Applicability" section of the final rule, 40 CFR 467.01(a) which states, in pertinent part, that surface treatment of aluminum is excluded from regulation under the metal finishing guidelines in 40 CFR Part 433 when performed as an integral part of aluminum forming. This sentence should indicate that surface treatment of aluminum is also excluded from the electroplating regulations at 40 CFR Part 413. Although the proposed rule specifically stated that these operations were excluded from 40 CFR Part 413 (see 47 FR 52648; November 22, 1982), the reference to 40 CFR part 413 was inadvertently dropped in the final aluminum forming regulation at 40 CFR 467.01(a). This error is corrected by this notice. Thus, the EPA has excluded from Part 413 and included under Part 467 any surface treatment of aluminum if performed as an integral part of the aluminum forming process.

This notice adds a new section, 40 CFR 467.05, that states that removal allowances pursuant to 40 CFR 403.7(a) may be granted for toxic metals limited in 40 CFR 467 when used as indicator pollutants. The Agency's intent regarding the granting of such removal allowances was explicitly stated in the preamble to the final rule (see, 48 FR 49133; October 24, 1984); however, regulatory language to this effect was inadvertently omitted from the final rule. This omission is corrected by this notice.

The Best Practicable Technology (BPT) and Best Available Technology (BAT) monthly average limitations for the pollutant aluminum are incorrect in some subparts. Shortly before promulgation a correction was made in the calculation of the treatment effectiveness concentration value used to determine the maximum for monthly average limitations for the pollutant aluminum. It in no way affects the technology basis of the regulations and only slightly affects the stringency of the regulation. This correction was reflected in some but not all of the limitations before promulgation. This notice corrects the maximum for monthly average values for the pollutant aluminum for BPT and BAT.

The core allowances for the Rolling with Neat Oils Subcategory were improperly identified. The limitations and standards for the *Core With an Annealing Furnace Scrubber* were listed as the limitations and standards for the *Core Without an Annealing Furnace Scrubber*. Likewise, the limitations and standards for the *Core Without an Annealing Furnace Scrubber* were listed as the limitations and standards for the *Core With an Annealing Furnace Scrubber*. This notice corrects the error.

Appendices B, C, D, E, and F which list pollutants excluded from regulation for specific reasons contained several errors; in many instances, the errors consist of misspelled pollutant listings or inaccurate numerical identifications. In a few cases, pollutants were properly listed as excluded from regulation but were improperly listed in a particular Appendix or were listed twice. These errors are corrected by this notice.

Also, the pollutant "vinyl chloride" was inadvertently included in the list of organic pollutants considered for regulation and in the definition of Total Toxic Organics (TTO) at 40 CFR § 467.02(p). This pollutant was not detected in any wastewater sample and is thus excluded from regulation pursuant to Paragraph 8(a)(iii) of the Settlement Agreement in *NRDC v. Train*, 8 ERC 2120 (D.D.C. 1976).

modified, 12 ERC 1833 (D.D.C. 1979). By the notice, the pollutant is deleted from the definition of TFO and listed in Appendix B as excluded from regulation because it was not detected. This correction in no way affects the mass standards for TFO because vinyl chloride was not detected and thus not included in the data used to calculate TFO.

A typographical error caused the units in the regulation to be printed as Mg/off-kg with a capital letter m rather than mg/off-kg with a lower case letter m. Similarly a typographical error caused the use of a number one instead of lower case letter l in many cases where the expression l/kg was used. This notice corrects these typographical errors.

Dated: February 29, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

The following corrections are made to FR Doc 83-28157, the Aluminum Forming Point Source Category; Effluent Limitations Guidelines; Pretreatment Standards and New Source Performance Standards published in the Federal Register on October 24, 1983 (48 FR 49126).

1. On page 49126, column one, the second paragraph under **DATES**, in the last sentence, "The compliance date for pretreatment standards for existing sources (PSES) is October 24, 1983" is corrected to read, "The compliance date for pretreatment standards for existing sources (PSES) is October 24, 1986".

2. On page 49128, column two, in the second complete paragraph, the ninth line, "(47 FR 34079, July 27, 1983)" is corrected to read, "(48 FR 34079, July 27, 1983)".

3. On page 49130, column three, the first complete paragraph, the first sentence, "porcelain enameling" is corrected to read, "porcelain enameling wastewaters".

4. On page 49131, column one, the second complete paragraph, the first sentence, "BTP" is corrected to read, "BPT".

5. On page 49131, column one, in the third complete paragraph, the last sentence, "The limitation" is corrected to read, "The limitations".

6. On page 49131, column two, on the sixth line from the top, "the available data including data including the preproposal data and is 179 l/kg (43 gal/ton)" is corrected to read, "the available data including the preproposal data and is 179 l/kg (43 gal/ton)".

7. On page 49131, column two, in the first complete paragraph, the last sentence, "13,912 l/kg" is corrected to read, "13,912 l/kg".

8. On page 49131, column two, in the second complete paragraph, the second sentence, "15,900 l/kg" is corrected to read, "15,900 l/kg".

9. On page 49131, column two, in the third complete paragraph, on line sixteen, "The BPT regulatory flow of 1,478 l/kg" is corrected to read, "The BPT regulatory flow of 1,478 l/kg".

10. On page 49131, column two, in the fourth complete paragraph, on line five, "45 l/kg" is corrected to read, "45 l/kg".

11. On page 49131, column three, in the first complete paragraph, the last sentence, "5.5 l/kg" is corrected to read, "5.5 l/kg".

12. On page 49131, column three, in the second complete paragraph, the first sentence, "1.964 l/kg" is corrected to read, "1.964 l/kg".

13. On page 49131, column three, in the third complete paragraph, last sentence, "1,555 l/kg" is corrected to read, "1,555 l/kg".

14. On page 49131, column three, in the fourth complete paragraph, first sentence, "1,329 l/kg (298 gal/ton)" is corrected to read, "1,329 l/kg (319 gal/ton)".

15. On page 49131, column three, in the fourth complete paragraph, on line thirteen, "1329 l/kg (319 gal/ton)" is corrected to read, "2,609 l/kg (626 gal/ton)".

16. On page 49132, column one, the second line, "\$84.4 million" is corrected to read, "\$48.4 million".

17. On page 49132, column one, in the second complete paragraph, the last sentence, "179 l/kg" is corrected to read, "179 l/kg".

18. On page 49132, column one, in the third complete paragraph, the last sentence, "1,391 l/kg" is corrected to read, "1,391 l/kg".

19. On page 49132, column one, in the fourth complete paragraph, the last sentence, "193.9 l/kg" is corrected to read, "193.9 l/kg".

20. On page 49132, column two, in the fourth line, "45 l/kg (11 gal/ton), 1,230 l/kg (295 gal/ton), 1,964 l/kg (0.471 gal/ton) and 5.5 l/kg (1.3 gal/ton)" is corrected to read, "45 l/kg (11 gal/ton), 1,478 l/kg (355 gal/ton), 1,964 l/kg (0.471 gal/ton) and 5.5 l/kg (1.3 gal/ton)".

21. On page 49132, column three, paragraph two, on line four "29,000 kg/yr" is corrected to read, "29,000 kg/yr".

22. On page 49132, column three, in the second complete paragraph, on line fifteen, "pollutants discharged after BPT" is corrected to read, "pollutants discharged after BAT". On line twenty of the same paragraph, "removal of approximately 1 kg (2.2 lb)" is corrected

to read, "removal of approximately 0.3 kg (0.6 lb)".

23. On page 49133, column one, on line six, "298 l/kg" is corrected to read, "298 l/kg". In the same paragraph, on line twenty-seven, the last sentence, "allow installation of small end-of-pipe" is corrected to read, "allow installation of smaller end-of-pipe".

24. On page 49133, column two, line one, "109 kg per year lb/yr" of aluminum" is corrected to read, "109 kg per year (240 lb/yr) of aluminum".

25. On page 49133, column two, in the first complete paragraph, line five, "POTW The" is corrected to read, "POTW. The".

26. On page 49133, column three, in the first complete paragraph, line seven, "0.01 mg/l" is corrected to read, "0.01 mg/l".

27. On page 49134, column one, on line twenty-eight, "drawing with emulsions or soaps subcategory less than" is corrected to read, "drawing with emulsions or soaps subcategory that manufacture less than".

28. On page 49134, column two, in the second complete paragraph, line ten, "\$1.039 million for PSNS" is corrected to read, "\$1.039 million for PSES". In the same paragraph, last sentence, "Since PSES costs are approximately the same as the PSES costs" is corrected to read, "Since PSNS costs are approximately the same as the PSES costs".

29. On page 49134, column two, in the fourth complete paragraph, last sentence, "There are" is removed.

30. On page 49135, column three, on the fifth line, "that NSPS and PSNS will continue a barrier" is corrected to read, "that NSPS and PSNS will constitute a barrier".

31. On page 49137, column two, in the third complete paragraph, last sentence, "not" is corrected to read, "no".

32. On page 49138, column one, on line three, "(1) The data is too small" is corrected to read, "(1) The data base is too small".

33. On page 49140, column one, in the fourth complete paragraph, first sentence, "plans" is corrected to read, "plants".

34. On page 49140, column two, in the fourth complete paragraph, last sentence, "4.45 µg/l to 6.43 µg/l" is corrected to read, "4.5 mg/l to 6.43 mg/l".

35. On page 49141, column three, in the first complete paragraph, line eighteen, "\$284,200 per year" is corrected to read, "\$283,200 per year".

36. In Appendix B which begins on page 49145, "088 vinyl chloride" is inserted to follow, "063 N-nitrosodi-n-propylamine" in the lists for Subparts A

and B in column one, Subpart D in column two, Subpart E in column three, and Subpart F in column one, page 49146.

37. On page 49145, column one, Appendix B, in the list for Subpart A, "041-bromophenyl phenyl ether" is corrected to read "041 4-bromophenyl phenyl ether".

38. On page 49145, column two, Appendix B, in the list for Subpart C, "036 2,6-dinitrotoluene" is corrected to read, "036 2,6-dinitrotoluene".

39. On page 49145, column two, Appendix B, in the list for Subpart D, "006 carbon tetrachloride" is removed.

40. On page 49145, column two, Appendix B, in the list for Subpart D, "028 3,3'-dichlorobenzene" is corrected to read, "028 3,3'-dichlorobenzidine".

41. On page 49145, column two, Appendix B, in the list for Subpart D, "033 1,3-dichloropropylene" is corrected to read, "033 1,3-dichloropropylene".

42. On page 49146, column one, Appendix C, in the list for Subpart C, "037 1,2-diphenylhydrazine" is removed.

43. On page 49146, column two, Appendix C, in the list for Subpart C, "072 benzo(a)anthracene (1,2-benzanthracene)" is inserted to follow, "057 2-nitrophenol".

44. On page 49146, column two, Appendix C, in the list for Subpart D, "072 benzo(a)anthracene (1,2-benzanthracene)" is inserted to follow, "057 2-nitrophenol".

45. On page 49146, column two, Appendix C, in the list for Subpart E, "015 1,1,2,2-trichloroethane", is corrected to read, "015 1,1,2,2-tetrachloroethane".

46. On page 49146, column two, Appendix C, in the list for Subpart E, "029 1,1-dichloroethylene" is corrected to read, "029 1,1-dichloroethylene".

47. On page 49146, column two, Appendix C, in the list for Subpart E, "037 1,2-diphenylhydrazine" is removed.

48. Appendix D which begins on page 49146, in the list for Subpart F on page 49147 column two, "067 butyl benzyl phthalate" is corrected to read, "067 butyl benzyl phthalate".

49. On page 49147, column two, Appendix E, in the list for Subpart E, "004 benzene" is removed.

50. On page 49147, column two, Appendix E, in the list for Subpart E, "034 2,4-dimethylphenol" is corrected to read "034 2,4-dimethylphenol".

51. On page 49147, column three, Appendix E, in the list for Subpart F, "051 chlorodibromomethane" is corrected to read, "051 chlorodibromomethane".

52. In Appendix G which begins on page 49148 "088 vinyl chloride" is

removed from the following lists: Subparts A and B in column one and two respectively, Subparts C and D in column two and three respectively, and Subpart E in column three.

53. On page 49148, Appendix G, "072 benzo(a)pyrene" is corrected to read "073 benzo(a)pyrene" in the following lists: Subparts A and B in column one, Subparts C and D in column two and three respectively, and Subpart E in column three.

54. Also in Appendix G, on page 49149, column one, in the list for Subpart F, "037 1,2-diphenylhydrazine" is inserted to follow, "035 2,4-dinitrotoluene".

55. On page 49149, column one, Appendix G, in the list for Subpart F, "073 benzo(a)pyrene" is inserted to follow, "070 diethyl phthalate", and "088 vinyl chloride" is removed.

#### PART 467—[CORRECTED]

56. In 40 CFR 467.01(a) on page 49150, column one, line 13, "under the Metal Finishing provisions of 40 CFR Part 433" is corrected to read, "under the Electroplating and Metal Finishing provisions of 40 CFR Parts 413 and 433".

57. In 40 CFR 467.01, the note which follows paragraph c in the first column of page 49150, "This paragraph is promulgated as an Interim Rule" is corrected to read, "This paragraph is promulgated as an Interim Final Rule".

58. In 40 CFR 467.02, on page 49150, column three, paragraph (p) is corrected with the removal of "vinyl chloride" from the list of organic pollutants.

59. In 40 CFR 467.03(a)(2), on page 49151, column one, "will not be used in the aluminum process" is corrected to read, "will not be used in the aluminum forming process".

60. In 40 CFR 467.03(b), on page 49151, column one, "As an alternative to monitoring" is corrected to read, "As an alternative monitoring".

61. In 40 CFR 467.03(c), on page 49151, column one, "discharge limits in direct discharge" is corrected to read, "discharge limits in direct discharge permits and for pretreatment standards. Compliance with the monthly discharge limit is required regardless of the number of samples analyzed and averaged."

62. In 40 CFR 467.04, on page 49151, column one, the compliance date for PSES is corrected to read, "October 24, 1986".

63. On page 49151, column one, following 40 CFR 467.04, add a new section, 40 CFR 467.05 to read as follows:

§ 467.05 Removal Allowances for Pretreatment Standards.

Removal allowances pursuant to 40 CFR Part 403.7(a) may be granted for the toxic metals limited in 40 CFR Part 467 when used as indicator pollutants.

64. In 40 CFR 467.12, on page 49151, column two, under *Core Without an Annealing Furnace Scrubber*, "Mg/off-kg (pounds per/million off-pounds)" is corrected to read, "Mg/off-kg (lb/million off-lbs)".

65. In 40 CFR 467.12, on page 49151, column two, the table heading, "*Core Without an Annealing Furnace Scrubber*" is corrected to read, "*Core With an Annealing Furnace Scrubber*".

66. In 40 CFR 467.12, page 49151, the term "Mg/off-kg (pounds per/million off-pound)" is replaced with, "mg/off-kg (lb/million off-lbs)" each time it appears. This term appears in the tables labelled: *Core With an Annealing Furnace Scrubber*, *Continuous Sheet Casting Spent Lubricant*, *Solution Heat Treatment Contact Cooling Water*, and *Cleaning or Etching Bath*.

67. In 40 CFR 467.12, on page 49151, column two, the table heading, "*Core With an Annealing Furnace Scrubber*" is corrected to read, "*Core Without an Annealing Furnace Scrubber*".

68. In 40 CFR 467.12, on page 49151, column three, under *Continuous Sheet Casting Spent Lubricant*, the maximum for monthly average for aluminum, "0.0062" is corrected to read, "0.0063".

69. In 40 CFR 467.12, on page 49151, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

70. In 40 CFR 467.12, on page 49151, column three, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

71. The term, "Mg/off-kg (pounds per million off-pounds)" is replaced with, "mg/off-kg (lb/million off-lbs)" each time it appears.

This term appears in the following Tables:

Section	Pages	Column	Title of table
467.12	49152	1	<i>Cleaning or Etching Rinse</i>
		1	<i>Cleaning or Etching Scrubber Liquor</i>
467.13	49152	1	<i>Core Without an Annealing Furnace Scrubber</i>
		2	<i>Core With an Annealing Furnace Scrubber</i>
		2	<i>Continuous Sheet Casting Spent Lubricant</i>
		2	<i>Solution Heat Treatment Contact Cooling Water</i>
467.14	49152	2	<i>Cleaning or Etching Bath</i>
		3	<i>Cleaning or Etching Rinse</i>
		3	<i>Cleaning or Etching Scrubber Liquor</i>
467.14	49152	3	<i>Core Without an Annealing Furnace Scrubber</i>

Section	Pages	Column	Title of table
	49153	1	Core With an Annealing Furnace Scrubber.
		1	Continuous Sheet Casting Spent Lubricant.
		1	Solution Heat Treatment Contact Cooling Water.
467.15	49153	2	Cleaning or Etching Bath.
		2	Cleaning or Etching Rinse.
		2	Cleaning or Etching Scrubber Liquor.
	49154	3	Core Without an Annealing Furnace Scrubber.
		3	Core with an Annealing Furnace Scrubber.
		3	Continuous Sheet Casting Lubricant.
467.16	49154	3	Solution Heat Treatment Contact Cooling Water.
		1	Cleaning or Etching Bath.
		1	Cleaning or Etching Rinse.
467.22	49155	1	Cleaning or Etching Scrubber Liquor.
		2	Core.
		2	Direct Chill Casting Contact Cooling Water.
467.23	49155 49156	2	Solution Heat Treatment Contact Cooling Water.
		2	Cleaning or Etching Bath.
		3	Cleaning or Etching Rinse.
467.24	49156	3	Cleaning or Etching Scrubber Liquor.
		2	Core.
		2	Direct Chill Casting Contact Cooling Water.
467.25	49157	3	Solution Heat Treatment Contact Cooling Water.
		3	Cleaning or Etching Bath.
		3	Cleaning or Etching Rinse.
467.26	49157	3	Cleaning or Etching Scrubber Liquor.
		3	Core.
		3	Direct Chill Casting Contact Cooling Water.
467.32	49158	3	Solution Heat Treatment Contact Cooling Water.
		1	Cleaning or Etching Bath.
		1	Cleaning or Etching Rinse.
467.33(c)	49159	1	Cleaning or Etching Scrubber Liquor.
		1	Core.
		2	Extrusion Press Leakage.

72. In 40 CFR 467.12, on page 49152, column one, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "43.69" is corrected to read, "44.52".

73. In 40 CFR 467.12, on page 49152, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "49.93" is corrected to read, "50.88".

74. In 40 CFR 467.13, on page 49152, column one, the table heading, "*Core Without an Annealing Furnace Scrubber*" is corrected to read, "*Core With an Annealing Furnace Scrubber*".

75. In 40 CFR 467.13, on page 49152, column two, the table heading, "*Core With an Annealing Furnace Scrubber*" is corrected to read, "*Core Without an Annealing Furnace Scrubber*".

76. In 40 CFR 467.13, on page 49152, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "6.396" is corrected to read, "6.518".

77. In 40 CFR 467.13, on page 49152, column two, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

78. In 40 CFR 467.13, on page 49152, column three, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "4.368" is corrected to read, "4.45".

79. In 40 CFR 467.13, on page 49152, column three, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "6.070" is corrected to read, "6.186".

80. In 40 CFR 467.14, on page 49152, column three, the table heading, "*Core Without an Annealing Furnace Scrubber*" is corrected to read, "*Core With an Annealing Furnace Scrubber*".

81. In 40 CFR 467.14, on page 49153, column one, the table heading, "*Core With an Annealing Furnace Scrubber*" is corrected to read, "*Core Without an Annealing Furnace Scrubber*".

82. In 40 CFR 467.15, on page 49153, column three, the table heading, "*Core Without an Annealing Furnace Scrubber*" is corrected to read, "*Core With an Annealing Furnace Scrubber*".

83. In 40 CFR 467.15, on page 49153, column three, the table heading, "*Core With an Annealing Furnace Scrubber*" is corrected to read, "*Core Without an Annealing Furnace Scrubber*".

84. In 40 CFR 467.15, on page 49153, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.090" is corrected to read, "0.90".

85. The tables titled, "*Cleaning or Etching Scrubber*" are corrected to read,

"*Cleaning or Etching Scrubber Liquor*" wherever they appear. This title appears in the following sections:

Section	Page	Column
467.15	49154	1
467.16	49154	3
467.25	49157	2
467.26	49158	1
467.35	49161	3
467.36	49162	2
467.45	49163	3
467.46	49164	2
467.55	49167	2
467.58	49168	1
467.65	49171	1
467.68	49171	3

86. In 40 CFR 467.16, on page 49154, column two, the table heading, "*Core Without an Annealing Furnace Scrubber*" is corrected to read, "*Core With an Annealing Furnace Scrubber*".

87. In 40 CFR 467.16, on page 49154, column two, the table heading, "*Core With an Annealing Furnace Scrubber*" is corrected to read, "*Core Without an Annealing Furnace Scrubber*".

88. In 40 CFR 467.16, on page 49154, column three, under *Cleaning or Etching Scrubber*, the maximum for monthly average for cyanide, "0.15" is corrected to read, "0.16".

89. In 40 CFR 467.22, on page 49155, column one, under *Core*, the maximum for monthly average for aluminum, "0.408" is corrected to read, "0.416".

90. In 40 CFR 467.22, on page 49155, column two, under *Direct Chill Casting Contact Cooling Water*, the maximum for monthly average for aluminum, "4.18" is corrected to read, "4.26".

91. In 40 CFR 467.22, on page 49155, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

92. In 40 CFR 467.22, on page 49155, column two, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

93. In 40 CFR 467.22, on page 49155, column two, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum appearing near the top of the third column, "43.69" is corrected to read, "44.52".

94. In 40 CFR 467.22, on page 49155, column three, under *Cleaning or Etching Scrubber Liquor*, the maximum for any one day for aluminum, "103.24" is corrected to read, "102.24".

95. In 40 CFR 467.22, on page 49155, column three, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "49.93" is corrected to read, "50.88".

96. In 40 CFR 467.23, on page 49155, column three, under *Core*, the maximum for monthly average for aluminum, "0.41" is corrected to read, "0.42".

97. In 40 CFR 467.23, on page 49156, column one, under *Direct Chill Casting Contact Cooling Water*, the maximum for monthly average for aluminum, "4.18" is corrected to read, "4.26".

98. In 40 CFR 467.23, on page 49156, column one, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "6.40" is corrected to read, "6.52".

99. In 40 CFR 467.23, on page 49156, column one, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "4.37" is corrected to read, "4.45".

100. In 40 CFR 467.23, on page 49156, column two, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "6.07" is corrected to read, "6.19".

101. In 40 CFR 467.24 on page 49156, column two, under *Core*, the maximum for monthly average for cyanide, "0.010" is corrected to read, "0.011".

102. In 40 CFR 467.25 on page 49157, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for cyanide, "0.56" is corrected to read, "0.59".

103. In 40 CFR 467.25, on page 49157, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for zinc, "1.24" is corrected to read, "1.25".

104. In 40 CFR 467.32, on page 49158, column two, the BPT effluent limitations under *Core* are corrected to read, as follows:

The maximum for any one day for oil and grease, "7.28" is corrected to read, "7.32".

The maximum for monthly average for oil and grease, "4.37" is corrected to read, "4.39".

The maximum for any one day for suspended solids, "14.92" is corrected to read, "15.0".

The maximum for monthly average for suspended solids, "7.10" is corrected to read, "7.13".

105. In 40 CFR 467.32, on page 49158, column two, under *Extrusion Press Leakage*, the maximum for monthly average for aluminum, "4.64" is corrected to read, "4.73".

106. In 40 CFR 467.32, on page 49158, column three, the BPT effluent limitations for *Direct Chill Casting Contact Cooling Water* are corrected to read as follows:

The maximum for monthly average for chromium, "0.27" is corrected to read, "0.24".

The maximum for monthly average for cyanide, "0.18" is corrected to read, "0.16".

The maximum for monthly average for zinc, "0.90" is corrected to read, "0.81".

The maximum for monthly average for aluminum, "4.64" is corrected to read, "4.26".

The maximum for monthly average for oil and grease, "17.74" is corrected to read, "15.95".

The maximum for monthly average for suspended solids, "28.82" is corrected to read "25.92".

The maximum for any one day for suspended solids, "60.60" is corrected to read, "54.49".

107. In 40 CFR 467.32, on page 49158, column three, under *Press Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

108. In 40 CFR 467.32, on page 49158, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

109. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

110. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "43.69" is corrected to read, "44.52".

111. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for any one day for aluminum, "103.24" is corrected to read, "102.24".

112. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "49.93" is corrected to read, "50.88".

113. In 40 CFR 467.32, on page 49159, column two, under *Degassing Scrubber Liquor*, the maximum for monthly average for aluminum, "8.20" is corrected to read, "8.35".

114. In 40 CFR 467.33(b) which appears on page 49159, column two, "There shall be no discharge of wastewater pollutants from the degassing operation" is corrected to read, "There shall be no discharge allowance for wastewater pollutants from the degassing operation".

115. In 40 CFR 467.33(c), on page 49159, column two, in the table labelled *Core*, "BPT effluent limitations" is corrected to read, "BAT effluent limitations".

116. In 40 CFR 467.33(c), on page 49159, column two, under *Core*, the

maximum for any one day for aluminum, "2.18" is corrected to read, "2.19".

117. In 40 CFR 467.33(c), on page 49159, column two, under *Core*, the maximum for monthly average for aluminum, "1.08" is corrected to read, "1.09".

118. In 40 CFR 467.33(c), on page 49159, column two, in the table labelled *Extrusion Press Leakage*, "BPT effluent limitations" is corrected to read, "BAT effluent limitations".

119. The term, "Mg/off-kg (lb/million off-lbs)" is replaced with "mg/off-kg (lb/million off-lbs)" each time it appears in the following tables:

Section	Pages	Column	Title of table
467.33(c)	49159	3	<i>Direct Chill Casting Contact Cooling Water.</i>
		3	<i>Press Heat Treatment Contact Cooling Water.</i>
		3	<i>Solution Heat Treatment Contact Cooling Water.</i>
49160	3	<i>Cleaning or Etching Bath.</i>	
	1	<i>Cleaning or Etching Rinse.</i>	
467.34(b)	49160	1	<i>Cleaning or Etching Scrubber Liquor.</i>
		1	<i>Core.</i>
467.35	49161	2	<i>Extrusion Press Leakage.</i>
		2	<i>Direct Chill Casting Contact Cooling Water.</i>
		2	<i>Press Heat Treatment Contact Cooling Water.</i>
		3	<i>Solution Heat Treatment Contact Cooling Water.</i>
		3	<i>Cleaning or Etching Bath.</i>
		3	<i>Cleaning or Etching Rinse.</i>
		3	<i>Cleaning or Etching Scrubber Liquor.</i>
		1	<i>Core.</i>
		1	<i>Extrusion Press Leakage.</i>
		1	<i>Direct Chill Casting Contact Cooling Water.</i>
467.36	49161	2	<i>Press Heat Treatment Contact Cooling Water.</i>
		2	<i>Solution Heat Treatment Contact Cooling Water.</i>
49162	49162	2	<i>Cleaning or Etching Bath.</i>
		2	<i>Cleaning or Etching Rinse.</i>
467.36	49161	3	<i>Cleaning or Etching Scrubber.</i>
		3	<i>Core.</i>
49162	49162	3	<i>Extrusion Press Leakage.</i>
		1	<i>Direct Chill Casting Contact Cooling Water.</i>
467.44	49162	1	<i>Press Heat Treatment Contact Cooling Water.</i>
		1	<i>Solution Heat Treatment Contact Cooling Water.</i>
49163	49163	1	<i>Cleaning or Etching Bath.</i>
		1	<i>Cleaning or Etching Rinse.</i>
467.45	49163	1	<i>Cleaning or Etching Scrubber Liquor.</i>
		2	<i>Core.</i>
467.46	49164	2	<i>Forging Scrubber Liquor.</i>
		2	<i>Solution Heat Treatment Contact Cooling Water.</i>
467.46	49164	3	<i>Cleaning or Etching Bath.</i>
		3	<i>Cleaning or Etching Rinse.</i>
467.46	49164	3	<i>Cleaning or Etching Scrubber.</i>
		1	<i>Core.</i>
467.52	49164	1	<i>Forging Scrubber Liquor.</i>
		1	<i>Solution Heat Treatment Contact Cooling Water.</i>
467.52	49164	1	<i>Cleaning or Etching Bath.</i>
		2	<i>Cleaning or Etching Rinse.</i>
467.52	49164	2	<i>Cleaning or Etching Scrubber.</i>
		3	<i>Core.</i>
467.52	49164	3	<i>Continuous Rod Casting Contact Cooling Water.</i>
		3	<i>Core.</i>

Section	Pages	Column	Title of table
467.53 467.54	49165 49166	1	Solution Heat Treatment Contact Cooling Water.
		1	Cleaning or Etching Bath.
		1	Cleaning or Etching Rinse.
		1	Cleaning or Etching Scrubber Liquor.
467.55	49166 49167	2	Core.
		1	Continuous Rod Casting Spent Lubricant.
		1	Continuous Rod Casting Contact Cooling Water.
		2	Solution Heat Treatment Contact Cooling Water.
467.56	49167 49168	2	Cleaning or Etching Bath.
		2	Cleaning or Etching Rinse.
		2	Cleaning or Etching Scrubber.
		2	Continuous Rod Casting Lubricant.
467.62	49168 49168	3	Continuous Rod Casting Contact Cooling Water.
		3	Solution Heat Treatment Contact Cooling Water.
		3	Cleaning or Etching Bath.
		3	Cleaning or Etching Rinse.
467.63	49168 49168	1	Cleaning or Etching Scrubber.
		2	Core.
		2	Continuous Rod Casting Spent Lubricant.
		2	Continuous Rod Casting Contact Cooling Water.
467.64	49169 49170	2	Solution Heat Treatment Contact Cooling Water.
		2	Cleaning or Etching Bath.
		2	Cleaning or Etching Rinse.
		2	Cleaning or Etching Scrubber Liquor.
467.65	49170 49171	3	Core.
		3	Continuous Rod Casting Spent Lubricant.
		3	Continuous Rod Casting Contact Cooling Water.
		3	Cleaning or Etching Bath.
467.66	49171 49171	3	Cleaning or Etching Rinse.
		1	Core.
		2	Continuous Rod Casting Lubricant.
		2	Continuous Rod Casting Contact Cooling Water.
467.66	49171 49171	2	Solution Heat Treatment Contact Cooling Water.
		3	Cleaning or Etching Bath.
		3	Cleaning or Etching Rinse.
		3	Cleaning or Etching Scrubber Liquor.

120. In 40 CFR 467.33(c), on page 49159, column three, under *Direct Chill Casting Contact Cooling Water*, the maximum for monthly average for

aluminum, "4.18" is corrected to read, "4.26".

121. In 40 CFR 467.33(c), on page 49159, column three, under *Press Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "6.40" is corrected to read, "6.52".

122. In 40 CFR 467.33(c), on page 49159, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "6.40" is corrected to read, "6.52".

123. In 40 CFR 467.33(c), on page 49159, column three, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.56" is corrected to read, "0.58".

124. In 40 CFR 467.33(c), on page 49160, column one, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "4.37" is corrected to read, "4.45".

125. In 40 CFR 467.33(c), on page 49160, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "6.07" is corrected to read, "6.19".

126. In 40 CFR 467.34(a), on page 49160, "There shall be no discharge of wastewater pollutants from the degassing operation" is corrected to read, "There shall be no discharge allowance for wastewater pollutants from the degassing operation".

127. In 40 CFR 467.34(b), on page 49160, column one, "from the core shall not" is corrected to read, "from the core and ancillary operations except those listed in paragraph (a) shall not".

128. In 40 CFR 467.34(b), on page 49160, column one, the new source performance standards for the *Core* are corrected as follows:

The maximum for monthly average for chromium, "0.057" is corrected to read "0.051".

The maximum for any one day for suspended solids, "5.08" is corrected to read, "5.10".

129. 40 CFR 467.35 which appears on page 49160, column three, is corrected by redesignating and revising the introductory text as (a) and by adding paragraphs (b) and (c) to read as follows:

**§ 467.35 Pretreatment standards for existing sources.**

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(b) There shall be no discharge allowance for wastewater pollutants from the degassing operation.

(c) The mass of wastewater pollutants from the core and ancillary operations except those identified in paragraph (b), introduced into a POTW shall not exceed the following values:

130. In 40 CFR 467.35, on page 49161, column one, under *Core*, the maximum for any one day for oil and grease, "6.78" is corrected to read, "6.80".

131. In 40 CFR 467.35, on page 49161, column two, the pretreatment standards for existing sources for the *Cleaning or Etching Bath* are corrected as follows: "Aluminum" corrected to read, "TTO".

The maximum for any one day entry for TTO, "1.15" is corrected to read, "0.124".

The maximum for monthly average entry for TTO, "0.59" is corrected to read, "—".

The pollutant listed, "Oil and grease" is corrected to read, "Oil and grease (alternate monitoring parameter)".

The entry for "Suspended Solids" is removed.

The entry for "pH" is removed.

The footnote is removed.

132. 40 CFR 467.36 which appears on page 49161, column three, is corrected by redesignating and revising the introductory text as (a) and by adding paragraphs (b) and (c) to read as follows:

**§ 467.36 Pretreatment standards for new sources.**

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(b) There shall be no discharge allowance for wastewater pollutants from the degassing operation.

(c) The mass of wastewater pollutants from the core and ancillary operations except those identified in paragraph (b) introduced into a POTW shall not exceed the values set forth below:

133. In 40 CFR 467.36, on page 49161, column three, under the *Core*, the maximum for any one day for TTO, "0.23" is corrected to read, "0.24". In the same table, the maximum for monthly average for zinc, "0.14" is corrected to read, "0.15".

134. In 40 CFR 467.36, on page 49162, column two, under *Cleaning or Etching Rinse*, the maximum for any one day for oil and grease (alternate monitoring

parameter), "139.10" is corrected to read, "13.91". In the same table, the maximum for monthly average for oil and grease (alternate monitoring parameter), "139.10" is corrected to read, "13.91".

135. In 40 CFR 467.44, on page 49162, column three, under *Forging Scrubber Liquor*, the maximum for monthly average for zinc, "0.40" is corrected to read, "0.04".

136. In 40 CFR 467.44, on page 49163, column one, the new source performance standards for *Cleaning or Etching Bath* are corrected as follows:

The maximum for any one day for aluminum, "0.772" is corrected to read, "1.094".

The maximum for monthly average for aluminum "0.376" is corrected to read, "0.485".

The maximum for any one day for suspended solids, "—" is corrected to read, "2.69".

The maximum for monthly average for suspended solids "—" is corrected to read, "2.15".

137. In 40 CFR 467.44, on page 49163, column one, under *Cleaning or Etching Rinse*, the maximum for any one day for aluminum, "8.00" is corrected to read, "8.5". In the same table, the maximum for monthly average for aluminum, "2.92" is corrected to read, "3.77".

138. In 40 CFR 467.44, on page 49163, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for any one day for aluminum, "8.33" is corrected to read, "11.81". In the same table, the maximum for monthly average for aluminum, "4.06" is corrected to read, "5.24". Also, in the same table, the footnote references are removed from the entry for suspended solids and inserted in the entry for pH.

139. In 40 CFR 467.45, on page 49163, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.896" is corrected to read, "0.897".

140. In 40 CFR 467.45, on page 49163, column three, under *Cleaning or Etching Bath*, the maximum for any one day for TTO, "1.23" is corrected to read, "0.123".

141. In 40 CFR 467.46, on page 49164, column one, *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for TTO, "0.86" is corrected to read, "—".

142. In 40 CFR 467.52, on page 49164, column three, under *Core*, the maximum for monthly average for suspended solids, "0.971" is corrected to read, "0.972".

143. In 40 CFR 467.52, on page 49164, column three, under *Continuous Rod Casting Spent Lubricant*, "Mg/off-kg (lbs/million off-lbs)" is corrected to read, "mg/off-kg (lb/million off-lbs)".

144. In 40 CFR 467.52, on page 49164, column three, the BPT limitations for *Continuous Rod Casting Spent Lubricant* are corrected to read as follows:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (lbs/million off-lbs) of aluminum rod cast	
Chromium.....	0.00086	0.00035
Cyanide.....	0.00057	0.00024
Zinc.....	0.00287	0.0012
Aluminum.....	0.0127	0.0063
Oil and Grease.....	0.0393	0.0236
Suspended Solids.....	0.0805	0.0383
pH.....	(1)	(1)

<sup>1</sup> Within the range of 7.0 to 10.0 at all times.

145. In 40 CFR 467.52, on page 49165, column one, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

146. In 40 CFR 467.52, on page 49165, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for oil and grease, "198.80" is corrected to read, "190.8".

147. The term "Mg/off-kg (lb/million off-lbs)" is replaced by "mg/off-kg (lb/million off-lbs)" each time it appears in the following tables:

Section	Pages	Column	Title of table
467.53	49165	2	<i>Continuous Rod Casting Spent Lubricant</i> .
		2	<i>Continuous Rod Casting Contact Cooling Water</i> .
		3	<i>Solution Heat Treatment Contact Cooling Water</i> .
		3	<i>Cleaning or Etching Bath</i> .
		3	<i>Cleaning or Etching Rinse</i> .
467.54	49166	3	<i>Cleaning or Etching Scrubber Liquor</i> .
		3	<i>Core</i> .

148. In 40 CFR 467.53, on page 49165, column two, under *Continuous Rod Casting Contact Cooling Water*, the maximum for monthly average for cyanide, "0.023" is corrected to read, "0.024".

149. In 40 CFR 467.54, on page 49166, column one, under *Continuous Rod Casting Spent Lubricant*, the maximum for any one day for zinc, "0.0002" is corrected to read, "0.002". In the same table, the maximum for monthly average for suspended solids, "0.03" is corrected to read, "0.024".

150. In 40 CFR 467.54, on page 49166, column two, under *Cleaning or Etching Rinse*, the maximum for any one day for suspended solids, "20.67" is corrected to read, "20.87".

151. In 40 CFR 467.55, on page 49167, column one, under *Continuous Rod Casting Contact Cooling Water*, the maximum for any one day for chromium, "0.853" is corrected to read, "0.086". In the same table the maximum for any one day for cyanide, "0.562" is corrected to read, "0.057".

152. In 40 CFR 467.55, on page 49167, column one, under *Cleaning or Etching Bath*, the maximum for any one day for TTO, "0.13" is corrected to read, "0.124".

153. In 40 CFR 467.55, on page 49167, column two, under *Cleaning or Etching Scrubber*, the maximum for any one day for TTO, "1.33" is corrected to read, "1.34".

154. In 40 CFR 467.56, on page 49167, column two, under *Core*, "Mg/off-kg (lb/per million off-lbs)" is corrected to read, "mg/off-kg (lb/million off-lbs)".

155. In 40 CFR 467.56, on page 49167, column three, the pretreatment standards for new sources for *Continuous Rod Casting Contact Cooling Water*, are corrected to read as follows:

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (lbs/million off-lbs) of aluminum rod cast	
Chromium.....	0.072	0.029
Cyanide.....	0.039	0.016
Zinc.....	0.198	0.082
TTO.....		0.134
Oil and Grease (alternate monitoring parameter).....	1.94	1.94

156. In 40 CFR 467.62, on page 49168, column two, under *Core* the maximum for monthly average for aluminum, "1.47" is corrected to read, "1.50".

157. In 40 CFR 467.62, on page 49168, column two, under *Continuous Rod Casting Spent Lubricant*, the maximum for monthly average for cyanide, "0.0002" is corrected to read, "0.0003".

158. In 40 CFR 467.62, on page 49168, column two, under *Continuous Rod Casting Spent Lubricant*, the maximum for monthly average for aluminum, "0.006" is corrected to read, "0.007". In the same table, the entry for suspended solids, "0.038" is corrected to read, "0.039".

159. In 40 CFR 467.62, on page 49168, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for aluminum, "49.54" is corrected to read, "49.55". In the same table, the maximum for monthly average for aluminum, "24.19" is corrected to read, "24.66".

160. In 40 CFR 467.63, on page 49169, column one, under *Continuous Rod Casting Contact Cooling Water*, the

maximum for any one day for chromium, "0.085" is corrected to read, "0.086". In the same table the maximum for monthly average for cyanide of "0.023" is corrected to read, "0.024".

161. In 40 CFR 467.63, on page 49169, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.896" is corrected to read, "0.897".

162. In 40 CFR 467.64, on page 49169, column three, under the *Core*, the maximum for any one day for cyanide, "0.093" is corrected to read, "0.094". In the same table, the maximum for monthly average for aluminum, "1.26" is corrected to read, "1.27".

163. In 40 CFR 467.64, on page 49169, column three, under *Continuous Rod Casting Spent Lubricant*, the maximum for monthly average for aluminum, "0.0051" is corrected to read, "0.0053".

164. In 40 CFR 467.64, on page 49170, column one, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.760" is corrected to read, "0.754".

165. In 40 CFR 467.64, on page 49170, column one, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for cyanide, "0.405" is corrected to read, "0.408".

166. In 40 CFR 467.64, on page 49170, column one, under *Cleaning or Etching Rinse*, "USPS" is corrected to read, "NSPS". In the same table, the maximum for any one day for oil and grease, "13.911" is corrected to read, "13.91".

167. In 40 CFR 467.64, on page 49170, column one, under *Cleaning or Etching Scrubber Liquor*, "mMg/off-kg (lb/million off-lbs)" is corrected to read, "mg/off-kg (lb/million off-lbs)".

168. In 40 CFR 467.65, on page 49170, column two, under *Continuous Rod Casting Contact Cooling Water*, the maximum for any one day for chromium, "0.085" is corrected to read, "0.086". In the same table, the maximum for monthly average for cyanide, "0.023" is corrected to read, "0.024". Also in the same table, the maximum for monthly average for zinc, "0.118" is corrected to read, "0.119".

169. In 40 CFR 467.65, on page 49170, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for zinc, "1.24" is corrected to read, "1.25".

170. In 40 CFR 467.65, on page 49171, column one, under *Cleaning or Etching Scrubber*, the maximum for any one day for TTO, "1.33" is corrected to read, "1.34".

171. In 40 CFR 467.66, on page 49171, column two, the pretreatment standards for new sources for *Continuous Rod*

*Casting Contact Cooling Water* are corrected to read as follows:

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Maximum for monthly average
	Mg/off-kg (lbs/million off-lbs) of aluminum rod cast	
Chromium.....	0.072	0.029
Cyanide.....	0.039	0.016
Zinc.....	0.198	0.082
TTO.....	0.134	
Oil and Grease (alternate monitoring parameter).....	1.84	1.94

172. In 40 CFR 467.65, on page 49170, column two, under *Core*, the maximum for monthly average for chromium, "0.84" is corrected to read "0.084".

[FR Doc. 84-6092 Filed 3-20-84; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR Bureau of Land Management

[Circular No. 2542]

### 43 CFR Parts 3100, 3200, 3400 and 3500

#### Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; and Leasing of Minerals Other Than Oil and Gas; Amendment Changing the Collection Process for Mineral Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

**SUMMARY:** This final rulemaking will amend the existing regulations covering the procedures for collection of bonus and rental payments required in connection with mineral leases issued by the Bureau of Land Management. The final rulemaking will transfer most bonus and rental collections after the payment for the initial lease year to the Minerals Management Service. This final rulemaking is being issued to comply with the requirements of the Federal Oil and Gas Royalty Management Act of 1982 and a Memorandum of Understanding between the Bureau of Land Management and the Minerals Management Service.

**EFFECTIVE DATE:** April 26, 1984.

**ADDRESS:** Any inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Bruce, (202) 343-8735.

**SUPPLEMENTARY INFORMATION:** This final rulemaking will implement the

provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701-1757) and a Memorandum of Understanding between the Bureau of Land Management and the Minerals Management Service dealing with the question of remittances in connection with mineral leases issued by the Bureau of Land Management. Basically, the final rulemaking changes the provisions in the existing regulations requiring that all bonus and rental remittances made in connection with mineral leases be made to the Bureau of Land Management. Under this final rulemaking, normally only the initial bonus, first year's rental and all required fees will be remitted to the Bureau of Land Management, with all subsequent payments being remitted to the Minerals Management Service. The change made by the final rulemaking will permit the Minerals Management Service to better meet its responsibility of providing the highest possible return from mineral leases granted by the United States.

The change is being issued as a final rulemaking because it is an administrative change, one that imposes no new burdens on the public. Holders of mineral leases will continue to have to remit required payments, but with the amendment being made by this final rulemaking, most post-lease issuance bonus and rental remittances will be made to the Minerals Management Service, rather than to the Bureau of Land Management. The final rulemaking excepts leases on six categories of lands from the requirement that most post-lease issuance bonus and rental remittances be paid to the Service, but will continue to be paid to the Bureau. The holders of the approximately 3,000 leases covered by this exception have been notified that they will continue to make their payments to the Bureau.

The principal author of this proposed rulemaking is Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management, assisted by the staff of the Deputy Director for Energy and Mineral Resources, Bureau of Land Management.

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.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will impact equally on all entities, large or small. The impact will be insignificant since it only requires a change in the agency within the Department of the Interior to whom required remittances payable after lease issuance are made in connection with mineral leases issued by the Bureau of Land Management. Unless the amount of the remittances is changed under the terms of the lease or under authority granted the Secretary of the Interior, the remittances will be unchanged.

The final rulemaking contains no additional information collection requirements requiring approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

#### List of Subjects

##### 43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

##### 43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

##### 43 CFR Part 3470

Coal, Mineral royalties, Mines, Public lands—mineral resources, Surety bonds.

##### 43 CFR Part 3500

Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 226), the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Groups 3100, 3200, 3400 and 3500, Subchapter C of Title 43 of the Code of Federal Regulations are amended as set forth below.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 20, 1984.

#### PART 3100—[AMENDED]

1. Section 3103.1-1 is revised to read:

##### § 3103.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

2. Section 3103.1-2(a) is revised to read:

##### § 3103.1-2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year rentals and bonuses for leases issued under group 3100 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals for non-producing leases covering: Coos Bay Wagon Road; Oregon and California Grant; BLM National Grasslands; National Petroleum Reserve—Alaska; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals for non-producing leases not covered by paragraph (a)(1) of this section shall be paid to the Service.

##### § 3103.2-2 [Amended]

3. Section 3103.2-2 is amended by amending the introductory paragraph of the section by inserting after the phrase "proper BLM office" in the three places it appears and the phrase "improper BLM office", the one place it appears the phrase, "or the designated Service office, whichever is appropriate," and by removing the period at the end of the last complete sentence in the introductory paragraph and adding the phrase ", except that during the period April 1, 1984, through March 31, 1985, payments made improperly to either the Bureau or Service shall be forwarded to the appropriate agency."

##### § 3103.3-2 [Amended]

4. Section 3103.3-2(c) is amended by removing the phrase "until the lease accounts on the non-participating acreage are returned to the Bureau of Land Management".

##### § 3108.2-1 [Amended]

5. Section 3108.2-1 is amended by:

A. Amending paragraph (a) by inserting after the phrase "proper BLM office", where it appears, the phrase "or the designated Service office, as appropriate,"; and"

B. Amending paragraph (b) by:

(1) Amending the first sentence of the paragraph by inserting a comma after the word "bill" and after the word "officer";

(2) Amending the third sentence of the paragraph by inserting after the phrase "authorized officer" the phrase "or the designated Service office, as appropriate" and by removing the phrase "on a form approved by the Director"; and

(3) Amending the fourth sentence of the paragraph by inserting after the phrase "proper BLM office" the phrase "or the Service, as appropriate".

#### PART 3200—[AMENDED]

6. Section 3205.1-1 is revised to read:

##### § 3205.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—the Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

7. Section 3205.1-2 is revised to read:

##### § 3205.1-2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year rentals and bonuses for leases issued under group 3200 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals and deferred bonus amounts payable after the first year for non-producing leases covering: Coos Bay Wagon Road; Oregon and California Grant; National Grasslands; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases not covered by paragraph (a)(1) of this section shall be paid to the Service."

(b) All royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all royalty payments under easements for directional drilling are to be paid to the Service.

**PART 3400—[AMENDED]**

8. Section 3473.1-1 is revised to read:

**§ 3473.1-1 Form of remittance.**

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

9. Section 3473.1-2 is revised to read:

**§ 3473.1-2 Where submitted.**

(a)(1) All first-year rentals and the first-year portions of all bonuses for leases issued under group 3400 of this title shall be paid to the Bureau of Land Management State office having jurisdiction over the lands (43 CFR Subpart 1821). In addition, all second-year and subsequent rentals and deferred bonus amounts payable after the first year for non-producing leases covering: Coos Bay Wagon Road, Oregon and California Grant; National Grasslands; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the Bureau of Land Management State office having jurisdiction over the lands (43 CFR Subpart 1821).

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases not covered by paragraph (a)(1) of this section shall be paid to the Service.

(b) All royalties on producing leases, all payments under leases in their minimum production period, and all advance royalties shall be paid to the Service.

10. Section 3503.1-1 is revised to read:

**§ 3503.1-1 Form of remittance.**

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

**PART 3500—[AMENDED]**

11. Section 3503.1-2 is revised to read:

**§ 3503.1-2 Where submitted.**

(a)(1) All first-year rentals and bonuses for leases issued under group

3500 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals for non-producing leases covering: Coos Bay Wagon Road; Oregon and California Grant; National Grasslands; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and all payments for leases not covered by paragraph (a)(1) of this section shall be paid to the Service.

(b) All royalties on producing leases and all payments under leases in their minimum production period shall be paid to the Service.

[FR Doc. 84-7871 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-84-M

**LEGAL SERVICES CORPORATION****45 CFR Parts 1612, 1618 and 1621****Instruction on Implementation of Eligible Client Grievance Procedures.**

**AGENCY:** Legal Services Corporation.

**ACTION:** Withdrawal of LSC Instruction 83-10.

**SUMMARY:** Instruction 83-10, dealing with the establishment of grievance procedures pursuant to Section 1006(b)(2) of the Legal Services Corporation Act of 1974, as amended 1977, 45 CFR 1612.5, 45 CFR 1618, and 45 CFR 1621, was published in the *Federal Register* on Monday, December 19, 1983, at page 56058. On the basis of comments received indicating that the language of the Instruction could be interpreted as going beyond the language of the Act and Regulations, the Corporation has decided to withdraw Instruction 83-10. It may be reissued in modified form at a later date.

**EFFECTIVE DATE:** Instruction 83-10 is withdrawn effective March 27, 1984.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Opsut, Office of Compliance and Review, Legal Services Corporation, 733 Fifteenth Street, N.W., Washington, D.C. 20005, (202) 272-4331.

Dated: March 20, 1984.

Gregg Hartley,  
Director, Office of Field Services.

[FR Doc. 84-8176 Filed 3-26-84; 8:45 am]

BILLING CODE 6620-35-M

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 83-488; RM-4425]

**TV Broadcast Station in Gainesville, Florida; Changes Made in Table of Assignments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns UHF Channel 61 to Gainesville, Florida, as its third TV assignment in response to a petition filed by Holt Robinson Communications Corp.

**EFFECTIVE DATE:** May 22, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**Report and Order; Proceeding Terminated**

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Gainesville, Florida); MM Docket No. 83-488, RM-4425.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 27563, published June 16, 1983, which invited comments on a proposal to assign UHF Television Channel 61 to Gainesville, Florida, in response to a petition filed by Holt Robinson Communications Corp. ("petitioner"). Petitioner submitted comments in support of the proposal and expressed an interest in applying for the channel, if assigned. Gainesville Television, Inc. filed opposing comments.

2. Gainesville Television, Inc., licensee of WCJB-TV (Channel 20) in Gainesville, filed comments in opposition to the proposal, stating that there was already sufficient television service provided by stations in and around Gainesville, as well as cable TV service and low power TV applications pending. The Commission has determined that questions concerning sufficiency of service should be taken up at the application stage, where the specific proposal can be analyzed.

3. We believe that the petitioner has adequately demonstrated the need for a third television assignment in

Gainesville and that the public interest would be served by assigning UHF commercial Channel 61 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules. However there are two applications pending for Channel 53 at High Springs, Florida, which specify transmitter locations short spaced to the present Gainesville allocation. These applicants would need to specify another site in order to avoid the spacing problem.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.263 of the Commission's Rules, it is ordered, that effective May 22, 1984, the TV Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Gainesville, Florida.....	*5-, 20, 61+

5. It is further ordered, that this proceeding is terminated.

6. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-8117 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 83-489; RM-4416; RM-4486]

#### TV Broadcast Stations in Katy and Pasadena, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 51 to Katy, Texas, as its first UHF television channel in response to a petition filed by the Enigma Corporation. A counterproposal submitted by Dr. Samuel Levantino to assign Channel 51 to Pasadena, Texas, has been withdrawn.

EFFECTIVE DATE: May 22, 1984.

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

#### FOR FURTHER INFORMATION CONTACT:

Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

#### Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Katy and Pasadena,<sup>1</sup> Texas); MM Docket No. 83-489, RM-4416, RM-4486.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, published in the *Federal Register* on June 27, 1983 (48 FR 29552), proposing the assignment of UHF television Channel 51 to Katy, Texas, in response to a petition by the Enigma Corporation ("Enigma").

2. Comments were filed by Enigma, reiterating its continued intention to apply for a construction permit for Channel 51 if the channel is assigned to Katy, and the Association of Maximum Service Telecasters, Inc. ("AMST").

<sup>2</sup> Supporting comments were filed by Dr. Samuel R. Levantino.<sup>3</sup>

3. After consideration of the proposal, the Commission is persuaded that the public interest would be served by assigning Channel 51 to Katy, Texas, as its first television channel assignment. A site restriction of 3.6 miles south is required to avoid short spacing to a construction permit for Station KLMG-TV on Channel 51 in Longview, Texas.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.238 of the Commission's Rules, it is ordered, That effective May 22, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Katy, Texas.....	51+

5. It is further ordered, that this proceeding is terminated.

<sup>1</sup> This community has been added to the caption.

<sup>2</sup> AMST's comments were directed to the Pasadena proposal (see fn. 3, *infra*).

<sup>3</sup> Originally, Dr. Levantino filed a counterproposal to assign Channel 51 to Pasadena, Texas. However, on January 9, 1984, Dr. Levantino withdrew the Pasadena petition in support of the Katy proposal. Thus we have given no further consideration to the Pasadena proposal.

6. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-8118 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 83-97; RM-4235; RM-4428]

#### FM Broadcast Stations in Pullman, Washington and Moscow, Idaho; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Class C Channel 258 to Pullman, Washington, in response to a petition filed by P-N-P Broadcasting. The assignment could provide a second FM service to Pullman.

EFFECTIVE DATE: May 22, 1984.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

#### List of Subjects in 47 CFR 73

Radio broadcasting.

#### First Report and Order

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Pullman, Washington and Moscow, Idaho)

MM Docket No. 83-97, RM-4235, RM-4428.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 8503, published March 1, 1983, proposing the assignment of Channel 258 to Pullman, Washington, as its second FM assignment. The *Notice* was issued in response to a petition filed by P-N-P Broadcasting ("petitioner"). Petitioner filed comments, restating its intent to apply for the channel, if assigned. A counterproposal was filed by KRPL, Inc.<sup>2</sup> proposing instead the substitution

<sup>1</sup> This community has been added to the caption.

<sup>2</sup> KRPL, Inc. is the licensee of Station KRPL-FM, Moscow, Idaho.

of Channel 258 for Channel 280A at Moscow, Idaho, to which the petitioner responded.

2. A staff study indicates that Channel 291 can be assigned to Moscow, Idaho. Thus, we are issuing a *Further Notice of Proposed Rule Making* seeking comments on the proposed substitution of channels at Moscow. In so doing, we have not considered the comments of KRPL, Inc. comparing the need for the assignment of Channel 258 to Moscow instead of to Pullman.

3. After consideration of P-N-P's proposal, the Commission is satisfied that the public interest would be served by a second FM assignment at Pullman. We shall, therefore, assign Channel 258 to Pullman, Washington. As stated in the *Notice*, the transmitter site is restricted to 3.7 miles south of the city to avoid short spacing to FM Stations KSEM, Moses Lake, Washington, and KICN, Spokane, Washington.

4. Canadian concurrence has been obtained in the assignment of Channel 258 to Pullman, Washington.

5. In view of the foregoing and pursuant to the authority contained in §§ 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 22, 1984, the FM Table of Assignments (§ 73.202(b) of the Rules) is amended with regard to the following community:

City	Channel No.
Pullman, Washington.....	258, and 285A.

6. For further information, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 305, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.  
Roderick K. Porter,  
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-8119 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

[Docket No. 40228-19]

**Pacific Coast Groundfish Fishery**

**AGENCY:** National Marine Fisheries Service; NMFS, NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to amend the rules implementing the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP), published on October 5, 1982 (47 FR 43964). Two measures in § 663.26, Gear Restrictions are clarified so that the mesh size of a trawl codend will be measured in the last 50 meshes of the net, and that a roller or bobbin trawl must have at least two 14-inch rollers or bobbins equally spaced on each side within 10 feet of the center of the footrope. This final rule clarifies and eliminates misinterpretations of the groundfish regulations.

**EFFECTIVE DATE:** 0001 hours, PDT, on April 25, 1984.

**FOR FURTHER INFORMATION CONTACT:** T. E. (Gene) Kruse at 206-527-6160 or Floyd S. Anders, Jr. at 213-548-2526.

**SUPPLEMENTARY INFORMATION:** This final rule clarifies two portions of the existing regulations which govern fishing for groundfish along the Pacific coast. The two portions, § 663.26 (b)(2) and (b)(7), have caused confusion and compliance has been jeopardized. The first change makes it clear that mesh measurements to determine compliance with minimum requirements are to be taken in the last 50 meshes of the codend. The second change clarifies that rollers or bobbins used on the footrope of a trawl net must be 14 inches in diameter, free to rotate, and spaced so that at least two are on each side within ten feet of the center.

This rule was published as a proposed rule on October 31, 1983 (48 FR 50129), with a 45-day comment period, which ended December 15, 1983. Since the notice of the proposed rule was published, the exact dimensions of the stainless steel wedge used to make these measurements have been added to this rule. The genesis of the issues and the basis for the corrective measures were discussed at length in the proposed rule and are not repeated here. No comments were received on the proposed rule. These changes also were the subject of public discussion and comment at meetings of the Pacific Fishery Management Council during the summer of 1983.

**Classification**

The Regional Director determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Council prepared an environmental impact statement (EIS) for this FMP; a notice of availability was

published on November 30, 1979 (44 FR 69005). There will be no change in environmental impact from that determined in the EIS as a result of this rule.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

This rule has been certified as "nonsignificant" under the Regulatory Flexibility Act. It makes a minor technical adjustment to clarify the regulations; it will have no economic effect and will create no extra paperwork or reporting burdens.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. (16 U.S.C. 1801 *et seq.*)

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: March 22, 1984.

**Carmen J. Blondin,**  
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

**PART 663—[AMENDED]**

For the reasons set out in the preamble, 50 CFR Part 663 is amended as follows:

1. The authority citation for Part 663 is as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*  
2. In § 663.26 paragraphs (b)(2) and (b)(7) are revised to read as follows:

**§ 663.26 Gear restrictions.**

\* \* \* \* \*  
(b) \* \* \* \* \*

(2) *Mesh size.* Trawl nets may be used if they meet the minimum sizes set forth below. The minimum sizes apply to the last fifty meshes running the length of the net to the terminal (closed) end of the codend. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 18 of 20 sets of two meshes each of wet mesh in the codend.  
\* \* \* \* \*

(7) *Roller trawl or bobbin trawl.* In the Eureka, Columbia, and Vancouver Subareas, if trawl mesh size less than 4.5 inches is used, rollers or bobbins must be at least 14 inches in diameter and free to rotate, with at least 2 rollers or bobbins equally spaced on each side

of the footrope within 10 feet of the center of the footrope of the net.

[FR Doc. 84-8205 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

## 50 CFR Part 671

[Docket No. 31230-254]

### Tanner Crab off Alaska; Closure of Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Rule-related notice; closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum harvest level of Tanner crab in the North Mainland Section of the Kodiak District in Registration Area J will be achieved on March 23, 1984, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing the North Mainland Section to fishing for Tanner crab by vessels of the United States on that date. The previously scheduled closing date is April 30, 1984.

**DATE:** This notice is effective 12:00 noon, Alaska Standard Time (AST), March 23, 1984. It was filed for public inspection with the Office of the Federal Register on March 26, 1984. Public comments on this notice of closure are invited until April 9, 1984.

**ADDRESSES:** Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST weekdays) at (1) the NMFS Kodiak Field Office, ADF&G Building, Kashevaroff and Mission Roads, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Baglin (NMFS Fishery Management Biologist), 907-486-4791.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act. Provides for inseason adjustments by field order of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. The Kodiak District is further subdivided into eight sections. The Alaska Board of Fisheries has set the desired 1984 harvest level for the North Mainland Section at 1.25 million pounds, based on pot index surveys conducted by the Alaska Department of Fish and Game (ADF&G) in 1983.

The 1984 fishing season for this section began on February 10. Approximately 15 vessels have delivered about 1.2 million pounds through March 18. The catch rate has declined rapidly from about 45 to about 25 crabs per pot. This rapid decline indicates that stocks are insufficient to support this fishery through the scheduled April 30 closure date. The optimum harvest level of 1.25 million pounds is expected to be reached on March 23.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that: (1) The actual condition of Tanner crab stocks in the North Mainland Section is substantially different from the condition anticipated at the beginning of the fishing year; and (2) this difference reasonably supports the need to protect

those Tanner crab stocks by closing the North Mainland Section of the Kodiak District, as described in § 671.26(f)(1)(i). This section is therefore closed to all fishing for Tanner crab from 12:00 noon, AST, March 23, 1984, until 12:00 noon ADT, April 30, 1984, at which time the closure of this area prescribed in § 671.26(f)(2)(i) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through ADF&G procedures, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this field order's continued effect, modifying it, or rescinding it.

##### Other Matters

Tanner crab stocks in the North Mainland Section will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order are contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-8204 Filed 3-23-84; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 49, No. 60

Tuesday, March 27, 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.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 217

[Docket No. R-0514]

#### Interest on Deposits; Advertising; Regulation Q

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Board is proposing to amend Regulation Q—Interest on Deposits to incorporate its Policy Statement of March 22, 1984, concerning advertising of split rate time deposits and Individual Retirement Account ("IRA") deposits and to clarify permissible advertising methods in view of the removal of federal deposit interest rate limitations. The Board is also requesting comments on other advertising and disclosure issues that may warrant consideration under Regulation Q.

**DATES:** Comments must be received by May 22, 1984.

**ADDRESS:** Interested parties are invited to submit written data, views, or arguments concerning the proposal to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or such comments may be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Gilbert T. Schwartz, Associate General Counsel (202/452-3625); Paul S. Pilecki, Senior Counsel (202/452-3281); or Elaine M. Boutilier, Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The Board is authorized under Section 19(j)

of the Federal Reserve Act (12 U.S.C. 371b) to prescribe rules governing the advertisement of interest on time and savings deposits by member banks. The current regulation is codified in Regulation Q at 12 CFR 217.6—Advertising of Interest on Deposits. The Board believes that revisions to this regulation may be warranted in view of the deregulation of interest rate ceilings resulting from actions of the Depository Institutions Deregulation Committee ("DIDC") pursuant to the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221).

The DIDC has substantially deregulated the limitations on interest rate ceilings that previously existed. In this deregulated environment, depository institutions have greater freedom in structuring time and savings deposits. This freedom has led to a vast diversity in terms and conditions on deposit accounts, making it more difficult for the consumer to compare accounts. Consequently, the issue of whether customers are receiving meaningful information in advertisements for deposit accounts has become more important.

In recognition of this increased importance of advertising, on March 22, 1984, the Board adopted a Policy Statement concerning the advertising of split rate accounts, in particular, the potentially misleading advertising practices for deposits used as investments for IRAs. The Board anticipates that similar actions will be taken by the Comptroller of the Currency, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation. In summary, the Policy Statement provides that the Board believes that advertisements that state in large type an initial rate that is effective for a period of a few months and then state in smaller type a lower rate that will be effective for the remaining term of the deposit can be misleading to consumers. Such advertisements should state both rates in equal type in order not to be regarded as misleading. In addition, advertisements for deposits to be used in connection with IRS should not refer to contributions to such accounts as "tax-free," "tax-exempt" or other similar terms. This action was taken to assure that depository institutions provide meaningful and accurate information and to assist consumers to make

comparisons of deposit interest rates being offered.

The Board proposes that the principles set forth in its March 22, 1984 Policy Statement be incorporated into Regulation Q, as an amendment to 12 CFR 217.6. The Board is requesting comments on the proposed amendment, and also is interested in any alternative proposals that would achieve the goals of the Policy Statement. In addition, the Board requests comments regarding other advertising and disclosure issues arising from the deregulation of interest rate ceilings, and whether existing provisions of Regulation Q should be modified to reflect the removal of interest rate ceilings. Currently, the regulation establishes a framework of deposit advertising rules aimed at full disclosure of the material elements of deposit instruments. As a general matter, Regulation Q prohibits any advertisements or solicitations relating to interest paid on deposits that are inaccurate, misleading, or misrepresentative of deposit contracts (12 CFR 217.6(g)). Other provisions of the regulation require that specific types of information appear in advertisements:

(a) Interest rates must be stated in terms of the annual rate of simple interest, and advertisements that display an effective annual yield based on compounding must state the annual rate of simple interest and the basis of compounding (12 CFR 217.6 (a) and (b));

(b) No interest rate can be advertised that states a yield based on a period of more than one year in order to ensure that effective yields are not artificially inflated (12 CFR 217.6(c));

(c) If an advertised rate is payable only on a deposit that meets a specific time or amount requirement, such requirements must be stated clearly and conspicuously (12 CFR 217.6(d));

(d) Advertisements for time deposits must state that interest penalties apply in the event of early withdrawal (12 CFR 217.6(e));

(e) Member banks are required to inform customers at the time that an account is opened as to the method that will be used in computing and paying interest on the account, including any provisions for nonpayment of interest (12 CFR 217.148).

The Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board have virtually identical rules for institutions subject to their respective jurisdictions.

The Board is interested in receiving comments on existing advertising and disclosure practices that may be harmful

to individuals. In addition, the Board is interested in comments or changes that could be made to the existing advertising provisions to reflect the removal of interest rate ceilings on deposits. Such comments could, for example, discuss the proper method of advertising floating or variable interest rates, or requiring that rates for deposits be stated in terms of the average effective annual yield rather than requiring that the simple rate be used.

#### Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the proposal would not impose any additional reporting or recordkeeping requirements. The purpose of this proposal is to request comment on any alternatives that the public believes may be preferable to the Board's March 22, 1984 Policy Statement. Suggested alternatives will be considered when comments are analyzed. The proposed rule would apply only to commercial banks which are members of the Federal Reserve System. It is not anticipated that the proposal will have a negative impact on the ability of small depository institutions to attract deposits, and the proposal should benefit consumers in their efforts to obtain the most favorable deposit terms.

#### List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

#### PART 217—[AMENDED]

Pursuant to its authority under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) the Board proposes to amend § 217.6 of Regulation Q (12 CFR Part 217) by revising paragraph (a), and by redesignating paragraph (g) as paragraph (g)(1) and adding a new paragraph (g)(2) as follows:

#### § 217.6 Advertising of interest on deposits.

(a) *Rate of interest.* (1) Interest rates shall be stated in terms of the annual rate of simple interest. In no case shall a rate be advertised that is in excess of the rate being paid on the deposit.

(2)(i) Advertisements for time deposits where more than one rate is paid must state each rate to be paid on the account in type of equal size together with a conspicuous statement as to the length of time for which each rate is effective and a conspicuous statement of the average effective annual yield for the deposit which assumes compounding of

interest at least annually. This applies to accounts where

(A) it is known in advance what the rates to be paid throughout the life of the account will be and,

(B) the initial rate to be paid is higher than subsequent rates.

(ii) For accounts subject to a variable interest rate that is determined by an index, the initial interest rate may be advertised; however, the advertisement must also include a conspicuous statement as to (A) the time period for which such rate applies, and (B) the method by which the rate will be determined for future periods and the time period for which such rate will apply.

(iii) For accounts that offer an initial fixed rate to be followed by a variable rate determined by an index during the remainder of the term of the account, the method of determining the variable rate shall be stated in type of the same size as the fixed rate. In addition, the time periods for which the initial fixed rate and subsequent rates apply must be conspicuously stated.

\* \* \* \* \*

(g) *Accuracy of advertising.* (1) \* \* \*

(2) It is misleading and inaccurate for advertisements to refer to an Individual Retirement Account ("IRA") as a "tax-free," "tax exempt" (or other similar language) investment. Contributions to, and earnings on, IRAs are deferred from federal income taxes rather than exempt from taxes.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, March 22, 1984.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 84-8222 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

#### CIVIL AERONAUTICS BOARD

#### 14 CFR Part 255

[Economic Reg. Docket: 41686; EDR-471]

#### Carrier-Owned Computer Reservations Systems

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** In conjunction with a separate notice of proposed rulemaking on carrier owned computer reservations systems being issued simultaneously, EDR-466C, the Board is requesting comments on the need for rules specifying the way in which connecting flights are selected and arranged for

display on computer terminals. We also solicit comments on the feasibility of various requirements for objective flight displays and on their effectiveness in meeting consumer needs.

**DATE:** Comments by: April 26, 1984.

Reply comments by: May 11, 1984.

**ADDRESSES:** Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Young (202) 673-6060, Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUPPLEMENTARY INFORMATION:** In EDR-466C, being issued concurrently, we are proposing comprehensive rules to regulate air carrier operation of Computer Reservations Systems (CRS's) that travel agents use to get information about carrier services, make reservations and issue tickets. The proposed rules would prohibit display bias, i.e., giving preference to the flights of certain carriers, in CRS displays, and would regulate pricing of CRS services to user carriers, other aspects of the CRS owner/user carrier relationship, aspects of the CRS owner/travel agent relationship, and use of booking and sales data generated by CRS's.

As discussed in detail in EDR-466C however, we are concerned about the effectiveness of our proposed rule on connecting flight bias. This proposed connecting flight bias rule would prohibit consideration of a carrier identity in selecting connecting points and also in the selection of connecting flights over those points. The nature of the construction of connecting flights,—the selection of connecting points followed by the editing of flights, may make a prohibition on bias easy to evade. In addition, with direct flights, bias usually just places a flight farther from the first line of the first screen. In the case of connecting flights, bias may cause flights not to be displayed at all.

One way to avoid this risk would be to specify the standards that CRS carriers must employ in constructing connecting flights displays. As discussed in EDR-466, we are generally reluctant to intervene in the CRS industry to such a degree and to impose

our judgment as to what is the proper level of service quality. This would be inconsistent with the policy of placing maximum reliance on competition, unless it were shown to be necessary to correct abuses in the market.

In addition, before adopting a specific display requirement, we would have to satisfy ourselves that the requirement in fact reflected consumers' preferences in choosing among connecting flights. Moreover, we would have to consider the cost to carriers of implementing any Board requirement. Such costs would inevitably be passed on to consumers. If they were high enough, the Board's requirement could result in a net reduction in consumer welfare.

Thus there are a number of questions to be answered before we can propose any affirmative connecting flight display requirements. We are issuing this advance notice of proposed rulemaking to solicit information and comments to assist us in answering these questions.

#### The Need for Specific Standards

The threshold question of course is whether Board-imposed, affirmative standards are required to ensure that connecting flights are not selected for display on the basis of competitive considerations and to ensure that consumers will in fact have the opportunity to learn about flights that best serve their needs. Especially with the appearance of new hubs used by one or two carriers, the danger that CRS vendors can avoid listing competitors' flights even with objective standards may be very real, and we are anxious to explore this possibility further.

If this danger is indeed substantial, we request comment on whether it could be alleviated by adding what might be considered less intrusive requirements, such as a requirement that systems use a minimum number of connecting points or that they include additional connecting flights that do not meet the CRS's objective requirements for a fee. The OAG currently "sells" additional connecting flights. What threshold minimum number of connecting points is sufficient to reduce the risk that objective criteria can still be used to block the display of competitors' flights?

#### Consumer Preferences

If simple prohibitions on bias are not sufficient to correct abuses, it may be necessary to select objective criteria that best serve consumer interests in selecting flights. There are a number of factors which may be of primary importance, such as departure time, arrival time, elapsed time or waiting time at the connecting point. Some consumers may give primary weight to

on-line connections over interline connections while others may be indifferent. Some consumers may prefer large aircraft over small aircraft enough that type of equipment is more important than other considerations. Before proposing any specific standards, we need to determine whether any consideration so predominates as to justify its use as an industry standard. If no single factor predominates but two or three appear to be substantially more important, would a combination of standards be more appropriate?

#### Feasibility

Assuming that we can identify predominant consumer concerns, we must also determine the feasibility of programming CFS's to display flights in a manner that accounts for the above.

If time considerations alone are used, CRS's could conceivably have to search flights over all possible connecting points in selecting flights for display. What would be the cost of processing individual flight requests? Would the search introduce substantial delay in the processing of those requests? Would non-time standards such as on-line versus interline or large versus small aircraft require similar universal searches of all possible connecting points? Is it possible to construct a program based on multiple criteria? What would be the cost of such a program?

Most systems use a two-step process to build connecting flights today. Connecting points are first selected using a variety of criteria that may include circuitry, frequency of service between the connecting point and each end point, size of the city-pair market in question, or historic traffic flows. Once this selection is made, the service related criteria outlined above—like time, on-line/interline, or equipment type—are used to select the particular flights to be displayed over each connecting point. This prescreening of hubs may alleviate the potential expense and delay of a "pure" service standard, i.e. one that requires comparison of flights over all possible connecting points.

Before we would include prescreening of connecting points in a connecting display standard, we must consider a number of issues. How clearly would displays where hubs were prescreened resemble displays under a "pure" service standard? Put another way, how often would the results for the first 5 to 10 connecting flights be the same? Is there a particular prescreening criterion that produces markedly superior results? If the results are close, would the added costs of eliminating the gap by imposing

a pure service standard be justified. Is there some way to enhance prescreening standards to close the gap between prescreened and "pure" service displays as requiring a minimum number of connecting points or requiring that the CFS's owner sell additional connecting points? What threshold minimum number would make a material difference and what would be the cost of such requirement?

Comments by interested parties will assist us greatly in resolving these issues. Of even greater assistance would be any hard information such as any studies or surveys or evaluations by appropriate personnel, that already exists or that might be prepared without extraordinary expense in the period allowed for comments. Once we have evaluated comments and information, we will decide whether uniform standards for connecting flight displays are required.

(Secs. 102, 204, 404, 411, 419, 1102 of Pub. L. 85-726, as amended, 72 Stat. 740, 743, 760, 797, 92 Stat. 1732, 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502)

Accordingly, the Civil Aeronautics Board requests comments and information on the issues outlined above.

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

[FR Doc. 84-8043 Filed 3-26-84; 8:45 am]  
BILLING CODE 6320-01-M

#### 14 CFR Part 255

[Economic Reg. Docket: 41686; EDR-466C]

#### Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.  
ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to adopt rules that would deal with competitive abuses and consumer injury resulting from practices of those airlines that provide computer reservations services to other air carriers and travel agents. The Board is proposing rules that would prohibit specific practices, including discrimination in price and other terms of access to information distribution services; tying of access to information distribution services to the purchase of other services or goods; ordering the display of information in computer reservations systems on the basis of carrier identity; including provisions in agreements with travel agents that impede agent access to objective service information; and that would require the

dissemination of certain computer-generated information.

**DATES:** Comments by: April 26, 1984.

Reply comments by: May 11, 1984.

Comments received after this date will be considered by the Board only to the extent practicable.

**ADDRESSES:** Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

**FOR FURTHER INFORMATION CONTACT:**

Robert D. Young (202) 673-6060, Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUPPLEMENTARY INFORMATION:** This proceeding is an outgrowth of a Congressional request in the Conference Report accompanying Pub. L. 97-369 the Board's 1983 appropriations Act, that the Board investigate the competitive and consumer ramifications of computer reservations systems (CRS's) used by travel agents in marketing air transportation services. In response to this request, the board opened a docket for comments (Docket 41207) and conducted informal interviews with numerous carriers. The Board, in consultation with the Department of Justice, submitted its *Report to Congress on Airline Computer Reservations Systems (Report)* on June 1, 1983.

On March 16, 1983, while the Board was preparing the *Report*, the Association of Retail Travel Agents, Ltd. (ARTA) filed petition for rulemaking asking the Board to adopt rules declaring certain avoidable forms of bias in automated reservations systems unlawful. (Docket 41369). After the issuance of the *Report*, two additional petitions were filed. On August 2, 1983, Air Cal, Muse Air, Capitol International Airways, Inc., Midway Airlines, Inc., Ozark Airlines, Inc., Pacific Southwest Airlines, Air Florida, Inc., Jet America Airlines, Inc., Northeastern International Airways, Inc., Pacific Express and Pan American World Airways, Inc. (the Joint Carriers) jointly filed a petition requesting that the Board adopt rules determining criteria for the marketing and operation of CRS's. (Docket 41621). On August 5, 1983 Continental Air Lines, Inc., filed a petition which asked the Board to institute a proceeding to adopt rules to eliminate unfair and deceptive

bias and discrimination in the CRS industry. (Docket 41628).

In EDR-466, 48 FR 41171, September 14, 1983 we consolidated the various petitions into a single docket (Docket 41686) and issued an advance notice of proposed rulemaking, which requested comments on the need for rules governing the marketing of CRS services. We indicated that the information then available justified serious concern about the potential for practices in the CRS industry to inhibit competition and injure consumers. If the distribution system or a critical part of it is controlled by a few airlines, and their competitors cannot easily circumvent that system or provide their own system, their ability to compete will be greatly diminished and the premises underlying deregulation will be undercut.

Concluding that CFR access is critical to airlines and consumers, and that a handful of air carriers control those systems now and probably will continue to control them for a long time to come, we requested comments on rules to limit competitive and consumer abuses in three problem areas. First, we suggested that rules to curb display bias might be necessary. Bias is the result of CRS owners' programming their systems to give preference to their own flight information, or that of preferred carriers, in the selection of services displayed on the CRS screen. Second, we suggested that rules to eliminate unfair or discriminatory charges for distributing other air carrier's information through a CRS might be necessary. We were also concerned that CRS carriers might be requiring other carriers to sign agreements for the purchase of unrelated goods or services as a precondition to distributing other carriers' information. Finally we were concerned that the information on travel agent sales to which CRS airlines have access gives them a potentially unfair advantage over their airline competitors.

Comments on the advanced notice of proposed rulemaking were received on November 17, 1983. Generally, the comments fell into four categories. The comments of United Air Lines, Inc., the American Automobile Association, Inc., the Travel Agents' Computer Society and Travel Trust International expressed the view that Board action in this area was unnecessary and unwarranted. Eastern Air Lines, Inc. only commented that any rules the Board might adopt should not be applied to its CRS. While American Airlines, Inc. questioned the need for regulatory intervention, it indicated it would accede to, and in fact proposed, limited rules on CRS practices. The second category of commenters favoring rules

included ARTA, Continental Airlines, Delta Air Lines, Inc., the Department of Justice, Frontier Airlines, Inc., Golden Pacific Airlines, the Joint Carriers, Muse Air Corp./Air Cal/Jet America Airlines, Inc. (the Muse Group), Pan American World Airways, Inc., Trans World Airlines, Inc. and Western Airlines, Inc. In their comments, Omega World Travel, Inc., Republic Airlines, Inc., and Tymshare, Inc. argued that the various rulemaking proposals were inadequate to correct the competitive and consumer harm they believed results from air carrier ownership of CRS's. These parties asked us to begin procedures that would produce structural changes in the CRS industry. Specifically, they seek a proceeding that would consider the need to divest CRS owning carriers of their CRS's or to isolate CRS operations in separate corporate subsidiaries. Of the various commenters, the Bureau of Competition, Consumer Protection and Economics of the Federal Trade Commission were alone in taking no position. Their comments were filed for the purpose of explaining the FTC's standards for adopting rules predicated on findings of consumer injury.

Reply comments were filed on December 16, 1983 by American, ARTA, the American Society of Travel Agents (ASTA), Continental (we will grant its motion to file late), Delta, DOJ, Eastern, Frontier (we will grant its motion to file an unauthorized document), the Joint Carriers, Midway Airlines, Inc., the Muse group, Northwest Airlines, Inc., Pan Am, the Regional Airline Association, Republic, TACOS, TWA, Tymshare (we will grant its motion to file late), United, USAir, Inc., Western, and World Airways, Inc.

Simultaneously with our request for comments on EDR-466, we issued Order 83-8-105, August 26, 1983 which directed certain air carriers that operate computer reservations systems used by travel agents to provide specific information concerning those systems. (Docket 41663). We indicated that the information might be used in this proceeding or in a future enforcement proceeding under section 411. United and American filed pleadings requesting that we reconsider our order and that it be vacated. These petitions were denied by Order 83-10-74. In that same order we deferred action on United's request for an adjudicatory hearing. (Docket 41735), which has been consolidated into this proceeding.

The information has now been filed. By Orders 83-12-136, 84-1-41 and 84-2-85, we made that information accessible to interested persons for use in formulating their positions in this

proceeding, subject to carefully articulated procedures for maintaining the confidentiality of documents where such treatment was justified.<sup>1</sup>

On the basis of the information we have received in Docket 41663 and comments and reply comments to EDR-466, we have decided to adopt general rules that would forbid air carriers owning computer reservations systems from using those systems to affect air transportation competition adversely and to cause consumer injury. We find that rules dealing with unjust discrimination in the terms of contracts with other carriers are necessary. We are also proposing rules that would prohibit the ordering of information in integrated displays on the basis of carrier identity. Under those rules, CRS vendors would be required to inform participating airlines of the criteria used in selecting connecting cities and ranking flights. We are further proposing rules that would forbid subscriber contract terms that would impede travel agent access to other information sources. Finally, we are proposing rules requiring CFR carriers to disseminate to participating airlines information generated by CRS's.

### I. Overview

It has been just eight years since United and American decided to market to travel agents computers that would provide them with information on flights and fares offered by carriers, and whether seats were available. Those carriers admit that they were willing to provide such services at a substantial loss in order to gain agent acceptance. Moreover they acknowledge that they were willing to include competing carriers' information in their systems, without charge to other carriers in order to make their systems more attractive.

CRS's have become virtually essential for information management. On top of the tremendous amount of information to be managed already, in 1978, airline deregulation multiplied the number of flight and fare offerings available in the marketplace several times. Moreover, deregulation has allowed carriers to change their flight and service offerings almost at will, which has created the need for information sources that are updated far more quickly than those in place prior to 1978. It is not surprising, therefore, that 90 percent of travel agent sales are through CRS systems. They provide a highly efficient information source, in addition to keeping track of

passenger reservations and printing tickets.

With travel agents' increasing reliance on computers as an information source, it has become more important for air carriers to have their information displayed on the various computer systems. Travel agents are the primary distributors of air transportation. Moreover, their importance as a distributor is increasing. At the present time over 60 percent of all air transportation sales in the United States are made by agents.

This fact has not gone unnoticed by CRS vendors. In the last three years they have begun to charge their competitors for the display of information through their systems. CRS vendors' tendency to charge and their competitors' willingness to pay for information display highlights the importance of CRS's in the current air transportation distribution industry. Insofar as agents are the primary distribution mechanism, and CRS's are their information source, if a carrier's information does not appear in the computer display, that carrier will be at a significant disadvantage vis-a-vis its competitors. The agent will not know of its services and will not offer them to the public as a travel option.

The information distribution function of computer reservations systems constitutes, in essence, the vertical integration of CRS vendors into air transportation distribution. CRS's are the information source for the prevalent distribution method. Distribution is one level removed from air transportation competition and the level at which consumers actually purchase air transportation services. With vertical integration, if vendors have market power at the distribution level, they can use it to harm competition at the transportation level.

In this proceeding we are examining the CRS industry to assess its competitive and consumer impact on air transportation services. We have been entrusted with the responsibility for ensuring a competitive air transportation industry, and if CRS vendor practices are having an adverse effect on competition and consumers at that level, we believe we have the authority to redress such problems. Specifically, section 411 of the Federal Aviation Act (49 U.S.C. 1381) permits us to determine whether any air carrier has engaged in unfair or deceptive practices or unfair methods of competition in air transportation or its sale. Under section 41, we need not wait until violations of the antitrust laws actually occur. We may act to prevent problems from

occurring when we determine that a significant potential for abuses exists.

Our review of the information we have received in Docket 41663 and the comments we have received on EDR-466 leads us to conclude that some CRS vendor practices do, or in the future, may affect air transportation competition and consumer interests substantially and adversely. We have decided, therefore, to propose general rules that would eliminate or prohibit those specific vendor practices. While greater regulatory intervention, in the form of very specific rules of conduct or some form of structural relief might yet be necessary, we believe that the rules we adopt will be adequate to ensure vigorous air transportation competition and to avoid consumer injury.

Our belief that CRS carriers are engaged in unfair methods of competition flows from CRS vendors' role as providers of automated information distribution services to other air carriers. The facts clearly demonstrate that CRS vendors have substantial control over the information travel agents have on their competitor's flights. Our data on CRS vendors' market shares and concentration in the CRS industry shows the industry to be highly concentrated, with just six firms providing CRS services and two of them, American and United, having nearly 70 percent of the CRS market between them. Concentration is even more pronounced on a regional level, with individual CRS vendors frequently having market shares of more than 50 percent. These facts create an inference that CRS vendors at national and regional levels have substantial economic power in the information distribution market.

The inference of economic power is strengthened by evidence that entry into the CRS industry is difficult and that CRS carriers are engaged in conduct that could only occur if they possessed substantial market power. For example, as CRS owners acknowledge, they can differentiate in the prices they charge their carrier competitors for automated information distribution services on the basis of the services' value to their competitors. Regardless of whether such pricing practices are desirable, as a matter of economic theory, a producer of a good or service could not engage in that type of conduct in a competitive market. We may act to prevent its use of adversely affect air transportation competition under section 411, whether or not this economic power can be described as monopoly power.

Our review of CRS vendor practices has revealed conduct producing

<sup>1</sup> Throughout this document we cite material from Dockets 41663 and 41666. The DOJ material cited is contained in Docket 41666, and references to Appendices are those of the commenters—and not those listed in the orders cited above.

competitive harms that may be analogous to conduct that would be labeled an abuse of monopoly power under section 2 of the Sherman Act, 15 U.S.C. 2. CRS carrier vendors are apparently gaining the ability to determine the terms on which they provide automated information distribution services on the basis of the extent to which the other carriers compete with them. The charges being assessed for providing such services are or may be assessed, in significant measure, upon the extent or nature of competition from the other party. Similarly, CRS carriers appear to possess the power to offer special service enhancements to other carriers and to set display priorities based upon the extent or nature of competition from the other carrier.

An entity holding market power in one segment of the distribution chain should not be able to use that power indiscriminately to influence competition in the final product. It can be required to deal on reasonable non-discriminatory terms with its competitors for the final product. To forestall these users of CFR economic power we are proposing rules that would prohibit discrimination in access charges, enhancements, and display priorities based upon a carrier's identity. We are also proposing requiring CRS vendors to inform participating airlines of their criteria for display.

CRS vendors use economic power in another way that adversely affects competition. Some CRS vendors have sufficient economic power to require, as a precondition to providing automated information distribution services, that their competitors compensate them for writing some kinds of tickets. CRS vendors are, in effect, tying CRS access to the purchase of direct sales services, services which were previously done free of charge as a service to the public. It is well established that a firm holding market power in one market cannot exert that power to require the purchase of goods or services in another market. Consequently, we are proposing a rule that would forbid CRS carrier vendors from requiring the purchase or sale of any other goods or services as a condition for participation in their systems.

Our proposed rules are justified because the types of conduct set out above are having an immediate substantial effect on air transportation competition. The targeting of economic power to raise competitor's distribution costs selectively is constraining competition on the merits of fare and service offerings. Further, it appears to

have the potential effect of deterring some entry into air transportation markets. Consumers are injured by diminished air transportation competition and higher fares.

We also find that CRS carrier vendors practices may be, or could in the future result in, unfair and deceptive practices under section 411. An unfair and deceptive practice occurs when a practice produces substantial injury to consumers that is not outweighed by offsetting benefits and cannot reasonably be avoided.

Consumers view travel agents as providers of objective travel advice. The system of common accreditation of travel agents was designed for this purpose and its rules impose specific obligations that agents serve their many principals fairly. Agents believe that CRS's can be used to obtain information on all air carriers' services. CRS carriers have fostered this impression by claiming that information is objectively displayed and that the best flights are listed first or in the first display. In practice, however, CRS carriers include in their displays significant preferences for their own services, and those of favored competitors, and these preferences inhibit travel agents' ability to provide objective advice. This is causing substantial injury to consumers in that they are being steered to specific carriers without due regard to price and service offerings. Other air carriers that may provide better service, whether it be at a lower price, at a preferable time or with a more attractive connection, are being denied revenues they would normally receive. As a result, air transportation competition on the merits of fare and service offerings is being undermined. This injury cannot be reasonably avoided by agents or consumers because it is frequently difficult to detect, and, even if detected CRS carriers have the means to change its character and extent almost at will. Moreover, CRS carriers have begun to include clauses in their contracts with agents to inhibit access to alternative information sources. In addition, the alternative CRS systems will also be biased.

In our view these facts lend further support for rules forbidding the use of carrier preference factors in ordering information on CRS displays. They also provide a basis for voiding subscriber contract terms of undue length that require the use of a particular system in the sale of its air transportation services, and that inhibit the use of any other system in the sale of air transportation.

Finally, CRS carriers have gained an unfair advantage over their competitors insofar as CRS's generate information for themselves that is unmatched in making marketing decisions and developing marketing initiatives. Such information is proprietary to the carrier on which the flights are booked and should not, properly, be used for other purposes. If, however, a CRS carrier generates such information, it should make that information available to participating airlines on non-discriminatory terms. We are proposing a rule to this effect.

Should we finally adopt our proposed rules, we are currently contemplating a 90-day transition period, from the date of final publication of the rules, before the rules would become effective. Our examination of the documents submitted in this docket and Docket 41663 suggests that the reprogramming of the various CRS systems to eliminate display bias will not be very burdensome. The major CRS vendors have demonstrated that they could change their display bias very quickly when it was in their economic interest to do so. Of course, our rules will also require CRS providers to renegotiate some provisions of their contracts with carriers and subscribers. We believe 90 days will be adequate for that task. We invite comments on these issues.

## II. The Relationship Between CRS's and Air Transportation

### A. The Role of Travel Agents in the Marketing of Air Transportation

Since the passage of the Airline Deregulation Act, two striking trends in the distribution of air transportation have developed. First, travel agents have become the primary distribution outlet for air carriers. Second, the overwhelming majority of travel agents have come to rely on CRS's as their primary resource for information on carriers' fares, service and availability.

As the air transport industry is currently structured, airlines have two major outlets for the distribution of their tickets: direct sales made by them and their competitors, and travel agents. Of these two distribution channels, the travel agency system has grown predominant, and its importance is expected to increase over the next few years. Travel agents' share of airline sales has been rapidly increasing in recent years. They accounted for 38% of domestic airline ticket sales in 1977, 53% in 1979, and between 60% and 65% in 1982. Order 82-12-85, p. 19, note 45. Travel agents' share of international sales in the United States is even

higher—approximately 80%. It appears that this trend will continue, at least over the next few years. Based on "research and some careful modeling," United strategists have predicted that the travel agent share of airline sales will grow to 85% by the late 1980's. DOJ Appendix B: UA001583.

The travel agency distribution system has an important feature which sets it apart from distribution systems in other industries. Unlike agents in most other industries, where distributors represent the interests of one or a few principals, each travel agent sells tickets on behalf of almost all airlines. The two major air carrier trade associations—the Air Traffic Conference of America (ATC) for domestic carriers and the International Air Transport Association (IATA) for international carriers—handle the accreditation and policing of travel agents for their members. Travel agents accredited by either or both of the two associations are authorized to sell air transportation for the associations' members. Until recently this conference agency system was the only outside distribution channel that association members could use.

While the Board's decision in the *Competitive Marketing Investigation*, Order 82-12-85, December 16, 1982, now permits the simultaneous use of conference agents and other persons as marketers, carriers have not implemented their new freedom. No carrier to our knowledge is using non-conference travel agents. Indeed, ATC and IATA have sought to reverse the Board's decision both in the courts and Congress.

In order to present both their clients and their air carrier principals adequately, travel agents must have access to accurate and timely information on the carriers' schedules, fares, and seat availability. Prior to deregulation and the growth of CRS's, agents typically accomplished this task as follows: after ascertaining the traveler's needs the agent would turn to the Official Airline Guide (OAG), a book containing carrier schedules and some limited fare information, to locate flights and carriers that could serve the customer's needs. To determine the applicable fares and restrictions, the agent would then turn to carrier tariffs, voluminous publications containing all fares, rules and restrictions for each carrier and routing. Once the agent had determined desirable flight and fare, it would have to telephone the air carrier's reservations office to confirm the flight and fare information, find out whether the carrier had seats available, and make a reservation for his customer.

The agent would then write the passenger's ticket by hand or through a teleticket printer.

Even before deregulation this process was cumbersome, time-consuming and costly for both airlines and agents. Recognizing this, the airlines, which had computerized their own in-house reservations functions, made several attempts between 1967 and 1976 to develop an industry-wide CRS for use by travel agents. These efforts failed for various reasons, and in 1976, United announced that it would market its own proprietary CRS system to agents. American and TWA soon followed.

The efficiency benefits of CRS's are obvious. With a CRS, a travel agent can obtain on successive computer screens the schedule of flights offered by various carriers, the fares charged by the carriers, and the availability of seats on particular flights. In addition, the agent can make reservations on most carriers through the computer and can automatically print tickets. On most systems, agents can also make hotel and car rental reservations. This entire process can take place without the intervention of carrier reservations personnel. Travel agents may also add to their reservations computer a "back office" accounting system, which maintains client records for billing purposes and keeps the agents' accounts. This permits an agent to operate virtually a paper-free office. This streamlining of the reservations process results in striking efficiency gains for agents and airlines. One survey estimated that the average productivity gain from automation was forty-two percent. *Travel Weekly*, May 1982, Louis Harris Study at 51.

Deregulation of the air transport industry has further emphasized the superiority and necessity of CRS's as information systems for airlines and travel agents. The number and variety of fare and service offerings, which were relatively stable prior to deregulation, have exploded since that time. So has the frequency of fare and schedule changes. Hub-and-spoke route systems have replaced linear route systems, reducing the number of direct flights but increasing the number of available connecting flights over an ever-widening variety of hub cities. A profusion of new carriers has entered the market. American has argued, with some merit, that CRS's have become a necessity, Docket 41207, American Airlines, Inc., Travel Agency Automation in an Era of Deregulation, April 1983, p. 35, reproduced in Addendum to CAB Report to Congress on Airline Computer Reservations Systems.

The growth in travel agency automation, which has paralleled the growth in the travel agent distribution system, further demonstrates CRS's efficiency advantages. In November 1977, United estimated that each of the three CRS's then offered to travel agents (APOLLO, SABRE and PARS) had been placed in about 270 travel agencies. UAO11511. By June 1980, about 4,060 agencies had computer equipment installed. *Automation in Airline Reservation and Ticketing Systems*, pp. 1-3, Docket 36595. Over the following three years, the number of automated agencies grew to about 14,000 by June 30, 1983. See DOJ Comments Appendix A, page 1. When one considers that the automated agencies also tend to produce the largest amount of airline revenue, the trend becomes even more dramatic. Some 90% of the airline revenue produced by travel agents is now produced by automated agencies. DOJ Comments at 36.

It is evident that CRS's have become the primary information and distribution resource for airlines and travel agents, and that the old OAG-telephone-manual method is at best a supplement to, rather than a substitute for, CRS's. It is further clear that for a carrier to obtain meaningful access to the majority of the traveling public that uses travel agents, the carrier must be included in the agents' primary information source—the CRS.

#### B. The CRS Industry Today

While the six CRS's currently available to travel agents have some significant differences, their basic feature is the same—they provide access to electronic display of airline schedule, fare and availability information together with the ability to book, sell and issue tickets automatically through the system. DOJ Comments at 25. They accomplish this by providing access to, and communication with, the reservations data base of one or more airlines. These data bases, which are maintained by all airlines, contain information on schedules, fares, and seat availability for the airline that owns the data base and for others as well. The three basic data components are obtained from various sources. Airline schedules are obtained from the OAG. Virtually all airlines submit their schedules of direct flights to the OAG for its publication. In addition to publishing this information in hard-copy form, the OAG prepares consolidated computer tapes containing these schedules and provides them to the airlines on a weekly basis. The airlines' computers use two tapes as the

bases through which they search for direct flights and build connections. The Airline Tariff Publishing Company (ATP) perform a similar function with respect to fares and their associated rules and restrictions.

The acquisition of information on seat availability is somewhat more complicated. Since each airline needs to retain control over the inventory of seat for its own flights, there is no centralized information source for seats availability. Instead, the airlines have established a communications network operated by Aeronautical Radio, Inc. (ARINC) through which their computers can exchange reservation requests and information on seat availability. This system is far from perfect. The ARINC network is required to handle an overwhelming amount of message traffic, and some messages are inevitably delayed, lost, garbled or mistaken. In addition, carriers frequently "close" flights for sale by other carriers before all seats are reserved to avoid overbooking or simply to reserve part of their inventory for themselves. As a result of these factors, the most accurate any up-to-date information on the availability of seats for any particular flight resides in the computer of the carrier providing that flight. To overcome the ARINC problem, some large carriers have direct, computer-to-computer links.

The CRS's now available to travel agents are of three basic types: Proprietary, direct access, and multi-access. The proprietary systems (APOLLO, SABRE, PARS and DATAS II) offer the agent access to only one data base—that of the system proprietor. The schedule, availability and other displays are modifications of the displays used by the proprietor's in-house reservations personnel, and the travel agent's transactions are processed in the same way as transactions initiated by the carrier's in-house personnel. The initial display of Eastern's SODA system is also a proprietary display. That is, the agent has access to, and books his transactions in a modified proprietary data base. In addition, however, the agent is essentially able to view the in-house availability displays of other participation carriers. This feature gives the agent more accurate and reliable information on participating carriers' service, particularly on their seat availability. A multiple access system (MARS PLUS and the SMART enhancement to SABRE) is basically a computer switch which allows the agent both to view and to interact with the in-house systems of the participating

carriers. APOLLO offers another variation, called direct link. The agent views the display of the APOLLO system but it can communicate directly with the in-house systems of participating carriers.

### C. CRS Market Share

As noted above, United (with APOLLO) and American (with SABRE) were the first to enter the CRS market. They were followed by TWA (with PARTS). In the 1970's, ITT developed the Mars Plus multi-access system in conjunction with a number of airlines. Finally, in the last three years, Eastern (with SODA) and Delta (with DATAS II) completed the list of current CRS providers. USAir and Frontier have also made aborted attempts to enter the field.

As a result of its investigation of the CRS industry, DOJ has presented to the Board an extensive compilation of the market positions of the six CRS providers in every metropolitan statistical area and consolidated metropolitan statistical area in the U.S. and for the nation as a whole (excluding

only those agencies located outside an MSA or CMSA). Based on DOJ's description of its methodology, the absence of any challenge to its figures, and other information available to the Board, those market share statistics appear to present a reliable but conservative picture of the relative positions of CRS hosts. See Tables 1-3.

DOJ computed its statistics on two different bases: (1) The number of travel agency locations for each CRS and (2) the amount of domestic airline revenues generated by those agencies over a one-year period. The second perspective provides a much more accurate picture of the relative economic strength and penetration of the respective systems. From DOJ's tables it is apparent that United and American CRS's far surpass other systems in terms of number of agency subscribers and revenue produced by those subscribers. Information submitted by the CRS hosts themselves increases the relative dominance of APOLLO and SABRE. Responses to Information Directives 1 through 56, Docket 41663.

TABLE 1.—NATIONAL SHARES OF ALL AGENCIES, 18 MO ENDED JUNE 1983

CRS	Number	Per-cent	Domestic revenues	Per-cent
APOLLO (United).....	3,865	18	\$4,040,856,002	27
DATAS II (Delta).....	688	3	259,774,372	2
MARS PLUS (Tymshare).....	344	2	281,932,911	2
PARS (TWA).....	2,159	10	1,561,123,415	10
SABRE (American).....	5,692	27	6,376,288,718	43
SODA (Eastern).....	1,074	5	605,345,545	4
Unautomated.....	7,546	35	1,822,511,524	12
Total.....	21,368	100	14,947,832,487	100

TABLE 2.—NATIONAL SHARES OF AUTOMATED AGENCIES BY PERCENTAGE OF REVENUE, 18 MO ENDED JUNE 1983

CRS	Number	Per-cent	Domestic revenues	Per-cent
APOLLO (United).....	3,865	28	\$4,040,856,002	31
DATAS II (Delta).....	688	5	259,774,372	2
MARS PLUS (Tymshare).....	344	2	281,932,911	2
PARS (TWA).....	2,159	16	1,561,123,415	12
SABRE (American).....	5,692	41	6,376,288,718	49
SODA (Eastern).....	1,074	8	605,345,545	5
Total.....	13,822	100	13,125,320,963	100

TABLE 3.—\$100 MILLION URBAN MARKET (CNSA) WHERE A CRS HAS MORE THAN A 40-PERCENT SHARE OF THE MARKET, 18 MO ENDED JUNE 1983

SABRE	Per-cent	APOLLO	Per-cent	PARS	Per-cent
Anchorage.....	92	Denver.....	72	Kansas City.....	71
Dallas-Fort Worth.....	88	Portland.....	66	St. Louis.....	57
Cincinnati.....	84	Cleveland.....	64	Columbus.....	51
Phoenix.....	69	Milwaukee.....	57	Pittsburgh.....	41
Boston.....	69	Sacramento.....	52		
Rochester.....	69	Salt Lake City.....	52		
Houston.....	68	Seattle.....	48		
San Diego.....	54	Honolulu.....	47		
Detroit.....	53	Buffalo.....	44		
Washington, D.C.....	51	Chicago.....	42		
New York.....	50				
Miami.....	49				
Minneapolis-St. Paul.....	49				
Hartford.....	45				

TABLE 3.—\$100 MILLION URBAN MARKET (CNSA) WHERE A CRS HAS MORE THAN A 40-PERCENT SHARE OF THE MARKET, 18 MO ENDED JUNE 1983—Continued

SABRE	Per- cent	APOLLO	Per- cent	PARS	Per- cent
Los Angeles.....	43				
Salt Lake City.....	42				
Chicago.....	41				

#### D. Entry into the CRS Market

Development of a CRS is expensive and time-consuming, even for entrants that are starting with sophisticated in-house systems. American estimates that it has incurred capital costs of \$160 million in developing SABRE, and United's claimed expenditures for APOLLO run as high as \$500 million. DOJ Comments at Appendix B: UA002433. DOJ estimates that entry would require a minimum investment of at least \$100 million. DOJ Comments, at 71. Moreover, it appears that a substantial portion to these capital costs are "sunk" costs—costs that are not recoverable if the enterprise is discontinued. A significant factor in the cost of entry is programming, or software development. In addition, in today's fast-changing data processing field, computer equipment may become quickly outmoded, and its resale value can plummet.

The time required to develop a CRS is also substantial. Programmers experienced with airline data systems are scarce and take from six months to two years to train. DOJ Comments at Appendix D: Kotar Tr. at 184-5, Murray Tr. at 120-26. SABRE and APOLLO have taken years to develop sophisticated enhancements like back-office accounting packages, automatic pricing, complete rules displays and advance boarding pass capabilities. A new entrant who fails to match these attractive features may be limited in the customers he can attract. For example, according to DOJ, Eastern's failure to offer an accounting package in conjunction with its system has limited its market penetration to the smaller travel agencies. DOJ Comments at 72.

A provider of a CRS also faces the economies of scale situation encountered in many "information" industries. The "provision" of the product entails a high fixed cost and a relatively low variable cost per user—average unit costs will decline with increasing output over a considerable range. NERA Analysis, page 9 attached to American's comments. Consequently, there is a "critical mass" of "threshold" factors to be considered—the need to attain some minimum level of market penetration before production becomes

economic. *Id.* at 11. At a lower level of market penetration, a CRS owner is operating at a loss. If its costs per transaction are considerably greater than the price it must charge to the competitive, and if it takes a long time to increase its market share enough to lower its costs significantly, the CRS owner will be incurring substantial losses. Such losses are almost entirely sunk costs; they cannot be recouped upon exist.

In the CRS industry, the need to attain a significant share of the market quickly to reach minimum efficient size, and obtain larger incremental revenues, prompted American and United to offer low "introductory" prices to travel agents to whom they initially marketed their systems. *Id.* at 10-12. While this pricing policy was certainly sensible—particularly considering the risk involved in introducing a totally new service to the market place—it apparently set the general pattern for generating revenue that prevails today.

There are three potential sources of revenue for a CRS proprietor to recover its costs and make a profit: charges to travel agent subscribers, fees to airlines for reservations services and, for airline proprietors so-called incremental revenues, *i.e.*, air transport revenues that the CRS proprietor gains by virtue of its system's presence in a travel agency. The pricing and marketing strategies of the two pioneer CRS proprietors have, since their systems' inception, placed the greatest reliance on the third revenue source to pay their way. This strategy has, for better or worse, largely dictated the course of CRS development.

The phenomenon of incremental revenues is relatively simple to describe but difficult to quantify. When a travel agency is automated with a particular carrier's CRS, there is a very strong tendency for the agency to place a disproportionate amount of its customers on the flights of the CRS proprietor. There are several reasons for this phenomenon. First, CRS carriers "bias" the selection and display of industry services to give prominence to their own flights and suppress those of their air carrier competitors. Second, an agent's use of a carrier's CRS tends to

foster close contact with, and general good will toward, that carrier. This "halo effect" tends to make the agent prefer flights of the CRS carrier when other factors are equal. Finally, as was described above, a CRS's information on seat availability tends to be more accurate for the proprietor's flights than for those of other carriers, so the agent may feel safer in booking the CRS carrier's flights, *i.e.*, those of the largest transporter in the area.

Although estimates vary, all agree that the amount of additional air transport revenues generated by this phenomenon is tremendous. American, which has devoted the most effort to quantifying incremental revenues, has made estimates ranging from \$78.5 to \$150 million for 1980. DOJ Comments, at 54 and AA-ER1-22, p. 5. United has made a conservative estimate for purposes of this proceeding that its 1983 incremental revenues from Apollo were over \$160 million (versus a system owned by a competitor). Internally, United has made little effort to quantify its incremental revenues, but it apparently believes that "possessing an airlines' [CRS] is strongly associated with disproportionately greater bookings being assigned to that carrier." See DOJ Comments at 107.

The extent of incremental revenues is also indicated by internal estimates of return on investment for decision making purposes. TWA has regularly estimated return on investment above 25% for capital expenditures to expand PARS. In some cases estimates have been over 95 percent with payback periods of approximately one year. See generally TW-Con, ER1-(22), pp. 32-81. In almost all instances, income generated by increased travel agent and carrier fees alone would have produced losses or barely covered expenses.

United believes that at each SABRE agency converted to APOLLO it will realize a 10-percent increase in air transportation revenue. It expects a 5-percent increase in revenue when a previously unautomated agent becomes an APOLLO agency. UA 12207 and UA 20628.

United and American have emphasized the importance of incremental revenues since the inception of their systems. Their motivations for entering the CRS market in the first place were, quite naturally, their desire to develop a more effective and efficient marketing system for their own air transportation product. Before their systems became widely accepted by travel agents, they had to price their systems attractively. They also had to offer the agents systems with the ability

to research and book industry-wide. They therefore made their information distribution and booking services available to other carriers at no charge. As the systems grew and the CRS carriers began to realize the anticipated incremental revenues, a number of developments took place.

First, their battle to sign up the strategic agencies intensified, and fees for targeted agencies were driven even lower. See DOJ Comments at 51-56. Second, the CRS proprietors began to seek ways to obtain revenues directly from other carriers. At first, when the systems were still small, these efforts were directed toward developing "co-host" arrangements whereby carriers that did not compete extensively with the host. Western with American and Delta with United for example, would pay modest (by today's standards) booking fees and a small capital contribution and would assist the host in marketing its system in areas where the co-host had a strong air transportation presence. In exchange, the host would bias its displays to favor the co-host. As the CRS's expanded their travel agent base, the hosts expanded their co-host program with increased booking fees; began in late 1980, to demand "net ticketing agreements" as a condition of CRS access; and, in late 1981, began to demand booking and net ticketing fees from carriers that were not co-hosts. By contrast, some new CRS entrants have not placed such demands on other carriers for access to their systems. See DL-NC-ERI-8-(1-3).

Interestingly, the booking fees to non-co-hosts, who received no bias in their favor, were in many cases substantially higher than co-host fees negotiated at the same time with other carriers. Fees per segment booked through APOLLO and SABRE currently range from \$0.30 to \$3.30, depending on the carrier. DOJ Comments, Table 7, at 139-140. This does not include the fees under "net ticketing arrangements," which American and United could only get other carriers to accept by making entry into such arrangements a precondition to access to their CRS systems. DOJ Comments at 141 and documents cited. Net ticketing fees—fees for handling tickets which name the CRS-owner as the ticketing carrier—can vary from \$.50 to \$3.85 for tickets written by travel agents and from \$1.00 to \$12.10 for tickets written by the carrier's own employees, in addition to the CRS access fee. DOJ Comments at 142-143.

While these developments reflected an effort by United and American to expand the revenue base for their CRS's,

this new revenue source clearly remained subordinate to incremental revenues. Thus, the widely varying booking fees American charges to co-hosts are based not on American's costs but on the impact the addition of that co-host will have on American's air transport revenues. DOJ Comments at Appendix D; Baker Tr. 130. See also DOJ Comments at 118. After November of 1981, United based its pricing strategy not on its costs or on the fees its CRS competitors were charging, but on the degree to which the participating airline competed with United in air transportation. DOJ Comments at 128-134.

The third development that took place as the two systems matured was that their proprietors began to increase the degree and sophistication of the bias in their systems. Several studies commissioned by United found that travel agents have a high degree of tolerance for bias and that they do not work to defeat the bias, and recommended that United increase its level of bias and make it more subtle. UA IR's 018178-018182, 018183-018191, 018266-018366. In August of 1981, United launched a two-phased Parametric Merchandising project designed to increase the level and subtlety of its bias. DOJ Comments at 99. American also increased the level of its bias several times during this period in such a manner as to minimize detection by travel agents. DOJ Comments at 83. Since TWA first introduced bias into PARS, the amount of bias on direct flights has increased twelve-fold. TW-Con-ER1-(26-27), pp. 16-29.

The fact that the incentives and strategies of the two major CRS proprietors are dominated by their desire to maximize downstream air transportation revenues has some important consequences. It forces all other CRS proprietors and potential entrants to match that strategy. If a CRS competitor wishes to attract any travel agent subscribers, it must offer its system at prices that are competitive with the at/or below-cost rates offered by the dominant CRS carriers. That forces the CRS competitor to rely on a combination of carrier fees and incremental revenues to compensate for the revenue shortfall from the travel agent source. Non-carriers or small carriers do not have the large air transport traffic base necessary to realize substantial incremental revenues and so are not able to earn a profitable return on a CRS. Large CRS carriers that are able to realize incremental revenues are forced into a strategy that will maximize their incremental revenues.

Delta, for example, allegedly has introduced a substantial element of bias into its system through its choice of connect points even though it markets its system as unbiased. See American Airlines Reply Comments at Appendix B.

#### *E. Difficulties in Converting Agents*

Another set of obstacles facing any would-be CRS proprietor relates to the difficulties in inducing agents to switch from one system to another. While the CRS industry has grown rapidly, it has at this point reached a certain level of maturity. The 35 percent of travel agents that remains unautomated account for only 12 percent of the air transportation sold by agents. DOJ Comments at Appendix A. A new CRS entrant cannot realistically gain a significant foothold in the CRS market by focusing solely on this pool of the smallest, unautomated agents. The alternatives then, are to attempt to convince automated agents to switch systems or to persuade agents to accept the new CRS as a second system. Both alternatives present serious difficulties.

In most cases, the agency's contract with its current CRS provider restricts its ability to change or add systems. It appears that most travel agent contracts on SABRE are 4-5 years in length, and United has recently begun to sign many agents to 7-10 year contracts. DOJ Comments at 60. These contracts also provide for fairly substantial penalties for cancellation. Notably, the length of American's and United's contracts have been increasing over the years. And, TWA, Delta and Eastern appear generally to use three-year contract terms. The lengthy terms of the contracts on the dominant CRS systems sharply reduce the number of agencies that the CRS entrant can seek to convert at any one time. Liquidated damage provisions may reduce even further the agency revenues the CRS entrant can hope to receive. For example, the liquidated damages clauses in APOLLO contracts require payment of 80 percent of the remaining rentals due under the contract. DOJ Comments at 61.

The two major CRS providers also attempt to restrict an agency from using more than one CRS. United requires that its subscribers use Apollo for at least 95 percent of all bookings that contain any United segments. UA 004603. Because of the prevalence of interlining and United's extensive route network, this so-called "95 percent rule" effectively prohibits any use of a second system for booking and ticketing functions and thereby forces agents to choose between Apollo and another CRS. American's

"minimum of parity" rule requires new subscribers to have at least as many SABRE CRT's as there are non-SABRE CRT's at each location. DOJ Comments at 57. As a result of these policies and other factors, few automated agencies, accounting for 12.6 percent of automated agency revenues, have more than one CRS at the same location. DOJ Comments at 58.

Aside from contractual limitations, agents have a great reluctance to switch systems because that process can be very costly and inconvenient. Switching causes great disruption of the agency's business due to the replacement of equipment and the time required for training and familiarization with the new formats and procedures. United's travel agent research confirms this point. One study, conducted in 1981, reports that "very few owners or managers express even the slightest interest in switching systems. The system they have represents a significant investment not only in terms of money, but in training and adjustment as well." UA 018326, DOJ Comments at Appendix B.

As was noted above, the regions where a carrier's CRS is predominant tend also to be regions where that carrier has a strong air transportation presence. There are two reasons for this striking correlation. First, because the primary source of revenue from CRS operations is incremental revenues, the major CRS proprietors have historically concentrated their sales efforts on the areas and agencies where they had the most air transportation business. Second, and perhaps more important, however, is the fact that in areas where a CRS proprietor has a significant air transportation presence, it has a distinct advantage over a CRS proprietor that does not have such a presence. See DOJ Comments at Appendix B; UA 018324-325.

The primary basis for the second competitive advantage is the fact, noted above, that the proprietor's CRS contains the most reliable, accurate and up-to-date information on its inventory of airline seats—which the travel agent recognizes as a necessity or a large advantage in writing tickets on that carrier. One of the biggest problems facing the CRS industry and the travel agent today is the so-called "no rec" problem. This occurs when the transmission of reservation requests, seat confirmations, and availability status messages from carrier to carrier through the ARINC message system becomes lost, garbled or delayed. In the typical case, for example, when a travel agent using carrier A's CRS makes a

reservation for a customer on a flight of carrier B, A's computer sends a message to B through the ARINC system. If B has space available and accepts the reservation, it sends a confirmation back to the agent through A. If, however, the original reservation message never reaches B, the agent may believe its customer has a confirmed reservation. When the customer arrives for B's flight and finds it booked, the traveler may be turned away because carrier B has no record of the reservation. This problem is avoided if the agent can, through its CRS, book directly into the inventory of the transporting carrier. Thus, travel agents have a very strong incentive to obtain the CRS that gives them immediate access for the largest proportion of their business.

Another example of the advantages gained from a CRS carrier's control over its own seat inventory is last seat availability. Largely because of the delay factors occasioned by ARINC, carriers frequently reserve part of their inventory for sale by their own reservations agents or through their own CRS. A CRS that can offer the agent access to these last available seats for the flights and carriers booked most often has a distinct marketing advantage.

Finally, American and United have recently developed an enhancement that further improves their regional advantages. SABRE and APOLLO agents can now issue their customers advance seat assignments and boarding passes for their proprietor's flights. This appears to be an attractive feature, especially for business travelers. Other enhancements might be developed in the future that would have a similar effect.

#### *F. The Importance of Incremental Passengers in Air Transportation*

The key to understanding the effect of CRS practices—particularly bias—on competition in air transportation is to recognize the impact of incremental passengers on costs and profitability. Since a flight costs almost as much to operate empty as full, the cost per passenger is highly dependent on the load factor—the percentage of seats filled with revenue-paying passengers. Simply stated, an airline averaging a 70-percent load factor will operate at roughly half the per passenger cost of a carrier with a 35-percent load factor, all other things being equal.

An airline will consider entry into market in a situation where it can reasonably expect to attain a load factor sufficiently high that it can cover its per passenger cost and make a profit at the prevailing price level. If it obtains more passengers per flight, its profits should

increase dramatically—assuming it is not discounting greatly—since the added cost of each additional passenger is a small portion of the ticket price. On the other hand, if it fails to reach a breakeven load factor, its costs per passenger will correspondingly increase in relation to the percentage its load factor is below breakeven. Moreover, unlike a seller of non-perishable goods, an airline's inventory of seats cannot be retained for another day. Once a flight takes off, the unsold seats will never provide any revenue.

The basic point is that small differences in average load factors often make the difference between substantial profit and significant loss in the airline industry. This is the basic reason for the popularity of the so-called "hub and spoke" route systems. Each additional flight a carrier adds at its hub will increase by a small percentage (perhaps only one point) the load factors on connecting flights leaving for points beyond the hub. In this way, the hubbing carrier lowers its per passenger costs and increases its profitability.

Essentially the same phenomenon is at work in the CRS industry. Each of the CRS providers recognizes that if an agent does not use a CRS or uses one without bias, it will place a certain number of passengers on its airplanes. This number can be increased by inducing the agent to use its CRS and by biasing their displays, because the probability of sale decreases line-to-line, screen-to-screen. AA083619. TW-CON-ER1-(9).

The added revenue which the CRS owner obtains through bias is, in most circumstances, profit-laden. Internal airline analyses often assume that 80% of this incremental revenue represents pre-tax profit. See TW-CON-ER1-22, pp. 32-81. For the carrier which "lost" that revenue, its profits decline by a similar amount all other things being equal.

Consequently, small shifts in load factor can have enormous implications. The "disadvantaged" competitor can lose much if not all of its profit in the market, and, the "advantaged" carrier can, if it wished, drop its price—since its per passenger costs are lower—thereby gaining a bigger share of the market and cutting the profits of its competitor even more or forcing it to sustain greater losses. Clearly, bias can be used by CRS-owners as a powerful weapon against existing competitors and a strong deterrent to entry by potential competitors.

### III. Competitive Analysis

The previous sections describing the nature of competition in air transportation, the marketing of air transportation today, the role of travel agents and the development of CRS systems lay the foundation for our analysis in this section. As more fully explained below, our analysis shows that the major airline-owned CRS systems have substantial market power which they exhibit today by charging very different fees to different carriers and by biasing the information on CRS systems. Neither practice could persist for any period of time in a competitive market. This "power to maintain price and reduce output" in the CRS market gives them the ability to raise competitors' costs and to deter entry into city-pair markets in the airline industry.

At the core of the CRS owners' power is the ability to generate incremental revenues to offset losses incurred because travel agent receipts and carrier booking fees do not cover CRS costs. The millions of dollars of incremental revenues generated by CRS's have the effect of precluding entry into the CRS industry by anyone except a very large air carrier—all, or most, of which already operate a CRS system.

#### A. Our Statutory Mandate

We believe that Congress gave the Board the authority and responsibility to take appropriate action in this type of situation, primarily under section 411. In the Airline Deregulation Act, Congress placed a high priority on "the prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, including the avoidance of "excess market domination and monopoly power" and other conditions "that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation." Section 102(a)(7).

Congress also gave the Board authority to prevent "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." Section 411. Section 411 was patterned—indeed is virtually identical to—section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and as the Supreme Court has noted, has the same general purposes. *Pan American World Airways v. U.S.*, 371 U.S. 296, 303 (1963). As the Supreme Court has consistently held, "unfair methods of competition" in the Federal Trade Commission Act "was designed to supplement and bolster the Sherman and the Clayton Act . . . —to stop in the

incipiency acts and practices which, when full blown, would violate those acts." *FTC v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394-95 (1953). *Atlantic Refining Co. v. FTC*, 381 U.S. 357 (1965); *FTC v. Brown Shoe Co.*, 384 U.S. 316 (1966). The companion prohibition against "unfair or deceptive practices" in both section 411 and section 5 of the Federal Trade Commission Act was intended to protect consumer from trade practices which, while not necessarily anticompetitive, were misleading, contrary to recognized public policy or injurious to consumers. *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972).

Given the prophylactic intention of section 411, it is appropriate for us to use section 411 as the basis for prospective rules. It permits us to forestall conduct where we find that a potential for abuse exists. We need not, therefore, determine whether there actually has been a violation of section 411 in order to promulgate rules. See *National Petroleum Refiners Ass'n v. FTC*, 482 F.2d 672, 678 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951. The choice between proceeding by general rule or by individual litigation is "one that lies primarily in the informed discretion of the administrative agency." *SEC v. Chenery Corp.*, 332 U.S. 202-03 (1947); *American Airlines, Inc. v. CAB*, 359 F.2d 624 (D.C. Cir. 1966) *cert. denied*, 385 U.S. 843.

In considering CRS carrier practices under this section, we are mindful of the fact that our principal obligation is to ensure effective competition in carriers' fare and service offerings. Of course airline deregulation is premised upon the view that individual city-pair markets are highly contestable. Our concern with the CRS system is that they constitute the primary information source to persons who sell over 60 percent of a typical air carrier's services today and may sell 70-80 percent in a few years. Except for a very few carriers, like People Express and Southwest, which have simplified pricing structures and regularized, frequent flights on heavily traveled routes and do not interline, carriers rely heavily on agents to inform the public of their fare and service offerings, and to write their tickets. Even for those low-cost carriers, access to travel agents at competitive fees and on an unbiased basis could increase the efficiency of their marketing.

To assess the effects of CRS practices on air transportation, we must examine the CRS market. The CRS market consists of the several services CRS owners provide to distributors of air

transportation (agents) and to the persons who wish to have their air transportation marketed through agents (other carriers). Agents purchase the electronic display of schedules, fares and seat availability, along with the ability to book reservations and issue tickets electronically by use of the system. Carriers purchase the electronic transmission of current schedule, fare and seat availability information, along with the transmission of reservation information upon an agent's sale of a seat. It is the ability to raise prices or restrict output of these services that is the focus of our analysis.

The CRS situation is one which affects virtually all major airlines in the United States. It is also one in which action, to be effective, should be taken with respect to all airlines/owned CRS systems even if they do not have the magnitude of market power that American and United possess today. The incentives to bias systems and generate incremental revenues are so strong that a rule applicable only to United and American would still leave substantial risk of abuse. The national market shares of the newer CRS's are growing. Moreover, in certain regional markets, where competition is most important, each of the smaller CRS owners have shares approaching those of American and United. To the extent that incremental revenues allow lower prices to agents, CRS competitors not subject to the rule could use this price advantage to offset the quality disadvantage of biased displays and thus perpetuate the problems associated with bias. Consequently, we believe the only responsible course is to propose rules covering all airline-controlled CRS systems.

#### B. Access to a High Percentage of Travel Agents is Essential

1. *The efficiencies of the travel agent system.* Given the importance of load factors to a carrier's per passenger costs and overall profitability, access to travel agents is usually critical. With minor exceptions, a carrier simply cannot ignore this distribution system which already accounts for over 60 percent of domestic revenue and 80 percent of international revenue today.

Carrier reliance on travel agents as their primary distribution system is based upon the substantial efficiencies of the agency system. As we found in the *Competitive Marketing Investigation*, it is far less costly for most carriers to use agents than to establish an independent distribution system. The common agency system allows carriers to spread the cost of

distribution outlets over a large base. Order 82-12-85 at 35. For many members of the domestic air carrier trade association that accredits agents, the cost of administration of the agency program was less than \$1.00 per agent. Individual air carriers could not establish a comparable independent marketing system. The system also facilitates entry into new markets. Even in cities far removed from a carrier's existing route system, there are agents prepared to provide distribution services immediately upon notification of a carrier's decision to enter. A carrier can enter a new city, or provide service in a new market without incurring significant costs in establishing a distribution network. Similarly, carriers can freely exist without liquidating fixed assets. *Id.* at 35-36. The evidence shows that the key to gaining these efficiencies for virtually all airlines is access to the travel agent community through CRS systems on reasonable terms.

United takes exception to our focusing on the travel agents in this proceeding. It argues that travel agents are merely one form of air transportation distribution available to air carriers and consumers. In its view, direct sales outlets are a readily interchangeable alternative available to both. As we have already explained, however, travel agent distribution is a more efficient means of distributing air transportation services than independent sales outlets. Only carriers with very specialized route systems may be able to circumvent travel agents through direct distribution systems.

Moreover, the *Marketing* case also established that consumers believe travel agents provide a different and more comprehensive type of distribution service than carriers. While there may be some interchangeability, the carriers themselves have assured that consumers will increasingly use travel agents—by creating and maintaining a system under which the consumer does not pay any more for full service from a travel agency than for direct purchases from the airlines. To most consumers, carriers are seen as providing little more than a reservation service. Carriers tend to be called directly when the choice of carrier, the itinerary and time for travel have already been determined. Travel agents, on the other hand, are seen as providers of comprehensive and objective travel advice.

Agent distribution services differ from carriers' direct sales services in that agents are relied upon to offer assistance in the selection of travel alternatives. In essence, consumers rely upon them to keep track of the multitude

of service and fare options the various carriers in a market may offer. Of course, travel agents are also used because they offer some types of travel services, such as car rental and hotel reservations, tour packages, cruise packages and travelers checks that airlines' direct sales outlets generally do not offer. Recognition of the basically different service that travel agents perform has been at the core of our explanation of travel agents' rapidly increasing share of the air travel distribution industry. United itself recognized as much when it projected that by 1985 travel agents may be responsible for some 80 percent of ticket sales and, in a few more years, as much as 85 percent. DOJ Comments at Appendix D: Kotar EX. 4 at 10 and UA-001583.

2. *Access to travel agents in a region.* While much of our discussion has focused on the importance of travel agents nationally, the real economic impact is more regional in nature. Obviously, most people use travel agencies with locations in the immediate community, not agencies hundreds of thousands of miles away. Consequently, a carrier is likely to have lower load factors—and therefore higher per passenger costs—if it is denied access to a high proportion of travel agents in the cities it serves. This is why the often high regional market shares cited by the Department of Justice are so troubling. A new entrant into a city-pair market out of Dallas-Ft. Worth, for example, may be denied access to some 54 percent of its potential passengers from that area were it not on the SABRE system, which has 88 percent of that area's travel agents by revenue.

Even where the predominant CRS system in a region has a smaller market share, the effect on load factors could be very significant. A carrier denied meaningful access to a CRS system handling 40 percent of the agent ticket volume in the cities it serves could well have difficulty reaching a quarter of its potential market today and a third of that market in a few years. Ignoring other factors, the carrier could have per passenger costs 30 percent higher (and in the future, 50 percent higher) than a competitor with access to all travel agents. The carrier might reduce some of this cost advantage if it had access to most travel agents at the other end of the city-pair or engaged in extensive advertising and promotion. But, even then, the potential cost disadvantage could still be significant.

Notably, the regional market share figures provided by the Department of Justice—which appear to be

conservative—show that in many of the major metropolitan areas of the country, the largest CRS system has at least 40% of the travel agent markets. In many major cities, the percentage is much higher: Boston (69%), Cincinnati (84%), Cleveland (64%), Dallas-Ft. Worth (88%), Denver (72%), Houston (68%), Kansas City (71%), Phoenix (69%), Portland (66%) and Rochester (69%).

3. *CRS is the key to the travel agent market.* As discussed in detail in the earlier section, CRS's are by far the primary conduit to information from carriers to the travel agent community. To most travel agents, CRS's are not a luxury but a competitive necessity as graphically demonstrated by the fact that CRS's have grown from almost zero to ninety percent of the market in less than eight years.

### C. The Major CRS Owners Have Market Power

All of the indicia of market power in traditional economic terms are exemplified by the undisputed facts presented in this rulemaking. As noted above, virtually all carriers must have access to a large proportion of travel agents in the regions the airlines serve. Reaching 90% of the travel agent market efficiently requires access to CRS systems. In economic terms, the cross-elasticities of demand between CRS's and their alternatives are very low for almost all carriers and travel agents.

That, in and of itself, would not be a great concern were entry into the CRS industry easy or were the market not concentrated and agents and carriers could use multiple systems or quickly switch between systems. None of these is the case.

1. *Difficulty of entry.* Entry into the CRS industry is not only difficult but indeed may well be impossible for all but the largest carriers that already provide CRS systems. This is due to the fact that even the American and United systems—which are among the most sophisticated computer systems in the world—may operate at a loss with their current pricing structure if incremental revenues from air transportation are not included.

Consequently, non-carriers realistically cannot enter the market and thus pose no competitive threat. They simply cannot offer prices competitive with the carrier-owned systems and still earn a profit. U-like carrier providers, they cannot overcome their losses with tens (if not hundreds) of millions of dollars of additional revenues from air transportation. Tymshare's experience—with a much less capital-intensive system than the major CRS's—

demonstrates this fact as it acknowledges that it has been forced to keep the price of its system below its costs in order to compete with carrier systems.

Since the incremental revenue generated by a CRS system for its owner is proportional to the amount of air transportation a carrier provides, it may well be that only the largest airlines—United, American, TWA, Eastern, and Delta—could profitably operate a CRS system today. They have the extensive route systems necessary to generate incremental revenues of the magnitude required to make a CRS system potentially profitable.

It is uncertain whether other major airlines could profitably enter the CRS industry or whether the fringe competitors—TWA, Delta and Eastern—can make significant inroads into the dominance of American and United. To make significant inroads, they have to convert agents since all but some ten percent of agencies (by revenue) are already under contract with one of the other CRS vendors. Or, they have to sell their system as a second system for the agent—something current contract provisions may inhibit.

Notably, United and American are increasingly using contracts with travel agents that make it more difficult for a competitor to convert an agent. Where economies of scale are important, long term leases with penalties for early termination tend to increase the time before a new entrant or fringe competitor has the market share necessary to operate economically and thereby increases its initial losses, risk and sunk costs.

The major CRS owners are also impeding agents' ability to use other systems in conjunction with their own. This is the effect of United's contract provisions that require an APOLLO subscriber to use APOLLO for at least 95 percent of its bookings that include a United segment. American's "minimum of parity" rule has a similar effect.

Of course, even if such clauses did not exist, agents may not readily switch systems. When an agent switches systems, it may incur additional installation and equipment costs. It will undoubtedly experience a period of disruption while the CRS system is replaced and the employees learn to use the new system. Generally, agents have required the new CRS provider to absorb these costs and to discount its system to compensate for the inconvenience of switching.

Finally, a new competitor will have particular problems converting agents in a region where the dominant CRS provider is also a major provider of air

transportation. Agents naturally prefer up-to-date and reliable information on the carrier that provides substantial air transportation in the region.

**2. Market shares and concentration.** The potential for substantial market power is increased by the fact that the CRS market is concentrated. Table 2, *supra*, shows that SABRE has 49 percent of automated agencies and APOLLO has 31 percent of automated agencies, in terms of revenue. If all agencies—automated and unautomated—are included, the two major CRS systems have 70 percent of domestic airline revenues derived from travel agencies. And, as noted earlier, the market share of the leading CRS providers in many major metropolitan areas is often much greater.

United suggests that we cannot find market power, however, unless the market share of the dominant firm is much higher—more than 60 percent. This is the case in a number of the regional markets, as detailed in Table 3.

But, more important, we must recognize that a firm can have substantial market power with much less than 60 percent of the market. It all depends on the ease with which customers can switch to alternatives and the ease with which new entrants and fringe competitors can increase output: market elasticities of demand and supply. Landes & Posner, *Market Power in Antitrust Cases*, 94 Harvard Law Review 937, 951 (1981).

While American and United may not have quite that much market power, the fact remains that market elasticities of supply and demand appear to be low. In most cases, neither travel agents nor carriers have any alternative but to be on a system; smaller CRS providers are likely to encounter difficulties in growing quickly; and new entry into the CRS market is difficult if not effectively blocked.

**3. Conduct and performance.** If there were any doubt that United and American have market power in the provision of CRS services, that doubt is dispelled by three facts that can only be explained by the existence of market power.

First, the record shows that American and United are charging different carriers disparate prices for the same service. The price ranges from thirty cents to three dollars per segment booked. As Professor (now Judge) Posner has stated:

Persistent discrimination is very good evidence of monopoly because it is inconsistent with the competitive market; it implies that some consumers are paying more than the cost of serving them, a situation that would disappear with competition. R. Posner,

*Antitrust Law: An Economic Perspective* 63 (1976).

Second, major CRS vendors clearly restrict the output of their product. Restriction of output is the classic behavior of a monopolist since this increases its profits. In the CRS market, the output is really the provision of information. And, restriction of information can be in the form of providing less information or providing less reliable information. In the case of bias, of course, it is the latter. Again, as in the case of systematic price discrimination, bias could not remain prevalent in a competitive market because travel agents and their customers—as well as other carriers—would obviously prefer unbiased information, although they might accept a certain degree of bias in exchange for lower fees. That biased systems not only persist but, in fact, dominate the market indicates very strongly that the incumbents recognize there is little threat of new entry.

Third, the internal documents of American, United and TWA reflect rates of return that could only exist in the long run if they had substantial market power. Since they do not price their CRS services to be profitable on a "stand alone" basis, these high rates of return are attributable to incremental revenues from air transportation. Internal American memos have estimated its rate of return on CRS as 500 percent. United, in fact, instructs its sales personnel not to accept a travel agent contract that will yield less than a 30 percent annual return of investment, including, of course, incremental air transportation revenues. DOJ Comments at 52: UA 004586.

**4. The heavy reliance on incremental revenues perverts competition.** Indeed, as American has noted in its comments, the importance of incremental revenues—which are enhanced by bias—really leads to a situation where all CRS vendors have a strong incentive to compete on the basis of increasing the bias of their systems, at least up to the point that will be tolerated by travel agents. The relationship between United and American, as confirmed by their internal documents, illustrates the problem and the perverse incentives that it creates.

United is the least preferred carrier in terms of listings on the American SABRE system and American is the carrier most biased against on the United system. Each system thereby diverts even more revenues away from a competitor. To combat this, each attempts to find increasingly sophisticated means of biasing its own

system so that, if the bias increases on the other system, the lost revenue will be balanced by the increase in revenue from its system.

The strong incentives for United and American to increase bias is exemplified by United's program for parametric merchandising. See DOJ Comments at 99-106. The thrust of United's plans is to bias its system on a market by market basis with various degrees of bias for different carriers, and a bias which is constantly changing depending on the competitive situation. Such unsystematic bias would make it much more difficult for travel agents to detect the bias and overcome it, leading—at least United hopes—to increased incremental revenue to it and diversions of revenue from its competitors.

#### D. The Impact on Air Transportation

The market power that United and American possess in the CRS industry gives them power to raise competitors' costs in air transportation markets. Other CRS vendors—TWA, Delta and Eastern—are compelled to bias their own systems as protection against the bias in the much more dominant United and American systems so that they do not sustain large losses. TW-CON-ER1-22 at 44, 46, 49, 50. This compounds the dissemination of misleading information to the detriment of travel agents and the consuming public and increases the power of the CRS owners to raise their competitors' costs.

The CRS owners can raise competitors' costs directly by charging higher access fees. The potential impact of this is suggested by an observation of the Joint Carriers in their original petition for rulemaking. Based on CAB data, in 1978, the most profitable year for airlines to date, all carriers made an average profit of about \$2.50 per passenger segment. CRS owners also can increase costs indirectly by biasing displays. This diverts sales from other carriers, which is very important because of the economics of load factors in the airline industry. A small decrease in load factors, as noted previously, may make the difference between significant loss and substantial profits.

Most important, the major CRS owners have the power to increase competitors' costs not only in a single market but in all markets in which a competitor flies. This provides a powerful deterrent to entry or to a competitor that may consider competing on the basis of lower fares. United or American can deter such procompetitive activity by threatening to increase access fees and bias for a competitor in all the markets which that competitor serves. The diversion of revenue for a

moderate size carrier could amount to tens of millions of dollars a year—much of which, as noted earlier, would otherwise go right to the bottom line.

That non-CRS carriers perceive the threat is demonstrated by correspondence in the record. Air Florida apparently felt that, to overcome United's concern that it would be an aggressive competitor with United, it had to agree to notify United prior to entry into any new market. Likewise Jet America in correspondence with United on at least two occasions apparently promised that it would not be a "low cost" airline. And, Pan American apparently sought to assuage United's concerns that Pan Am would become increasingly competitive with United. DOJ Comments at 166-67: UA 578, UA 18859 and UA 51.

This is not the kind of perception or conduct that we will tolerate in the domestic air transportation industry. The whole foundation of deregulation is the "contestability" of city/pair airline markets. That is, although many markets may be highly concentrated—with two or three competitors—fares and service should remain at competitive levels because of the ease of entry. If entry is deterred, however, incumbent airlines will have more flexibility to raise the price above competitive levels and more efficient airlines will be less able to discipline the major carriers. The result would be fares above competitive levels resulting in a monopoly surcharge to those passengers who do still fly and a reduction in consumer welfare for the economy as a whole.

The problems of bias and discriminatory access fees are compounded by other potential abuses of market power some of which are documented in the record before us. In addition to raising access fees to competitors, United and American have also required that other airlines enter into a "net ticketing agreement" with them as a precondition to the provision of access to their CRS systems. Net ticketing arrangements are contracts by which interlining carriers agree to pay each other for selling and handling the ticket sales on the other carrier. Such arrangements, in and of themselves, may not be anticompetitive at all. However, using access to a CFS as a precondition offers the very great potential of being able to charge unreasonable net ticketing fees or force a carrier to accept the added costs of that agreement—again a means of increasing competitors' costs and increasing the discriminatory nature of access fees.

The major CRS vendors—American and United—also obtain very valuable

sales and booking data from their systems which they use in their marketing planning and in dealing with travel agents. This very detailed and timely information permits them to determine exactly how much each travel agent on the CRS system is booking on themselves and each of their competitors. They are therefore in a position to offer agents override commissions geared toward increasing their load factors in particular markets vis-a-vis a competitor. In and of itself such conduct would not be at all reprehensible. The problem is that the proprietary information necessary to compete with such an override system is simply not available to their competitors. They are therefore in a position to suffer the same types of diversion through a selective commission override system that they now face due to bias.

Finally, a number of carriers have complained that access to the so called "service enhancements" offered by some CRS systems is not available to all carriers on a nondiscriminatory basis. See n.7, *infra*. Again, where service enhancements increase the ability of an airline to sell its air transportation, the major CRS vendors may be in a position to place competitors at a marketing disadvantage.

#### E. Legal Conclusion

In view of the express policies in section 102 of the Airline Deregulation Act, we believe that we have not only the authority but the responsibility under section 411 to take action to prevent the use of market power in the CRS industry to lessen competition in air transportation. Since that market power occurs only because the CRS providers are able to earn large amounts of incremental revenues from air transportation and would not exist if the CRS providers were not airlines, we believe that we have the authority to take action to reduce the market power in the CRS market.

This conduct is analogous to conduct which the courts have found destroys competition and establishes monopoly. In a number of cases monopolists have been required to deal on reasonable, nondiscriminatory terms. *LaPayre v. FTC*, 366 F.2d 117 (5th Cir. 1966) and *Fulton v. Hecht*, 580 F.2d 1243, 1249 (5th Cir. 1978) ("[u]nder section 5 of the FTC Act, a monopolist may be required to use uniform and reasonable criteria when dealing with those who compete in an adjacent market.") Moreover, the same duty has been imposed upon joint ventures where the joint ventures control a facility essential to effective

competition. In *U.S. v. Terminal Railroad Ass'n*, 224 U.S. 383 (1912) several railroad companies formed a joint venture that controlled access to rail routes to St. Louis. Unanimous consent was required before any new firm could gain access. The court ordered the Association to permit other railroads to use the Association's facilities on reasonable, nondiscriminatory terms. To the same effect are *Associated Press v. U.S.*, 326 U.S. 1 (1945), and *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963). Thus these cases require that those who control the essential facility provide access to all competitors on non-discriminatory terms.

The size of incremental revenues alluded to above also indicates the risk of consumer deception. The very existence of such incremental revenues indicates that consumers are in fact being misled if not deceived. Travel agents are presented to the public as neutral industry representatives and neither carrier nor agents point out that they use biased information systems. Even if an agent desired to overcome bias, the increasing sophistication of display programming makes it more difficult to detect.

Obviously the amount of incremental revenue does not accurately measure the amount of consumer harm caused by this misinformation. Bias can deprive consumers of the opportunity to take advantage of lower fares. Frontier Comments at Appendix B. Much of the harm may be in the form of inconvenience however. Given the extent of incremental revenue and its recurring nature the consumer injury from deception is likely to be substantial.

Nor can the consumer readily avoid it. To deal with air carriers directly the consumer would have to undertake the very search costs that the use of travel agents is intended to avoid. Switching between automated agents using different systems would only substitute one carrier's bias for another's. While use of a non-automated agent is possible, their numbers are dwindling and consumers would have to forego the advantages of automated agents to use this option.

#### IV. Our Proposed Course of Action

##### A. General Rules

Based on our review of the comments and the information filed in the rulemaking and in response to our Evidence Request, we believe that the dominant CRS owners have significant market power over the flow of information between carriers and travel

agents. We have also tentatively concluded the CRS owners have the ability and strong incentives to exercise this power to reduce competition in air transportation, and to otherwise injure consumers. The evidence suggests that some CRS owners may in fact be exercising this power today. We therefore have decided to propose rules which limit the exercise of that market power and remove some of the obstacles to entry which are the basis of that market power. The rules would prohibit bias, require CRS owners to give access to other carriers on non-discriminatory terms, and prohibit restraints on agents' use of multiple systems.

Our ability to forecast the future of the CRS industry is far from perfect. We cannot measure precisely the extent or duration of the market power or the limitations on it. These considerations lead us to conclude that it is appropriate to strike a balance which prevents competitive and consumer abuses but still allows the CRS market to function. Our proposed rules should be sufficient to alleviate the major problems that we have identified, but still give CRS owners great latitude in the design and marketing of their systems.

Given the dynamic nature of computer communications and airline distribution, the CRS industry should continue to be monitored by the Board or its successor even after our proposal is implemented. Should this proposal be inadequate, we would anticipate that the responsible agency(ies) would be ready and willing to consider further rules or either partial or complete divestiture. On the other hand, should the CRS owner's market power dissipate through new developments, the rules should be eliminated or modified. Therefore, we propose a mandatory reassessment of these rules by 1990.

1. *Bias.* With the exception of parties opposing rules altogether, all parties have identified bias as an area of abuse can lead to consumer deception and harm to competition. All support or at least accept rules on the subject. A majority of commenters urge us to adopt a simple prohibition of the use of carrier identify as a factor in creating displays.<sup>2</sup> Certain parties, however, argue that such a prohibition would not be effective, and urge us to require that displays be structured in particular ways.<sup>3</sup>

<sup>2</sup> Continental, Delta, DOJ, Frontier, Pan American and Western. No pro-rule commenter objected to simple bias prohibitions.

<sup>3</sup> American, Republic, ARTA, TWA and Western. Delta and the Joint Carriers specifically opposed Board-mandated display formats.

We will not adopt the latter approach to eliminating bias. We have consistently allowed market forces in the airline industry to determine as much as possible the quality and variety of services offered in the CFR industry. To now regulate CRS operations of carriers specifically, would be contrary to the intent of the Airline Deregulation Act. In addition, we hesitate to attempt to decide what single display format best meets consumer needs.

However, the display of connecting flight information presents special problems. All CRS systems now select a limited number of connecting points for each city-pair market and construct connections over those points and edit out certain connections, based on various criteria. This process creates a greater potential for abuse, which could not be readily detected. On the one hand, we recognize that the increased potential for abuse may justify imposition of some standards. On the other hand, we do not now have the information necessary to justify particular standards. Moreover, to defer action entirely while we collect that information would delay implementation of rules in other areas where we are prepared to go forward. We have therefore decided on a two-part approach. We are including as a part of the general CRS proposal, a rule that would prohibit use of carrier identity factors in selecting connecting points and selecting flights. We are also issuing a separate advance notice of proposed rulemaking to solicit suggestions for practical means of dealing with bias in connecting flights and to obtain information on the feasibility of various alternatives.

While we are not proposing to establish mandatory objective criteria at this time, the potential risks of permitting carriers to use total enplanements or flights (total size) at connecting point may warrant a specific prohibition. Some carriers are developing new hubs at smaller points as alternatives to such major hubs as Denver, Atlanta and Chicago. In the absence of any restriction, a CRS owner could adopt as an objective criterion the total size of each hub, e.g., select the five largest or ten largest hubs based on total flights or enplanements. Use of such an objective criterion would effectively deny listing to flights of a system vendor's competitor that elected to develop an alternative hub. We therefore request comments on whether we should expressly prohibit the use of size, at least as between medium and large hubs, as an objective criterion.

In an effort to enhance the effectiveness and enforceability of our bias rules, we are proposing two additional rules. First, we propose to require CRS owners to disclose the factors they use in constructing displays, in selecting connecting points, and in editing connecting flights. Many commenters, including CRS owners and user-carriers, support these rules. Second, we propose to require that CRS owners load and handle information in a non-discriminatory fashion.

2. *Pricing.* All commenters supporting Board intervention identified the pricing of CRS services as another potential problem area. A large number of commenters urge us merely to prohibit discrimination in fee levels.<sup>4</sup> They fear that any effort to regulate the level of fees would involve us in lengthy and difficult ratemaking, for which our authority is questionable. Some carriers urge us to go further and either set fees or prohibit unreasonable fees. They argue that fee levels are now excessive and that CRS owners have sufficient market power to maintain excessive fees, even in the face of a simple prohibition on discrimination.<sup>5</sup>

We have decided to prohibit discriminatory fees. As discussed more fully below, we anticipate that incremental revenues will be significantly reduced as a result of the elimination of bias. With lower incremental revenues, it is difficult to say that existing fee levels would be excessive. Indeed, determining reasonable fee levels for CRS's would be extremely difficult.

Although we are inclined to adopt the traditional view of discrimination, *i.e.*, one that permits cost-based differences in fees, we are also sensitive to the risk that such flexibility may lead to abuses. Therefore we are also seeking comment on whether to require each CRS owner to establish uniform fees that would be charged to all carriers, regardless of differences in cost in providing CRS services to different carriers.

Most commenters favoring rules also request that we prohibit CRS owners from requiring the purchase of or payment for other services as a condition of access to their CRS system (tying arrangement).<sup>6</sup> Tying

arrangements currently take the form of requirements that carriers accept interline ticketing fee agreements as a condition for CRS access, and they are objected to as abuses of CRS market power. This tying is simply another mechanism of discriminatory pricing. None of the pro-rule commenters have objected to such a prohibition. We propose to prohibit the practice.

3. *Service Enhancements.* A related issue raised by a number of commenters is access to service enhancements, *i.e.* services available through CRS's beyond reservations and ticketing capability. Some commenters, including TWA, a CRS owner,<sup>7</sup> have requested that we require that access to all service enhancements be given to participating carriers because otherwise the system owner has an unfair advantage. American opposes forced licensing.<sup>8</sup> It argues that access to service enhancements is not critical to assuring that the agent has access to the information necessary to book a reservation on a given airline, and that the ability to offer exclusive enhancements is merely a natural attribute of the service competition that spawned CRS development.

We propose to strike a middle ground. We would permit CRS owners to retain exclusive use of enhancements, but require that CRS owners offer them to all other carriers on non-discriminatory terms once they offer enhancements to any outside carrier. This approach prevents enhancements from being used as a weapon to injure competition, while maintaining the incentives for continued development of enhancements. However, we will also consider comments on whether this exception for CRS owners should be allowed.

4. *Travel agent contracts.* Many parties urge us to regulate certain aspects of contracts between CRS owners and travel agents. Some urge us to prohibit in general terms provisions that inhibit use of multiple systems.<sup>9</sup> Certain members of this group also ask us specifically to prohibit provisions that discourage an agent from using competing systems to book a CRS owner's flights.<sup>10</sup>

We propose to prohibit contract provisions that impede the use of multiple systems and that impede switching between systems. In this regard, we would prohibit contracts of longer than five years duration. We are

also proposing specific prohibitions on contract provisions that would limit the agent's freedom to choose among systems in connection with booking a CRS owner's flights and that require parity in the number of terminals an agent has from various CRS providers. Contract provisions such as these have the effect of insulating CRS owners from competition and increasing the difficulty of entry into the CRS market.

5. *Booking and sales data.* CRS's generate very detailed information about booking patterns which are made available to the marketing departments of CRS owners. Data that CRS owners make available to other carriers is much less detailed. Most commenters have urged us to regulate practices in this area to prevent CRS owners from having an unfair competitive advantage. They are split as to the appropriate solution. About half urge us to prohibit use of any such information by CRS owners' marketing departments.<sup>11</sup> The remainder contend that such a prohibition would be unenforceable.<sup>12</sup> They claim that only a compulsory disclosure rule would be effective in curing the problem.

We share the doubts about the effectiveness of prohibiting information dissemination to CRS owner marketing departments. We propose requiring CRS owners to offer any booking and sales data that they choose to generate to other carriers. CRS owners would not be obliged to generate booking information. If they do, they can charge non-discriminatory fees for providing the information to other carriers.

6. *Applicability.* We propose to regulate only carrier-owned systems, and only those used by travel agents as that term is commonly understood today, *i.e.* ticket agents that hold themselves out to the public as providing neutral representation of the industry. Internal reservations systems would not be included. The rule would apply to sales of domestic and foreign air transportation.

## B. Procedures

In the Advanced Notice of Proposed Rulemaking (ANPRM) EDR-466, we proposed to conduct an informal rulemaking, as defined by the Administrative Procedure Act, 5 U.S.C. 553. We indicated that this type of proceeding would be used to develop rules of general applicability that are prospective and legislative in nature, and to develop a "factual record, responsive policies and appropriate

<sup>4</sup> American, Continental, Delta, Golden Pacific, Muse Group, TWA and Western.

<sup>5</sup> ARTA, Continental, Golden Pacific, Muse Group, Joint Carriers, Pan American and Republic, TWA, Western and American specifically opposed fee setting. Frontier opposed a reasonable fee requirement.

<sup>6</sup> American, Continental, Delta, Frontier, Joint Carriers, Pan American, Republic and Western.

<sup>7</sup> Continental, Frontier, Joint Carriers, Pan American and TWA.

<sup>8</sup> American comments at 35-37.

<sup>9</sup> American, Continental, DOJ, Frontier, Joint Carriers, Pan American.

<sup>10</sup> Continental, Frontier, Joint Carriers and Pan American.

<sup>11</sup> ARTA, Continental, Joint Carriers, Pan American, TWA.

<sup>12</sup> American, Frontier, Republic and Western.

regulatory action."<sup>13</sup> We solicited comments on the proposed procedure.

We also have indicated on two occasions, in the ANPRM and Order 83-10-74, that we would not hold oral evidentiary hearings. In the ANPRM we stated that any final rule in this case would not rest on "resolution of particular issues of adjudicative fact"<sup>14</sup> but rather on policy determinations based on arguments, opinions, and facts submitted by commenters, and gathered pursuant to our request for information (Order 83-8-105). In Order 83-10-74, in response to various motions and petitions filed by United, and a petition for reconsideration of Order 83-8-105 filed by American, we again rejected the need for an oral evidentiary proceeding. We reiterated that we were not engaging in fact finding about past conduct—which is the end result of an adjudication. Instead, we were concerned about the need for future, prospective rules. However, we noted that it was necessary for us to gather specific facts from carriers to determine, what, if any, future actions were necessary. We also indicated that Order 83-8-105 was not an enforcement proceeding, and rejected efforts to turn it into one. Thus, while reviewing documents—some of which related to past conduct—our focus has been to assess what prospective course we should take. We further stated that comments filed by United in its Petition for Adjudicatory Hearing, Docket 41735, would be considered fully in this proceeding. We address those arguments below.

United alone maintains in three separate documents—a Petition for an Adjudicatory Hearing filed October 13, 1983, and Comments and Reply Comments to the ANPRM—that the Board must undertake to conduct an adjudication. American, in its Petition for Reconsideration of Order 83-8-105, initially agreed with United's position. However, it has not maintained its argument in its comments to the ANPRM. Essentially United makes three points: first, allegations have been made, and facts have been disputed, that can only be, and must first be, resolved through adjudication prior to any rulemaking proceeding, and that the Board is essentially engaging in an adjudication despite labeling it as rulemaking; second, under § 411 we are required to hold an adjudication; and, third, if the CAB voids United's existing CRS contracts without an adjudication United will be deprived of property without due process of the law.

The DOJ supports our decision, and the statutory basis for that decision, to proceed by informal rulemaking without holding an oral evidentiary hearing and also asserts that section 411 does not require that formal rulemaking procedures be used. The DOJ also concurs that we are not engaging in *de facto* adjudication, but rather that our intent and procedures clearly fall within the well defined boundaries of rulemaking, and that a trial-type hearing is not required whenever a rulemaking results in a restriction of property rights.

1. *Adjudicatory facts.* We disagree with United that we are engaged in determining the type of facts that would require an adjudication. First, we are engaged in rulemaking under the definitions of the terms "adjudication," "rulemaking" and "rules" contained in the APA, 5 U.S.C. 551(7), (5) and (4), respectively. Second, because of our intention to promulgate rules of general applicability, we are not engaging in an adjudication masquerading as a rulemaking.<sup>15</sup>

To assess whether an agency is engaged in rulemaking or adjudication, courts determine whether the proceeding involves "adjudicative" or "legislative" facts. Professor Davis defines the terms as follows:

Adjudicative facts are the facts about the parties and their activities, business, and properties. Adjudicative facts usually answer the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.<sup>16</sup>

We recognize that "[w]here adjudicative, rather than legislative facts are involved the parties must be afforded a hearing to allow them an opportunity to meet and to present evidence."<sup>17</sup> However, we disagree that the facts gathered, or the use of those facts, falls within the commonly applied definition of "adjudicative facts." We conclude instead that they fall within the term "legislative facts."

United has tended to view our rulemaking procedure as an attempt to find it in violation of the antitrust laws

<sup>13</sup> See Attorney General's Manual on the Administrative Procedure Act, at 14 (1947) which discusses the distinction between rulemaking and adjudication. See also *American Airlines v. CAB*, 359 F. 2d 824, 831 (D.C. Cir. 1966), cert. denied 385 U.S. 843 (1966).

<sup>14</sup> 1 Davis, Administrative Law section 702 at p. 413 (1958), also cited in *Alaska Airlines v. CAB*, 545 F. 2d 194, 200 (D.C. Cir. 1976).

<sup>15</sup> *Alaska Airlines, Inc. v. CAB*, 545 F. 2d 194, 200 (D.C. Cir. 1976).

or to have engaged in unfair or deceptive trade practices. It thus characterizes our action as essentially an adjudication. It seems that United views our request for information, for instance, as an attempt to determine if United's past actions "have violated" the laws.<sup>18</sup> It focuses on specific words used in the ANPRM and Order 83-8-105, and from those selected words argues that we are attempting to assess what wrongful acts United has in the past undertaken.<sup>19</sup> For example, United argues that we asked for organizational charts and the identities of certain key personnel because it "would be of interest in an attempt to assess individual wrongdoing."<sup>20</sup>

These claims are untrue. We sought this information pursuant to Order 83-8-105 to see how the various companies were structured and to expand our own knowledge of how the carriers operated their CRS's—not to assess individual culpability.

The focus of our rulemaking has been on what prospective actions we could or should take. A basic knowledge of the industry was required. Solicited information, and various comments gave us a sufficient basis to proceed—not to punish any carrier for past actions or assess whether violations of the antitrust laws have occurred. In addition, we do not resolve here allegations of wrongdoing.

United and the DOJ spar over their comparison of section 411 with section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The DOJ cites *National Petroleum Refiners Ass'n v. FTC*, 482 F. 2d 672 (D.C. Cir. 1973), cert. denied 415 U.S. 951 (1974) for the proposition that under section 5, which is analogous to section 411, an adjudicatory hearing need not be held before a rule is promulgated. United cites 15 U.S.C. 57(a), to support its argument that the FTC must hold an adjudication prior to issuance of any rule. (United agrees that section 411 was closely modeled after section 5 of the FTC act). Whether or not the FTC must hold an adjudication prior to issuance of a rule under section 5 is not relevant here as the Federal Aviation Act does not contain the same explicit statutory language relied upon by United—section 57a of the FTC Act. Indeed that language was added to the FTC Act in response to the decision in *National Petroleum Refiners* that the FTC could issue rules without holding

<sup>16</sup> United Petition for Adjudicatory hearing at 3. (United Petition).

<sup>17</sup> Order 83-10-7 also addresses this issue. We will not restate our entire discussion here.

<sup>18</sup> United Petition at 9.

<sup>13</sup> ANPRM at 22.

<sup>14</sup> ANPRM at 22.

an adjudication. Congress did not similarly amend section 411. To the extent that analogies can be drawn between section 5 and section 411, the addition of section 57a to the FTC Act in no way diminishes the Board's rulemaking authority under section 411.

2. *Statutory authority.* We have primarily relied upon sections 102, 104 and 411 as the statutory authority for our proposed rule. As noted in the ANPRM, those sections of the ADA provide ample authority for our decision to employ informal rulemaking procedures.<sup>21</sup> United, however, argues that sections 102 and 204 are not relevant as to whether we proceed by rulemaking or by adjudication, since neither section address which course we must take.

United recognizes that section 411 does not contain the words "on the record" but argues that despite the absence of that language the application of the statute is "essentially adjudicative" and thus we must hold a hearing. United also contends that because section 411 contains the word "order," and the definition of "adjudication" under the APA also includes the word "order," we therefore must engage in an adjudication.

The DOJ asserts that formal rulemaking is necessary when the language of the statute includes the words "on the record"—which sections 102, 204 and 411 do not.

We agree with the DOJ that we are not required to undertake formal rulemaking or engage in adjudication in this proceeding. The language of all the statutory sections does not contain the words "on the record" and consistent with Supreme Court decisions we believe our procedures fully satisfy section 553 of the APA.<sup>22</sup> We also may provide for oral argument which would give parties a "greater opportunity to persuade and enlighten"<sup>23</sup> the Board, than is required under the APA. Also, as noted in the ANPRM, while section 411 does provide for a notice and hearing before the issuance of a cease and desist "order" we consistently have held that we need not hold an oral evidentiary hearing when we engage in rulemaking.<sup>24</sup> In addition, we are not

here issuing a cease and desist "order", and thus United's argument concerning "order" and "adjudication" too must fall.

Finally, if we were engaged in "essentially an adjudication" perhaps case law cited by United would require us to hold a hearing "on the record" despite the absence of that phrase in any of the statutory sections relied upon here. However, we need not address that issue there because we are not engaged in "essentially an adjudication", as discussed earlier.

3. *Due Process.* We also do not agree with United that our action here will deprive it of property without due process. First, we are providing United with the processes attendant to informal rulemaking. United's argument is that that form of process is inadequate because we are restricting their contractual rights. However, trial-type processes are not required whenever a rulemaking restricts a property right. Virtually all substantive rulemaking affects or restricts property rights and the courts have not overturned rules merely for that reason.<sup>25</sup>

The DOJ notes that our chosen forum provides for much wider participation than would occur if we were engaged in an adjudication. In *Hercules, Inc. v. EPA*, 598 F.2d 91, 118 (D.C. Cir. 1978) the court noted that even if only one company was subjected to a proposed toxic substance rule, such a standard affects more than that particular company and "[r]ulemaking, not adjudication, is the appropriate, flexible procedural mechanism to accommodate the input of all concerned." We agree with the DOJ's and the court's conclusion that our proposed forum will provide all concerned the ability to comment on general rules that we believe will have a far-ranging beneficial effect.

A claim for adjudicatory procedures must rest on the existence of material facts in dispute, not arguments, inferences, conclusions, public policy or economic theory. For the most part United's specific points allegedly requiring adjudication are either not facts, or are facts upon which we do not rely. Moreover, we do not propose to reach a decision "as to whether past conduct was unlawful so the proceeding is characterized by an accusatory flavor and may result in disciplinary action."<sup>26</sup>

<sup>21</sup> See e.g. *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956); *American Airlines v. CAB*, 359 F.2d 624-29, and n.12-13 (D.C. Cir. 1966) cert. denied 385 U.S. 843 (1966); and *Air Line Pilots Ass'n International v. Quesada*, 276 F.2d 892, 896 (2d Cir. 1960).

<sup>22</sup> *United Petition at 14.*

We have made no accusations of illegal conduct and no civil or criminal penalties will be meted out. In addition, United does not dispute many of the facts we rely upon, including the number of agents automated by APOLLO and other systems, the absolute and relative sales revenues flowing through these systems, the differences in access prices and other terms afforded participating carriers, the listing of flights on the basis of carrier identity, the existence of hundreds of millions of dollars in total incremental revenues. Whether American actually drove New York Air out of a specific city-pair market through CRS manipulation is not determinative.<sup>27</sup> Likewise with respect to agents' willingness to work around bias, every study shows that screen placement affects sales. Furthermore, it is an economic judgment that observed CRS access disparities are not examples of legitimate value of service pricing. We have reviewed the assembled, uncontested facts and based on the knowledge gained and expertise in air transportation, reached conclusions on market concentration, structure, and performance, as well as on injury to consumers and competition. United is not entitled to an adjudicatory proceeding to contest those conclusions. We are obliged to inform all interested persons of the facts on which we have relied and the processes used to reach our present position. We have done so. United is now free to challenge those processes and conclusions in its comments in response to this notice and in court, but can demand no more.

### C. Divestiture

We also reject proposals that we order divestiture—complete or partial—at this time. Proponents of divestiture-type remedies have put forward three proposals: requiring airlines to divest themselves completely of CRS's, ordering airlines to set up separate profit centers for their CRS's with a "Chinese wall" between the two entities (including requiring that financial cost reports be generated and distributed), and mandating that carriers set up "maximally" separate subsidiaries to lower barriers to entry and eliminate incremental revenue. Each of the proponents of these proposals argues that its remedy would ensure a competitive market place, with a minimum of further government intervention.

Opponents generally claim that these remedies are unwarranted, that no basis

<sup>27</sup> *American Reply Comments*, pp. 39-40.

<sup>21</sup> ANPRM at 23-24.

<sup>22</sup> *United States v. Florida East Coast Railroad Co.*, 410 U.S. 224, 234-246 (1973); *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 757 (1972).

<sup>23</sup> *American Airlines, Inc. v. CAB*, 359 F.2d 624, 632 (D.C. Cir. 1966).

<sup>24</sup> See ANPRM at 24. Examples cited in the ANPRM include denied boarding compensation and baggage liability rulemaking.

for them exists, and that we do not have the authority to order divestiture. In addition, some commentators assert that general standards are the best way to address CRS problems, that competition will foster better systems, and that efficiencies inherent in vertical integration should not be destroyed. Still others argue that divestiture would not prevent bias, discriminatory access fees, or misuse of information by the third party vendors, and that, therefore, consumers would not be protected.

Divestiture/separate subsidiaries could arguably "cure" all of the ills asserted, and involve little government intervention in the future. On the other hand, at this point, the necessity for such action is not clear. First, general rules should have a direct effect in preventing CRS market abuses, while at the same time encouraging innovation and fostering efficiencies. In addition, general rules should enable the industry to continue to mature, without government direction of that growth. This should permit companies to reap the rewards of technological innovation fostered by competition, while at the same time reduce regulatory oversight of the market consistent with the intent of the Airline Deregulation Act.

Second, divestiture cases require an inquiry into specific facts and a review of past conduct to determine whether or not the remedy is appropriate. This would, necessarily, involve adjudicatory-type hearings. As a practical matter, these cases often take years to resolve, and thus the effectiveness of our role would be questionable. Third, there may be a whole host of efficiencies produced by the vertical integration of airline ownership of CRS that are otherwise unobtainable. For example, transaction costs may be lower for a vertically integrated firm than if we required separate ownership. We do not now have sufficient information to determine which, if any, efficiencies or benefits would be lost or gained by divestiture, and thus, at this time we will not undertake to employ such a remedy. Finally, we note that while we reject divestiture at this time, it may be a viable option in the future, if, after our proposed rules are made final, they prove ineffective. We suspect that if the market does not function competitively in the future, evidence of abuses would surface, and DOJ or any aggrieved party could then present its arguments for divestiture to a district court.

#### Our Proposal

We propose to issue regulations prohibiting display bias, unjust discrimination in fees and access to

service enhancements, and the tying of provisions of computer services to the purchase of other goods or services. The proposed Part 255 would also enable travel agents to use multiple CRS systems and switch systems more easily—thereby permitting new and smaller CRS owners to make inroads into the market. The proposed rule would also regulate use of travel agent sales and booking data generated by CRS's. We discuss the scope of the rule after explaining the substantive provisions in more detail.

### I. Specific Provisions of the Rule

#### A. Display of Information § 255.4

Proposed § 255.4 deals with the problems of bias, and the related problem of information loading.

Bias can reduce competition in air transportation. To the extent that bias reduces the bookings per flight of disfavored carriers, their per passenger costs are increased. Bias also can cause a carrier contemplating entering a market served by a system owner to reconsider its decision. It would have to ponder not only loss of passengers caused by specific market bias, but also the potential loss of passengers systemwide caused by a general increase in bias against its services in retaliation for its entry.

Bias can also result in direct consumer injury which is not easily quantified, but can be readily identified. We know that incremental revenues industry-wide total hundreds of millions of dollars a year. Some percentage of that total logically must constitute consumer injury in terms of dollars—injury also occurs through potential added inconvenience via selection of a less desirable flight because of bias. The magnitude of consumer losses is likely to be in the tens of millions of dollars a year.

1. *Requirement of Comprehensive Display.* Paragraph (a) requires all systems to offer comprehensive displays showing the services of all carriers. Thus, a CRS-owner cannot exclude any carrier. This requirement, when combined with paragraphs (b) and (c), also mandates that displays be free from bias, i.e., that carrier identity not be considered in the selection and ranking of flights.

The rule would apply to all carrier owned CRS's, even those that offer agents direct-access capabilities to other carriers' internal systems. We have considered Eastern's argument that such systems be exempted from any anti-bias rule, but find them unpersuasive. Eastern alleges that with direct/access, agents can overcome any primary

screen bias by simply jumping around from biased internal system to biased internal system. In addition Eastern claims that it would be competitively handicapped if it were subject to an antibias rule. Agents would have access to other carriers' biased internal displays, but Eastern would not have the opportunity to counter with bias in its primary display.

Eastern has underestimated the potential consumer and competitive harm from bias for these types of systems. The process of switching between internal systems is likely to be time consuming and detract from the efficiencies that lead agents to use CRS's in the first place. The record suggests that agents use the direct access feature primarily to get more accurate information on last seat availability and to confirm status of reservations, not to overcome bias.

Eastern has also overstated the potential burden of offering an unbiased display. SODA already offers a comprehensive display, admittedly a biased one. In terms of direct expense, Eastern will face the same costs as other system owners—the cost of unbiasing an existing display. As to the competitive disadvantage, Eastern is free to encourage agents to use its internal displays. In fact, Eastern's SODA system would be comparable to American's SMART system, which American obviously believes will give it a competitive advantage, not put it at a disadvantage.

There is also a serious drawback to Eastern's proposal. The exception could make the prohibition of bias totally ineffective. American, TWA, or any other carrier with direct access capability, could claim the benefit of the exception and carriers without such capability might be prompted to develop it. In a short time we would return to the very situation we have today. Agents would be faced with bias in whatever carrier owned system they used, and could only overcome it through time consuming searches through numerous biased screens.

2. *Display Bias.* Paragraph (b) and its subparagraphs set out our proposed rule on bias. The paragraph itself prohibits the use of carrier identity factors in the ordering of flight displays.

Subparagraph (1) directs that flights be ranked on the basis of service factors that do not consider carrier identity and are applied equally to all carriers. System vendors would be free to select the service criteria to be used. This subparagraph would reinforce the basic requirement that no carrier, including the system vendor, may receive a

preference in the listing of flights based on its identity.

The second subparagraph would require vendors to disclose to carriers and agents, on a current basis, both the criteria they use in ranking flights and the weightings attached to each. Many parties have commented that such publication is necessary to ensure that system vendors are not evading the Board's rule, and to allow agents to evaluate intelligently the information that they see displayed. We are inclined to agree.

We have decided against specifying the service criteria to be used in constructing direct schedule displays, that is affirmative display requirements. American, for example, has requested us to require consolidation of direct and connecting flights, and others have requested that we mandate use of the OAG format, which separates direct flights from connecting flights and lists flights by departure time. Each of these requests is based on a similar line of reasoning: unless we establish uniform objective criteria, system vendors will abuse their discretion to select service criteria so as to favor their own flights in their displays.

We recognize that this risk is present with a rule that simply prohibits use of carrier identity factors. However, we do not believe that the risk justifies the government imposition of uniform display criteria at this time. First, the disclosure requirement should substantially reduce the risk of manipulation. Second, a rule dictating service factors would stifle competition, innovation, and variety in the industry unnecessarily.

**3. Connecting Flight Bias.** a. *The need for special rules.* We are proposing a separate rule on connecting flight displays. While connecting flights will be subject to the general prohibition on use of carrier identity factors, they pose additional problems. All system vendors today select a limited number of possible connecting points over which to build connections. They then edit all of the possible flight combinations over each point. Generally the purpose of edit procedures is to eliminate duplicate and unattractive connections so that the agent need not search through multiple display screens in order to find connections that are realistic for the traveler. However, the procedure may also be used to eliminate attractive competing services.

A number of parties have suggested that because of these complicating factors, a simple rule against bias would be ineffective. The multitude of selections that a system vendor has to make to offer useful and timely displays

of connections simply would make such a rule unenforceable. They suggest that we impose standards for selecting and displaying connecting flights. They argue that imposition of standards would make manipulation more difficult and also make detection easier.

Others have suggested that we require a minimum number of connecting points—nine has been urged by American. They argue that unless we require connections to be constructed over a large number of connect points, carriers will inevitably pick points that favor their flights and will fail to show connecting flights over other hubs that are as good if not better. If the required number of connecting points is high, however, it is more likely that even if the owner's hubs are used, most other suitable connecting services will be shown on the display.

**B. The proposed rule.** We have decided as an initial step to take the more limited approach of merely prohibiting bias in connections. The proposed rule starts with a general prohibition on use of carrier identity factors in the display of connecting flights. It is followed by two subparagraphs that govern specific aspects of selection of connecting flight display.

The first subparagraph requires that connecting points be chosen on the basis of service criteria that do not consider carrier identity and that are applied to all carriers equally. Subject to those limitations, the CRS owner would be free to choose the criteria. The second requires that all editing be done on the same objective basis for all carriers. These two subparagraphs should eliminate one of the more pernicious forms of bias in connections—the failure to list some attractive connections. Imposing a requirement that hubs be selected without regard to which carriers serve the hub will reduce the risk that a competitive carrier's connecting flights are not displayed because it happens to use a connecting point that the system vendor does not. The system vendor would not be permitted to include its major hub or hubs automatically as connections for any city pair. Those hubs would be weighted on an equal footing with all other possible connecting points.

We also propose to require that CRS owners provide carriers and travel agents with up-to-date information on their chosen connecting points and all criteria used to select connecting points and to edit flights. This disclosure requirement should assist in monitoring carrier performance under the rule, and

make it more difficult to circumvent our rule.

*c. The need for more information.* We have decided not to propose specific standards for display of connecting flights, or to specify a minimum number of connecting points in this notice. We recognize that a simple bias prohibition may not be completely effective. Our proposal affords CRS carriers substantial latitude in selecting criteria to be used in order connecting displays. It may be difficult to determine whether competitive considerations have come into play in such circumstances. Nevertheless, as discussed in more detail in the Advance Notice of Proposed Rulemaking being issued concurrently, we are concerned about the feasibility and ramifications of other options.

At this time, we do not have enough information to evaluate adequately the various requests for affirmative rules on connecting flights bias. The time required to obtain and analyze that information could substantially delay enactment of any rule. Rather than delay our entire CRS program while we explore this issue more fully, we are now proposing general prohibitions on connecting flight bias. We are, however, simultaneously issuing an advance notice of proposed rulemaking that focuses on more specific approaches to connecting flight bias.

**4. Information loading.** Our proposed rule on information display contains one other element: a rule on loading of information. Many parties have complained that the inclusion of erroneous information in a system is almost as serious a problem as bias. Parties allege that new schedules or fares have not been included, that full flights show up as available, and that flights with unsold seats show up as full. While CRS owners claim that most of these problems are caused by human error, some participating carriers suspect that these mistakes are intentional.

We agree that some rules are appropriate in this area. Like bias, misinformation in the CRS can be injurious to the consumer. Erroneous information about a carrier's services can cause agents to avoid booking on it; fewer bookings raise that carrier's costs per revenue passenger. Competition between it and the CRS owner is thus reduced, not because of any change in the relative quality or costs of the competing carriers' air transportation services, but because the flow of information is controlled by the CRS owner.

Our proposed rule on information loading has three elements. The first is a general requirement that information provided by carriers be loaded with the same care and timeliness as that of the CRS owner once it is received. This provision establishes a rule of fair and nondiscriminatory treatment. It is not a rule of absolute equality. The rule requires only that the time between receipt of information on changes and the loading of that information be essentially the same for all carriers, including the owner. It does not, however, prevent the CRS owner from updating information about itself more often, if the CRS operation receives more frequent information about the owner's flights, fares and availability.

The second element is a requirement that CRS owners disclose their information input formats and procedure. This is designed to reduce the risk delayed carriers are apprised of the CRS owner's information loading procedures and formats, they should be better able to supply information that facilitates prompt loading and accuracy.

The third element requires that if system vendors offer enhanced loading capability to any carrier, it be offered to all on a non-discriminatory basis. This is intended to address the concerns of parties that urge for us to require vendors to allow for direct updating of information. These parties claim that so long as information must be processed by the vendor's personnel, it can be manipulated, and they argue that the only effective means of precluding manipulation is to permit direct updating.

An absolute direct updating requirement has serious drawbacks, however. Without some assurances of technical compatibility, and controls over access to data base for updating purposes, the risks of both intentional and unintentional misinformation could actually increase.

Once a vendor has shown the capability and willingness to overcome these problems, however, by providing another carrier with enhanced information loading capability, it is appropriate to require that all carriers willing to meet its system's technical and operational requirements have the opportunity to use the enhanced capability on non-discriminatory terms.

#### B. Contracts with Participating Carriers § 255.5

The next section of our proposed rules deals with certain aspects of contracts between CRS owners and participating carriers which we believe to be detrimental to competition in air transportation.

1. *Unjust price discrimination.* The first paragraph proposes a requirement on pricing. As discussed above, it appears that some CRS owners are using their market power to price access to participating carriers in a discriminatory manner and/or on the basis of the degree of competition between them. This raises the costs of CRS owners' competitors and stifles competition. The ability of some CRS owners to dictate the costs of their competitors' information flow to travel agents in what may be an arbitrary fashion justifies rules on the pricing of CRS services.

Our rule would prohibit unjust discrimination between carriers in the setting of fees. It would not necessarily require that CRS owners charge equal prices to all users. Price differentials based on cost differences would be permitted so that participating carriers could have incentives to reduce their costs to the CRS owner. Without such incentives, the CRS-owner's cost could be higher—higher costs that would be reflected in higher fees for all participating carriers.

We are very concerned, however, that any rule that allows cost based price differences not lead to the perpetuation of the great disparity in fees that we see today. We anticipate that the rule would create a strong presumption in favor of equal fees. In the event that a fee was challenged as discriminatory, the burden would be on the CRS carrier to substantiate the cost differences that justify fee differentials.

Such cost differences might arise in a variety of ways. A CRS customer might offer services that reduce the system vendor's cost of handling its data and transactions. For example, the customer might prepare the data in the vendor's format or it might offer the vendor use of an underutilized communications line. These and other cost savings resulting from such arrangements could be recognized in the fees under our rule.

Systems might offer different levels of service. In some cases, carrier schedules appear on the system, but the agent is required to contact the carrier by phone to make this reservation. If system vendors offered truly different service levels, and CRs users were free to choose among them without any coercion, fee differentials based on the differences in cost of the services would not be unjust or discriminatory.

2. *Resolving disputes.* We have considered the arguments of various parties that a rule prohibiting discrimination would be unworkable, or that it would lead to full scale ratemaking. We believe that once the rule is in place, government intervention

should be rare. The presence of certain carriers in the CRS is important to agents and therefore to CRS owners. Their importance to agents will give them some countervailing bargaining power. It is expected that under a non-discrimination rule CRS owners will have to approach this group of carriers first. The fees that result from these negotiations, along with our rule, should restrain abuses in CRS pricing for all other carriers.

To further enable the market to police itself, we also propose to require that all CRS contracts with participating carriers provide for expedited arbitration of fees. (§ 225.5(c)). This clause is designed to avoid the lengthy delay that would be involved in a traditional ratemaking case before the Board (or its successor), but would provide parties that believed that they were the victims of price discrimination with a means of seeking redress. We have imposed arbitration clauses often as a part of Labor Protection Provisions in merger cases, in recognition of the need to provide a sure and expeditious means of resolving disputes, and in recognition of the limits on the Board's ability to resolve questions relating to LPP's quickly. The same need for a means of prompt dispute resolution exists here. Therefore we conclude that an arbitration requirement is appropriate to ensure that our proposed rule is effective in controlling discrimination. We invite specific comments on this element of our proposal.

3. *An Alternative: completely equal fees.* Nevertheless, we are concerned that a rule permitting cost-based differences in fees may permit abuses. Such abuses would likely be most burdensome to the new smaller carriers that now are paying the highest fees.

A possible solution to this problem that would avoid some pitfalls of full-scale rate regulation would be to take a more restrictive view of discrimination. We would welcome comments on an alternative rule of strict equality. Each system vendor would be required to establish uniform fees for its services, but they would be free to determine the level of those fees.

At the moment, we have some doubts about the benefits of such a rule. The rule could conceivably eliminate some of the incentive for participating carriers to reduce the system vendor's costs of servicing them. A rule of strict equality might also lead to cross subsidization among CRS users. It is possible that costs of providing system services to carriers will vary to some degree between customers.

We request parties to comment on a rule requiring strictly equal fees as an alternative to a rule prohibiting unjust discrimination in fees. Parties should focus in particular on the need for such a rule, *i.e.* the risks of abuse of a rule on discrimination, and on the potential for harm from the distortion in the market that a rule requiring strict equality would produce.

4. *Rate-setting.* Finally, several parties have urged that we go further than a simple prohibition on discrimination. They urge us to either set rates, or impose a reasonable fee requirement. They argue that besides the problem of fee differentials, fees charged to competitors—especially low-cost new entrants—are excessive. Without a rule on fee levels, they suggest that CRS owners may simply charge excessive fees to all carriers.

Rate regulation has been shown to impose such distortions on dynamic markets that we view it as a last resort. Moreover, the accounting complexities that would be involved in setting reasonable rates for CRS services are unusually great. For example, fees to travel agents as well as carriers would have to be regulated. This in turn would require allocations of expenses and investments between agents and carriers. In addition, further allocations would have to be made to account for the fact that most CRS owners use much of the same software and hardware for their internal systems. The time and effort required to resolve these questions would be substantial.

Most important, any effort to control fees could lead to substantial distortions in the CRS market. While there may be market power present, some competition occurs. Any attempt to set fees could reduce the influence of competitive forces. If uniform fees were set for the industry, lower cost systems could not exploit this advantage to attract a portion of the business from incumbents. There would be no long run improvement in the conditions of market power. Even if fee levels were set for individual systems, there would be a loss of flexibility and ability to react quickly to changing circumstances. Setting fees could also reduce incentives to innovate or increase efficiencies. In contrast, the rule on price discrimination does not preclude competition between CRS suppliers. It only imposes a certain fairness requirement on that competition.

5. *Tying.* The proposed rule also would prohibit "tying". It would prohibit the CRS owner from requiring the purchase or sale of any goods or services as a condition for participation in the CRS. To date, the problem has

come to the Board's attention in the context of interline fees and CRS participation. CRS owners appear to require participants to agree to pay reciprocal fees for processing interline tickets as a condition for participation in the CRS. CRS-owners write more interline tickets than participants, such that the owners come out ahead. The ability to tie can be exercised just effectively in other areas. Therefore, the proposed rule would prohibit tying of any goods or services. The rule would not, of course, prohibit voluntary agreements in which goods or services are substituted for cash in the payment of fees.

Tying arrangements, especially in the form of mandatory net ticketing agreements, raise the cost of air transportation. CRS participants must not only pay the basic booking fees, but must also pay the interline ticketing fees. This effectively raises the cost of air transportation. The impact is effectively the same as that of discriminatory access fees.

In addition, there appears to be no valid business reason for tying interline ticketing and CRS services. A CRS can display any other carrier's service. Owners are compensated for that service through the booking fee. If the fee is not sufficient to cover costs, the solution is to raise the booking fee. Conversely, carriers can write interline transportation on each other even if the first is not a participant in the second's CRS system. Compensation for this service can occur without reference to CRS's.

We have considered the arguments of opponents of a rule on tying, and we find them unconvincing. United, for instance, argues that CRS services and interline ticketing are not separate services, and that therefore, there can be no tie in the traditional sense. As we discussed above, however, CRS's do not represent a method of distribution *per se*. Rather they represent a method of providing information to a distribution outlet. As such, CRS access is a distinct service from interline ticketing. Therefore CRS's and interline ticketing can be considered as separate services for purposes of analysis.

United argues that its linkage between CRS services and net ticketing fees is not the tying condemned by the antitrust laws. It claims that the tying prohibited by the antitrust laws is the use of market power by a supplier over one good or service to force customers to purchase a second. United is not forcing carriers to choose its interline ticket writing services over other competing services. It claims that almost all carriers desire United's interline

ticketing service, and that the linkage is only intended to insure that United is reimbursed for providing them.

This argument ignores the more fundamental nature of the harm of tying arrangements. Without a prohibition on tying, there is a strong risk that CRS owners will be able to use compulsory net ticketing agreements to evade the discriminatory pricing prohibition. Some CRS owners have shown an ability to compel net ticketing agreements as a condition for CRS access, and they have managed to differentiate fees widely. The rule on discriminatory fees will not diminish the economic incentives of CRS carriers to charge higher fees to their competitors. A failure to prohibit tying arrangements in the face of their existence today would provide CRS owners with an opportunity to do so, our prohibition on discriminatory fees notwithstanding.

#### C. Subscriber Contracts § 255.6

The next section of the proposed rule sets down requirements for CRS owner contracts with subscribers, which we define to be travel agent users. The first paragraph would prohibit subscriber contracts longer than five years. The remaining paragraphs would prohibit direct and indirect restraints on use of multiple systems by individual agents. These can take the form of a direct prohibition or, more commonly, of requirements that a given percentage of bookings made on the CRS owner be processed through its CRS. In addition, the rule would prohibit CRS vendors from conditioning commission payments on the use of its system. This would include conditions for receiving overrides as well as conditions for receiving base commissions.

Many parties have complained that the combined effects of long-term contracts, "exclusive use" provisions, excessive liquidated damages clauses, and below cost pricing are to impede entry into the CRS industry and expansion by small vendors. These practices are employed to get the agent onto the owner's system and keep it there. Once on, any carrier cannot avoid dealing with the CRS owner if it wants to communicate with the agent. If the CRS owner has enough agents signed on, the carrier cannot avoid dealing on the CRS owner's terms.

We are concerned about the ramifications of these features of the owner-subscriber relationship for competition in the CRS market and their ramification in the air transportation market. While we have not selected major structural remedies at this time, we also recognize that to the extent that

market power is the source of CRS problems today, reduction of market power may be the best long-term solution. These practices appear to entrench vendors and hence preserve market power. As discussed below, there appears to be little other business justification for contract terms in excess of five years or for "exclusive use" arrangements. While possession of market power is not itself necessarily condemned under antitrust policy, use of contract terms such as this to maintain market power may well be. *U.S. v. United Shoe Machinery Corp.*, 110 F.Supp. 295 (D. Mass. 1953), *U.S. v. Aluminum Co. of America*, 148 F.2d 416 (2nd Cir. 1945).

We also believe that long-term contracts and the exclusive use provisions have the effect of reinforcing or preserving the consumer deception that results from bias. Both terms make it more costly and difficult for agents to use alternate sources of information, even if they are dissatisfied with the misinformation provided by carrier-owned systems. Admittedly, misinformation should decrease once our rules prohibiting bias are in place. Nevertheless, as a number of parties have argued, our rules may be subject to circumvention. The fact that agents can more easily seek alternate sources of information may limit system vendors' incentives and ability to continue to bias.

The arguments against rules in these areas have not dissuaded us from proposing regulations—with one limited exception. American claims that under existing tax laws, five-year contracts are necessary for agents to claim the full benefit of investment tax credits. If this is true, it would appear reasonable to permit five-year contracts. We invite comments on this particular argument, and on whether a different contract term is appropriate.

The other argument against limitations on the length of contracts, in contrast, has little merit. Opponents suggest that long-term contracts enhance the ability of new entrants to compete. Under this theory, if long-term contracts are the norm in an industry, then a new entrant can expect to negotiate similar long-term contracts. This ability reduces the risk of entry substantially and thereby makes entry easier. Our problem with this theory is that it ignores one practical reality. The CRS market is almost saturated. New entrants benefit little from the reduced risks inherent in long-term contracts if similar long-term contracts held by incumbents mean that very little of the market is actually open to the new

entrant at any given time. In all likelihood, the risks inherent in being locked out of substantial segments at any given time outweigh risk reduction associated with long-term contracts.

None of the parties have convinced us that "exclusive use" provisions should not be prohibited. Some parties have said that their "exclusive-use" clauses are merely defensive countermeasures against clauses of other system vendors. To the extent that this is true, our rules will eliminate the need for such defensive measures. Parties have also claimed that they are merely a quality control device, as the CRS owner's own system is likely to have the most accurate and up-to-date information about its own services, it is not unreasonable to require agents to use its system in booking its air transportation services. The flaw in this argument is that the higher quality information itself provides a powerful incentive to use the vendor's system when booking flights on the vendor. The primary effect of the exclusive use clauses is to preclude agents from using other systems to overcome poor quality information about other carriers' services.

United offers one more justification which has not persuaded us against the rule. United claims that "exclusive-use" clauses are necessary to preserve competitive balance in the travel agency industry. It argues that in the absence of such clauses, the larger, richer agents would buy multiple systems, primarily to get the broadest range of availability information. Smaller agents that could not afford multiple systems would be at a disadvantage, and would ultimately lose customers because of their inability to offer the same service.

It goes without saying that it is not for United, or any other private business, to dictate the terms of competition in the travel agency industry. The whole purpose of competition is to reward those that offer superior service or lower prices. The ability to purchase multiple systems represents rewards for having better served consumer needs in the past and is itself a form of improved customer service. Neither United nor any other CRS vendor should interfere with the natural workings of the market place.

Two aspects of the vendor-subscriber relationship are not addressed in our proposal: below-cost pricing and excessive liquidated damages clauses. This is not due to a lack of concern. On the contrary, we have every reason to believe that CRS owners routinely offer systems to subscribers at prices below costs, *i.e.* prices which would be less than the cost of providing the system on

a stand-alone basis—without incremental air transportation revenues—and that they insist on liquidated damages provisions that could be deemed excessive. However, we have concluded that rules in this area will not be necessary.

It appears that the primary purpose of below cost pricing is to gain access to incremental revenues. With the prohibition on bias, there will be reduced incentives to offer below cost contracts to travel agents. In addition, the elimination of bias-induced incremental revenues and the non-discriminatory fee rule will substantially reduce the ability of CRS vendors to make up for below cost agent contracts out of other CRS revenues.

As to the excessive liquidated damages provisions, they are condemned under general contract law as penalties and are usually held unenforceable by the courts. We do not intend that adoption of CRS rules preempt general contract laws applicable to vendor-subscriber contracts, including prohibitions on penalties. However, if parties believe that contract law remedies are inadequate to prevent excessive liquidated damages we invite them to discuss a prohibition on any liquidated damage clauses or other appropriate alternatives.

#### *D. Service Enhancements § 255.7*

In addition to the rules outlined above, we propose rules that do not fall into these categories. The first concerns enhancements. Although the term service "enhancement" is used by almost all parties, they give it different meanings. Some use it to refer to such things as the capability to issue boarding passes or make advance seat selection. Others would include the agent's ability to get direct access to a carrier's internal reservation system, or the ability of a carrier to update its own information directly. There is a common thread through all of these categories, however. A service enhancement represents something more than the mere ability to make a reservation and issue tickets.

This thread forms the basis of the definition of enhancement in the proposed rule. "Service enhancement" would mean a product or service, offered through CRS's other than the display of information on schedules fares, rules and availability, the ability to make reservations, and the ability to issue tickets. Anything else, including direct access and direct updating would be considered an enhancement.

There are a number of reasons for defining enhancements in this fashion. As discussed more fully below, we propose to allow system vendors to favor themselves to some degree in the use of enhancements. Our definition insures that system vendors do not use this leeway to deny to competitors the basic functions of CRS's, information distribution and communications for purposes of ticketing. The consequences of exclusion from these basic services would certainly be far worse than those of merely being denied the ability to have boarding passes issued. At the same time the generic approach recognizes that CRS's are still undergoing refinement and development. New capabilities may develop over the years. Rather than limit the rule to capabilities that exist today, the definition will encompass future developments without constant amendments.

Just as parties differ on what constitutes a service enhancement, they differ on what the Board should do about them. At one extreme, parties argue that the Board should impose no requirements. They claim that any rule would have the effect of denying the natural advantages and rewards for having taken the risks in developing the enhancements. At the other extreme, parties request that the Board require CRS vendors to make enhancements available to all participating carriers when they use them in connection with their own services ("forced licensing"). Still a third group urges the Board to adopt a middle ground, of allowing system vendors to keep enhancements for themselves, but requiring that they be offered to all outside carriers once they are offered to any.

We have decided to follow the middle course and to require only that whenever an enhancement is offered to one participating carrier, it must be offered to all on a nondiscriminatory basis. There is no absolute requirement to offer enhancements to other carriers, and the vendor is free to use it exclusively. Once it gives up exclusive use, however, it is required to treat all carriers fairly.

This non-discrimination requirement does not require that all carriers that desire the enhancement receive it at precisely the same time. For example, unlimited access to the enhancement could be denied if the participating carrier did not have the required technical capabilities. If the vendor is incapable of providing the enhancement to all at the same time, access to some can be delayed, provided that the schedule is not based on competitive

considerations. Finally, the rule would not prevent the vendor from charging fees for enhancements, provided that it does not discriminate.

This approach to enhancements strike the best balance between the public interest in assuring that control of CRS's not adversely affect competition in air transportation, and the private interests of CRS owners in legitimately reaping rewards for their enterprise in developing their systems.

As parties who support a rule on enhancements correctly point out, denial of access to enhancements can have the same kind of effect as bias. Agents will favor the CRS host that offers the enhancements in connection with its services—especially enhancements like boarding passes—over carriers that cannot offer them. This will cause the traffic pool of have-not carriers to decrease, and thus increase the per passenger cost for the have-not carriers.

On the other hand, when basic display and ticketing capability are not involved, the effect is likely to be less pronounced. In addition, a rule requiring vendors to offer all enhancements might deprive them of the fruits of their efforts and could therefore discourage them from developing new enhancements.

We are not entirely comfortable with allowing system vendors to keep service enhancements to themselves. We have not been able to quantify the risks of permitting vendors to do this or the potential risks of "forced licensing." We therefore request parties to comment specifically on the issue of "forced licensing." Comments should focus on the need for "forced licensing," *i.e.* the risks of the alternative, and on the potential negative impact to the extent that concrete data is available, it should be provided.

#### *E. Marketing Information § 255.8*

We are also proposing rules on the use of sales and booking information. At present, system vendors collect a substantial amount of data on travel agent bookings. This detailed information is given to the system vendor's marketing department, which in turn can use it to analyze agent productivity, and the success of the carrier's marketing strategies in individual markets and against specific competitors. Participating carriers are given data about their own bookings from "sponsored" agents and may be given general aggregate data for the rest of the industry.

A number of parties have requested rules in this area. They claim that access to the detailed data gives CRS vendors an unfair advantage. It enables them to target particular agents for incentive

commissions and to analyze quickly their success in particular city-pairs. Without access to such detail themselves, other carriers cannot compete as effectively in developing a travel agent sales incentive program. They claim that system vendors are taking unfair advantage of their role as communications link between the agent and the carrier. They argue that the sales information is proprietary to the carrier whose services are booked and that mere transmission over the vendor's system does not give its marketing department a right of access.

Proponents of rules have suggested various options. Some have argued that we should prohibit distribution to vendor marketing departments. They argue that the information is indeed proprietary between the agent and the carrier on which it books and that, accordingly, it should not be disseminated. Another group argues that a rule prohibiting access by the vendors' marketing department would be unenforceable. Given this fact, the only way to cure the unfairness is to require disclosure, notwithstanding the proprietary nature of the information. American proposes something of a middle ground. Claiming that the information is proprietary to the agent, it would release all information that the agent permits to be released. Given the fact that travel agents are true agents of the carrier on which they book, it would seem that any proprietary right in booking information if it exists belongs to the carrier—not the agent or CRS owner. However, under common accreditation, an agent for one carrier is usually an agent for others. American's approach could put agents in a conflict of interest position with respect to their common law duty of loyalty to their principals.

Our proposed rule would simply require system vendors to supply participating carriers any marketing sales and booking data they elect to generate on reasonable and non-discriminatory terms. Vendors would not be required to generate any information that they do not already. They would be required merely to make available information that the system produces for a reasonable non-discriminatory fee.

The use of booking data by CRS vendors can have negative implications for competition in air transportation. Vendors can use the information to target competitors and attract traffic away from them. As with other CRS practices, the effect is to increase the per unit cost of other carriers' operations. As with other aspects of

CRS operations, competing carriers have no effective means of counteracting this outcome. The data that they get are either too incomplete or too dated to be useful in effectively matching the system vendor's sales efforts.

The use of CRS booking data does not appear to be merely a harmless by-product of CRS's. To the extent that system vendors are merely generating detailed information and studies about sales of their own services, we would agree that they are simply enjoying the fruits of their innovation. However, the vendors are going beyond that and also using for competitive purposes the sensitive booking data that they collect on other carriers simply because they are a communications link, much like the telephone line. Such conduct has no justification.

We have not been persuaded by arguments against Board intervention. Some vendors claim that the information really is not all that useful because it tallies bookings, rather than actual flights taken. We believe that these carriers are underestimating the value of the information, at least in their comments. The value of information of this nature depends on three factors: accuracy, detail and timeliness. The primary advantages of booking data are timeliness and detail. Reports available to the vendor are generated weekly or monthly and contain information on each travel agent's bookings for all carriers. The most detailed information that other carriers can get on all carriers is our own O&D data and service segment data which are broken down only as far as city-pairs, and are not available until several months after the time period covered. Admittedly, booking data may not reflect flights actually taken, but it is only reasonable to expect that system vendors have developed formulae that correlate their own bookings with actual passengers carried. That correlation is not likely to vary significantly from carrier to carrier. Besides, O&D and service segment data are also flawed. Compared to other information that is available to carriers about the sales of their competitors, booking data are probably as accurate, and it is certainly much more detailed and timely and hence more useful.

*F. Purpose, Applicability and Definitions—§§ 225.1, 225.2 and 225.3*

These sections, establish the scope of the proposed rule. The proposed rule would apply only to carrier owned systems (either air carrier, or foreign air carrier) and would apply to all sales of passenger air transportation, i.e., interstate, overseas and foreign, make by travel agents as the concept is

commonly understood in the United States.

1. *Application to non-carrier CRS.* We have tentatively decided not to regulate non-carrier systems at this time. As noted above, the air transportation marketing, computer, and communications industries are all in a state of flux. Our proposed rule attempts a measured response to problems that we perceive exist today or may exist in the future. Third party systems do not, at the present time, appear to present significant problems for competition in the air transportation market.

Thus, regulation of third party systems would do little to protect air transportation competition or promote consumer welfare. It could have long-term detrimental effects, however, as we noted above. To the extent that there is market power in the CRS industry, actions to improve the effectiveness of actual and potential competition may in the long run be a better means of controlling abuses than government regulation. Subjecting third party systems to some of the proposed rules might substantially increase entry costs of potential third party entrants. This would in turn reduce the effectiveness of potential competition as a disciplining force.

The only third party system now in existence is Tymshare's Mars Plus. For a variety of reasons, its operation does not pose serious risks to air transportation competition or consumer interests.

Tymshare at present has only a limited share of the market, and it has never been a major participant. See Tables 1 and 2, *supra*. Many carriers do not even participate on its system. Domestically, only Eastern, Northwest, TWA and Pan American participate. *Report*, Appendix F. It does not have market power which creates the risk of harm to competition in air transportation.

The risks to consumers presented by Mars Plus is also low. Mars Plus offers only access to its participating airlines' internal systems. It makes no claim that its individual displays offer complete or best flight information, although it does claim that agents' ability to jump between in-house systems allows it to find the information. Neither agents nor carriers can reasonably expect that individual display screens of internal reservation system seen through the Mars Plus system will be unbiased.

2. *Application to foreign air transportation and foreign air carriers.* The applicability and purpose section also make it clear that the proposed rule would apply to foreign as well as

domestic air transportation. A number of parties have urged the Board to limit application of the rule in foreign air transportation. They argue that foreign flag carriers that operate CRS's in their home countries, bias in favor of themselves more than U.S. carrier systems do, and that it would be unfair to require U.S. carriers to give them equal treatment here when U.S. carriers cannot get equal treatment abroad. Some parties suggest that the Board solve this problem by limiting application of the rule to domestic air transportation. Others urge the Board to simply exclude foreign air carriers that themselves operate CRS's that do not conform to Board rules from the rule's protective cover.

As discussed more fully below, (See § 255.9(b)) we have decided to adopt the latter approach: i.e., foreign air carriers that operate systems in their home countries that are biased against U.S. carriers will not be protected by our rules.

We also propose to limit our rule to use of CRS's in the United States. This is consistent with our position, most recently stated in the *Competitive Marketing Investigation*, 82-12-85, December 16, 1982, that marketing and distribution of air transportation services, as opposed to operation of such services, is largely an internal matter for each country. Thus, although our proposal would apply to use of CRS's for sales of all air transportation within the U.S., we are not attempting to regulate CRS practices outside the U.S., even when they affect the sale of air transportation.

3. *Application to types of users.* Finally, we are limiting the applicability of the rule based on the type of user. The rule would apply only to systems sold to "subscribers" as defined in the proposed rule. "Subscriber" is defined as a ticket agent that holds itself out as a neutral industry representative. By the concept of holding-out, we mean both explicit and implicit holding out, i.e., holding oneself out as a "travel agent" and relying on the common perception that a "travel agent" is an industry representative. Much of our policy concerns over CRS's stem from their use by industry agents who are perceived by the traveling public as, and in many cases consider themselves to be, neutral advisors. This neutrality is often relied on by new entrant carriers to provide a ready distribution network. When a ticket agent holds itself out as a dealer for a specific carrier or carriers, however, neither the public nor other carriers should reasonably expect it to provide neutral representation of all

carriers in the industry. Therefore, our proposed rule would not apply to instances where CRS's are used by ticket agents who hold themselves out as agents of selected carriers, nor does it apply to CRS's used by persons other than ticket agents. Thus, the rule would not apply to carriers' internal reservation systems or systems offered only to commercial accounts for their own use.

#### G. Exceptions § 255.9

We also propose two limited exceptions to the CRS rules.

1. *Carriers refusing to pay non-discriminatory fees.* The first exception deals with carriers that might refuse to agree to pay the non-discriminatory fees required by our rules. Some carriers today pay relatively low fees to system vendors. Usually these are carriers whose presence is considered necessary to make a system acceptable to agents, and they may be also carriers that vendors do not perceive to be strong air transportation competitors. It has been suggested that because of their importance to agents, these carriers may have some leverage to refuse to pay non-discriminatory fees which are likely to be higher than the fees that they currently pay.

Some parties have argued that system vendors should be permitted, if not required, to drop such carriers from their systems. They argue that otherwise, this group of carriers will simply refuse to negotiate in good faith and get a free ride. Other parties argue that total removal from the system would be inconsistent with the consumer protection purposes of our rules. Agents would be obliged to abandon the CRS entirely for another information source in order to make a booking on these excluded carriers. They suggest that vendors be permitted to retain bias in their systems against such carriers with full disclosure to the agent. While the biased information would be less accurate, at least the agent could still use the CRS to book on the affected carrier.

We agree that any rule should permit system vendors to give less preferred treatment to carriers that refuse to pay non-discriminatory fees. Ideally, the rule would be fashioned in such a way as to minimize the incentives of participating carriers to hold out for a free ride. Unfortunately, incentives will vary among systems and participating carriers, and with time. A precise weighing of these incentives would be difficult, if not impossible. System vendors, through the ongoing negotiating process, will be in a much better position to weigh and evaluate the

business motivations of participating carriers.

Therefore, our proposed rule would not apply to CRS services offered to carriers that do not enter into participation agreements, consistent with the proposed rule. This leaves the CRS owner discretion to adjust services offered to non-contributing carriers. Depending on the circumstances, it will have the option of removing a carrier from its system entirely, maintaining its schedules in its display but cutting off ticketing capability, or biasing its display against that carrier. However, in no case could a CRS owner give superior service to a carrier that refused to pay non-discriminatory fees.

We recognize that there is some risk in giving too much discretion to system vendors. It may well be that a participating carrier is so important that the vendor will continue to carry it on its system without penalty, even when it refuses to bargain in good faith. To require specific action would, however, eliminate the flexibility that we consider to be desirable in dealing with unwilling carriers. Moreover, any inclination to give non-contributing carriers the rights given participating carriers will be tempered by the knowledge that such an action creates the risk of being found in violation of the prohibition on discriminatory fees.

#### 2. Foreign air carriers.

The second exception deals with foreign carriers. CRS owners in particular have pointed out that many foreign carriers discriminate against U.S. carriers in their home country. In particular, foreign permit holders that operate CRS's in their home countries apparently discriminate heavily against U.S. international carriers in their displays, often more heavily than system vendors discriminate against their competitors in the U.S. We agree that U.S. carriers should not be forced to give up their advantage against carriers that operate discriminatory CRS's abroad without any assurances that those carriers will give up like advantages in their home countries.

The International Air Transportation Competition Act of 1979 (IATCA) established definite public policy in this case. We are directed to strengthen the competitive position of U.S. carriers to at least ensure equality with foreign air carriers (49 U.S.C. 1302(12)), and to pursue the elimination of discrimination and unfair competitive practices faced by United States carriers in foreign air transportation in developing negotiating policy. (49 U.S.C. 1502(b)(9).) In addition, IATCA authorized the Board to take retaliatory action if we find that a

foreign carrier or its government discriminated against our carriers.

This strong concern for assuring equal competitive opportunities for U.S. carriers vis-a-vis foreign carriers means that here, we must balance the policies of section 411 with other policies in the Act.

As outlined above commenters have suggested two solutions. The first, applying the CRS rules only to the sale of domestic air transportation, represents too great a sacrifice of the interests embodied in section 411. While the degree of competition in foreign air transportation varies widely from country to country, there is effective competition in many foreign markets. The harm to competition and consumer interests from bias, discriminatory fees and other practices covered by the proposed rule would be just as great in those foreign markets as it is in domestic air transportation. A general exception for foreign air transportation would deny the benefits of the rule to "innocent" air carriers, foreign air carriers and consumers of foreign air transportation because certain foreign carriers operating CRS's happen to bias their systems.

The second alternative mentioned by the commenters goes much further in fulfilling the policies of section 411. Therefore, we propose a second exception for foreign carriers that operate systems that discriminate against U.S. carriers. The exception would state that the protections of the rule do not apply to services offered to foreign air carriers that operate systems that discriminate against any U.S. carrier in their displays. We are not attempting to force foreign carriers to modify their own practices regarding CRS's in their home countries. Rather, we are simply stating that if foreign carriers expect to get the benefit of fair play in CRS's in the U.S., they must be prepared to offer the same benefits to U.S. carriers in their own countries. Foreign carriers that do not operate CRS's at all would not be subject to the exception, and they would have the full benefits of the Board's rule. The exception would not allow system vendors to give preferential listing to any foreign carrier.

Our proposal was intentionally fashioned to be as narrow as possible to meet the problem of foreign carrier practices with respect to U.S. carriers. Any exceptions to the rule diminish its efficacy in reducing consumer deception, and maintaining competition in air transportation. The proposed exception is designed to minimize this loss of efficacy. In addition, it is

consistent with our policy of taking proportionate countermeasures in the face of discrimination against our carriers. (See, e.g., Order 81-12-91, December 14, 1981 and Order 83-6-20, May 18, 1983.)

An exception tied to foreign carriers' operation of their own systems does no more than to allow our carriers to respond in kind to practices of their foreign air carrier competitors in a well defined area of their operations. In addition, our proposal does not prevent U.S. carriers CRS owners from voluntarily offering all the protections of our rules to foreign carriers. They are free to do so if they wish. All the exception does is to avoid compelling U.S. carriers to give non-discriminatory treatment to foreign carriers that do not afford such treatment to U.S. carriers in their systems' displays. This approach best balances the competing interests in acknowledging foreign carrier practices in defining the scope of our rule.

#### H. Review and Termination § 255.10

We also propose a review of the rules within five years of their effective date, with termination on December 31, 1990 unless they are extended by our successor on the basis of that review.

As noted above, both the air transportation distribution and information processing industries may change dramatically. A specific review requirement and termination date assures that the successor to the Board will reevaluate the CRS rules in light of changing circumstances at a later point.

The time frame proposed assures that an essentially meaningless review is not required before enough time has elapsed for change to occur. However, this will not preclude earlier review if desired as a matter of discretion. Such a review might occur under two circumstances: If changes in the relevant industries occur soon enough that our successor may reasonably question the need for rules before their five-year term expires; and conversely, experience under the rule may cause our successor to reasonably question whether they are sufficient to correct the problems we have identified. In either event, we anticipate that the rule could be revised without regard to the termination date.

#### II. Other requests

We have received a number of other requests for rules that we have decided not to propose, which we discuss separately below.

##### A. Mandatory Participation in Other Systems

DOJ has requested that we require CRS owning carriers to participate in

other systems. It argues that one of the largest impediments to successful penetration of the CRS market is the refusal of CRS owners that are also major carriers to participate in new systems. It attributes the failure of Tymshare to achieve greater market penetration in part to the refusal of American and United to join the MARS PLUS system. DOJ claims that mandatory participation would reduce CRS industry market power by making actual and potential competition more viable.

The primary problem with DOJ's request is that it is designed to enhance entry for a particular CRS competitor, Tymshare's MARS PLUS. Tymshare's difficulty in penetrating the market is the result of two factors. The first is its inability to use incremental revenues to lower fees charged to agents. The second is the refusal of carriers like United and American to participate. This refusal means that an agent that desires to book on United for example, must rely on the internal system of another carrier. Those internal systems are likely to be heavily biased against United, making this option unattractive to agents.

Our bias rules, which will reduce incremental revenues, should alleviate the first cause of Tymshare's problems. DOJ's requested rule is intended to cure the second. The proposal is flawed because Tymshare's second difficulty, in part, is the result of a business decision. Had Tymshare decided to offer a proprietary display, it would be able to offer accurate information on United using OAG and ATP tapes. The reservations and ticketing function could be performed through the internal reservation system of any MARS PLUS participant that had an interline agreement with United.

DOJ's proposal is thus an attempt to compel CRS owners to enhance the quality of CRS services offered by actual or potential competitors even through such competitors could provide the enhanced quality of service, if they are willing to undertake the effort of developing a proprietary system. Indeed, with the advent of an electronic OAG, an arrangement might be worked out using that as a proprietary screen that greatly reduced the costs involved.

We consider intervention in the CRS market to benefit a particular competitor as wholly inconsistent with our effort in the proposed rules to give maximum flexibility to CRC industry participants to respond to the needs in the market. Even if a third party CRS vendor elects not to provide a proprietary screen, it will have another means to overcome the disadvantage caused by the refusal

of some carriers to participate. It can pass the costs saved from not developing the proprietary screen along to agents in the form of lower fees. This kind of variety in service and price is precisely what one would expect in a market that is functioning competitively.

##### B. Discussion Authority and Collective Bargaining

Certain carriers have requested authority under section 412 of the Act and immunity under section 414 for discussions among carrier purchasers of CRS services with a view toward permitting joint negotiation of CRS participation terms. They argue that problems with bias and access fees result from the fact that no single carrier is as important to the viability of the CRS as the CRS access is to the carriers. This relative importance gives the CRS owner the ability to impose unreasonable terms. They predict that if participants could join together in negotiations, presumably with the ability to withdraw jointly in the face of unsatisfactory terms, then the positions of CRS owners and user airlines would be more balanced.

Joint discussions are not necessary to prevent CRS's from being used to reduce competition in air transportation, and they could be counter-productive. We have consistently rejected carrier requests for immunity for joint purchasing of goods or service, even from suppliers with alleged monopoly powers as inconsistent with competition under the Act. Order 83-2-17. The commenters have not demonstrated that an exception should be made here.

The danger in joint discussions is that they could create market power in the hands of the participants which could have unforeseeable and undesirable consequences. Thus, carriers might use their collective power to force CRS owners to accept their price. This might, in the extreme, make CRS operations uneconomic or, what is more likely, force CRS owners to raise prices to carriers that are not participants in the collective bargaining process.

Our proposed rules on bias and CRS owner-carrier contracts are designed to reduce the potential for abuses that may arise from the disparate bargaining power of CRS owners and other carriers. Until we have had a chance to test their effectiveness, we are not disposed to depart from our long-standing policy of refusing to risk giving market power to carriers that purchase CRS services by permitting collective bargaining.

### C. Ticketing and Plating Practices

Certain commenters have also requested that we further examine the CRS owner practices concerning ticket writing. They are concerned that CRS owners continue to encourage agents to issue tickets naming the CRS provider as the ticketing carrier so they may gain the advantage of cash float and net ticketing fees.

The issue of travel agent ticketing practices was recently addressed at length in a proceeding reviewing ATC agreements. Orders 82-12-77, 83-4-135, and 83-7-55. There, we directed ATC to modify its agreements governing ticketing standards to conform to the public interest, and to assure that no carrier, particularly CRS owners, achieves unfair competitive advantages over others based solely on its being identified as a ticketing carrier. All CRS owners are currently ATC members and are bound by this agreement, which has been modified to meet our concerns. If CRS owners are not abiding by the terms of the agreement, carriers have ample remedies elsewhere. Adding provisions to our proposed rule that are peripheral to the basic issue of carrier access to CRS's and agents is not necessary to protect competition in these circumstances.

### D. Use of Carrier Codes

Frontier has requested that we adopt rules addressing United's recently announced policy of removing multiple carriers that share a single two-letter airline designator from its Apollo display.

Generally speaking, airlines are each assigned two letter designators that are used to identify them in industry fare and schedule publications as well as for other purposes. For some time however, some carriers have shared a common designator. The practice started with USAir and its franchisees, the Allegheny Commuters, and it has been followed by other carriers that are establishing franchising networks, such as Pan American and Eastern. Most recently, Frontier has elected to share its designator with its newly established affiliate, Frontier Horizon.

According to Frontier, United has announced that it will discontinue the use of common designator codes for franchisees and affiliates and their airline "parent" in the ordering of displays. Apparently United considers the practice to be misleading in that what its computer shows to be on-line service is really interline service.

Frontier claims that because of the joint control, Frontier Horizon's service is the equivalent of Frontier's, and it

argues that connecting service between the carriers is the equivalent of on-line service. It requests that we require CRS owners to display both carriers' services using the same designator code.

Other carriers, such as USAir, have filed an emergency rulemaking petition which asks the Board to take similar action. The use of single designators by affiliates and franchisees is also the subject of pending third party enforcement complaints.

We have decided not to consider these requests here. Frontier and the affiliated carriers have raised what may well be a serious problem. The sharing of designators has been a practice in the industry for at least 15 years, starting with the Allegheny Commuters. We are unaware of any substantial consumer complaints that the practice is deceptive. In addition, the Board within the last year has sanctioned the sharing of airline designators, subject to a general disclosure requirement, *Emerald Air Fitness Investigation Order 83-4-98*, April 20, 1983. We prefer to address this issue in the context of the emergency rulemaking petition, in part because we could not complete this proceeding in time to give the petitioners any immediate relief if we decided that is warranted.

### Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Those requirements have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Officer for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.

### Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The analysis is required to describe the need, objectives, legal basis for, and flexible alternatives to the agency's proposed action. These requirements are met by the discussion above. In addition, the analysis must include a description of the small entities to which

this proposal would apply, the reporting, recordkeeping, or other compliance requirements of the proposed rule, and any other Federal rules that may duplicate, overlap, or conflict with it.

The Board tentatively finds that this rule may, if adopted as proposed, have a significant economic impact on a substantial number of small entities. The proposed rule would affect airlines operating aircraft with less than 60 seats, travel agents, and new, low-cost airlines.

The proposed rule would have an overall beneficial economic impact on a substantial number of small air carriers. First, they would benefit by the prohibition of display bias. Currently, none of these carriers are system vendors and consequently have not enjoyed the benefit of built-in display preference. Under the new rules, their flights will be displayed strictly on the basis of service criteria. This change will allow them to go from what is often the least desirable display to a competitive go from what is often the least desirable display to a competitive display. As a result, these small carriers will be better able to compete.

The proposed prohibition on tying arrangements will also benefit small aircraft operators. Presently, many small airlines are forced by system vendors to sign agreements to pay for interline tickets as a condition for staying on the system. Under the new rule, this cost would be eliminated.

The general availability of service enhancements might improve the quality of service offered by small aircraft operators. Under the proposed rule, if a system vendor has the technical capability to provide service enhancements to other carriers, it must allow any participating carrier to provide that service upon request. This change will provide small aircraft operators the opportunity to compete with larger, more established airlines on new service elements.

Finally, the rule will help small airlines compete by giving them access to information they previously could not have obtained. For example, a small carrier would be able to analyze booking information obtained from the service vendor to develop markets or change flight schedules. Alternatively, it could use the service criteria for ranking the order of connecting flights to ensure that it gets a favorable display. In a competitive environment, such information will be valuable.

If this rule is adopted, small carriers may have to pay higher fees. Presently, few small aircraft operators directly compete with the system vendors. As a

result, many of these operators have free or low-cost display. Under the new rule, fees must be non-discriminatory so that such an indirect subsidy would no longer be allowed.

Travel agents would also be affected by this rule. Nationwide, there are approximately 21,000 travel agents, 74-80 percent of which use automated reservations systems. Of these 21,000 travel agents, the Board estimates that over three quarters would be considered small entities for the purposes of the Regulatory Flexibility Act.

This rule may result in travel agents paying higher fees than at present. Currently, CRS owners rely on incremental revenues to recoup some portion of the cost of their systems. If this rule is adopted, some of these incremental revenues may be redistributed among other carriers and subscribers so that the system vendors cannot economically continue to subsidize their subscribers. In addition, may travel agents are presently paying fees that are below cost because certain vendors intentionally set low prices to gain a larger market share. Under the proposed rules, the fees for travel agents should be more consistent.

Travel agents should benefit, however, by the elimination of bias in the system. This change should increase efficiency and lower agency costs since personnel will no longer be required to take time to overcome bias. In addition, the rules on contracts between owners and agents will provide agents with greater opportunities to take advantage of CRS competition to lower costs. Further, under a regime of individual carrier commission rates, travel agents will have greater opportunity to recoup through increased commissions any cost increases associated from the rules. In effect, carriers that now have higher costs because of bias will have an incentive to share with agents their cost savings resulting from the rule. Finally, to the extent that service enhancements are available and used by other carriers, travel agents using computerized reservation systems will be able to offer better service than they do now.

New low-cost airlines should receive significant benefits from this rule. Presently, new entrants are among the greatest competitive threat to the established airlines that own the CRS systems. As a group, they currently must pay the highest fees for access to the system. Under the new rules, these entrants will pay the same fees as everyone else, which should result in a substantial cost savings. Similarly, flights by new entrants tend to be displayed inconspicuously. The prohibition against bias should result in

more favorable displays, which in turn should increase sales and lower the cost per seat. Finally, the elimination of interline ticket fees should also help lower carrier costs.

The rule does not contain any direct reporting, recordkeeping, or other compliance requirements. System vendors must disclose to interested subscribers and participating carriers what criteria were used in determining the order of display and the construction of connecting flights. In addition, the vendors must make available any marketing data generated by their system. The vendors are not required, however, to provide this information to the Board.

There are no other Federal rules that duplicate, overlap, or conflict with this proposed rule.

#### Regulatory Impact Analysis and Review

Executive Order 12291, dated February 17, 1981, requires every executive agency to prepare a Regulatory Impact Analysis for every "major rule." Major rule is defined in the order as any that is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As an independent agency, the Civil Aeronautics Board is not required to comply with E.O. 12291. Because of the importance of this rule and its expected transfer to the Department of Transportation in connection with the sunset of the Board, we are voluntarily preparing a Regulatory Impact Analysis. Because we are scheduled to sunset at the end of 1984 and it is important that this rulemaking be in place sufficiently prior to that time to allow the Board to implement it, we are not providing the 60-day review period provided in section 3 of the Executive Order for the Director of the Office of Management and Budget. Instead, our usual 10 work day OMB period will apply.

We find that this rule, if adopted as proposed would meet the definition of a major rule within the meaning of the Executive Order. American has estimated that the effect of incremental revenues on SABRE ranged from \$78.5 to \$150 million in 1980. DOJ Comments at 54. United has estimated that its 1983 incremental revenues from APOLLO were over \$160 million. There can be no

question, therefore, that the sum of incremental revenues for all CRS owners is well over \$100 million. Because this rule may result in a redistribution of a large portion of these revenues among CRS owners, participating carriers, and travel agents, it is a major rule under the terms of Executive Order 12291. In addition, the rule may result in a major increase in costs or prices for certain air carriers and travel agents.

The Executive Order sets forth five general requirements for new rules.

Administrative decision shall be based on adequate information concerning the need for and consequences of proposed government action;

Regulatory action shall not be undertaken unless the potential benefits to society from the regulation outweigh the potential costs to society;

Regulatory objectives shall be chosen to maximize the net benefits to society;

Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

We carefully considered each of these elements in the preceding Supplementary Information. Our tentative findings are based on information set forth in the various petitions for rulemaking, answers filed to those petitions and our extensive investigation into computer reservations systems. The investigation included substantive information requests from all the CRS owners. We also relied on extensive research conducted by the Department of Justice that was compiled for its investigation into the same area.

Our proposed rules have four or five major provisions. For each, we find that its benefits to consumers will substantially exceed its potential costs.

The elimination of carrier preference factors in the ordering of information on CRS displays will cause a significant revenue shift from CRS providers and certain preferred carriers to generally smaller, currently disfavored carriers. United and American estimated incremental revenue shifts of as much as \$150-\$160 million each year. The CRS providers are likely to retain the remainder because of the "halo" effect. Currently disfavored carriers are likely to experience revenue gains comparable

to those some carriers experienced when they went from "other airline" to "cohost status," generally 10 to 20 percent revenue gains per agency.

This shift of revenues with the elimination of bias will have significant beneficial effects on consumers. It will strengthen the merits of fare and service offerings as the basis for consumer selection of flights. Consumers can expect lower air fares as the CRS providers lose their ability to raise other carriers' costs through bias. While we cannot exactly predict consumer savings, because of the magnitude of the bias problem, if even a small percentage was passed through to the consumer the savings would amount to tens of millions of dollars.

Our proposal that carriers disclose their criteria for ordering display information will cause CRS carriers some additional costs, particularly to generate and disseminate the information. However, these costs should not be substantial, on the order of a few thousand dollars a year. The benefits, on the other hand, will be tremendous. Insofar as the rule provides the means for other carriers to monitor CRS carrier practices, the rule will be more effective than Board regulation. Many carriers currently have reservations departments that can perform this function. We, on the other hand, would have to establish a mechanism for continued government oversight of CRS carrier practices.

Currently, fees from other carriers and agents are generally insufficient to cover CRS providers' operating costs. Only through the benefits of bias have they become profitable. With the elimination of a substantial portion of bias revenues, CRS providers may raise costs to participating airlines and travel agent subscribers. We do not anticipate dramatic cost increases to these persons because CRS losses, when incremental revenues are not considered, are not substantial. On the basis of the profit and loss statement submitted to us, it has been determined that American's CRS operations could break even if air carrier subscribers were charged 54 cents a booking. We expect, therefore, modest increases in booking fees to other carriers because of our bias rules, and virtually no change in subscriber charges.

Insofar as our rules foreclose unjustly discriminatory access charges there will also be revenue transfers between CRS providers and participating carriers. The fees charged the generally smaller carriers that currently pay from \$2-\$3 should decrease. Those of the larger, more established carriers should increase somewhat, at least to .54 cents

a booking if not to the \$1.00 per booking range. Overall, participating airlines should pay more than they do at the present time for CRS services. These costs will be offset, however, by the substantial benefits gained from the elimination of bias.

Another reason to expect higher booking fees is our decision to eliminate CRS contract terms that require an airline to pay net ticketing charges as a precondition to CRS access. The ticketing services for which these charges are assessed do not appear to be of sufficient value to other carriers to, standing by themselves, warrant compensation. Insofar as other carriers are willing to pay them to gain CRS access, it appears that CRS carriers could merely charge more for CRS services, with no significant loss of revenue. As with our rule on unjustly discriminatory fees, smaller carriers are likely to pay somewhat less for CRS access and the larger, established carriers somewhat more. The effect of these marginal revenue transfers will also be offset by the tremendous benefits to be gained from a more competitive air transportation industry.

Finally, our rule requiring CRS carriers to make available to participating airlines the information generated by their systems will not result in significant new costs. The programs necessary to generate the information are or will already be in place. Our rule will merely result in slight administrative costs attendant to distributing the information to requesting carriers.

In considering the need for rules and the alternatives suggested to our proposed course we have endeavored to take the approach that will produce the maximum set benefits to society. The cost of doing nothing, in our view is tremendous. Consumer losses would be measured in hundreds of millions of dollars.

The alternatives of beginning a proceeding aimed at the possible mandated divestiture of some or all of carrier owned CRS systems, requiring separate corporate subsidiaries, and highly specific rules of conduct for CRS providers have also all been considered. We find that each of these alternatives would be more costly. The costs attendant to a separation of American's SABRE system, for example, from its other operations would be substantial. Among costs American would have to bring on line a new mainframe to handle in-house computer needs and hire new personnel to oversee its operation.

While the costs, attendant to these alternative proposals should be greater than those of our proposed course, it

does not appear that any greater benefits might be obtained. Our proposed rules will eliminate the conduct that is causing an immediate adverse impact on air transportation competition and consumer injury without undue interference in management prerogatives or the workings of the marketplace. As a result, our course involves the least net cost to society and maximizes the aggregate net benefits.

#### Comment Period

In light of our conclusions on the significant potential for competitive harm and consumer injury from CRS practices, comments on this notice of proposed rulemaking will be due 30 days after publication in the *Federal Register*. CRS carriers' ability to bias their systems, discriminate in access charges, and use computer generated information to their competitive advantage is lessening competition in air transportation. We have the responsibility under the Federal Aviation Act to act quickly in such circumstances. For this reason, we find good cause to conduct this rulemaking on an expedited basis with a 30-day comment period.

#### Options for Which Comments are Requested

To assure that parties are fully aware of all options on we are requesting comments, they are listed below:

All provisions of the proposed Part 255, *infra*; a rule prohibiting use of total hub size in selecting connecting points (pp. 32-33); a rule requiring strictly equal fees in lieu of one that would permit cost based fee differences (p. 49); and a rule requiring CRS owners to offer service enhancements as soon as they are developed (p. 56). We are also requesting comments on whether we should adopt affirmative standards for display of connecting flights in a separate advance notice of proposed rulemaking.

#### List of Subjects in 14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Chapter II by adding a new Part 255, *Carrier-Owned Computer Reservations Systems*, to read:

#### PART 255—CARRIER OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.	
255.1	Purpose.
255.2	Applicability.
255.3	Definitions.

- 255.4 Display of information.
- 255.5 Contracts with participating carriers.
- 255.6 Contracts with subscribers.
- 255.7 Service enhancements.
- 255.8 Market information.
- 255.9 Exceptions.
- 255.10 Review and termination.

Authority: Secs. 102, 204, 404, 411, 419, 1102 Pub. L. 85-726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.)

#### § 255.1 Purpose.

The purpose of this part is to set forth requirements for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

#### § 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that own, control or operate computerized reservations systems for travel agents in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

#### § 255.3 Definitions.

"Availability" means information provided in display with respect to the seats a carrier holds out as available for sale on a particular flight.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively that are engaged directly in the operation of aircraft in passenger air transportation.

"Discriminate", "Discrimination," and "discriminatory" mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

"Participating carrier" means a carrier that has an agreement with a system vendor for display of its flight schedules, fares, and seat availability in a system.

"Service enhancement" means any product or service offered to subscribers of passengers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or to issue tickets for air transportation.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general,

and that has entered into an agreement for the use of a system.

"System" means a computerized airline reservation system offered by a carrier to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

"System vendor" means a carrier that owns, controls or operates a system.

#### § 255.4 Display of information.

(a) All system vendors shall offer a display that includes the schedules, fares, rules and availability of all carriers in accordance with the provisions of this section.

(b) In ordering the information contained in a display, system vendors shall not use any factors relating to carrier identity.

(1) System vendors may order flight information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including the system vendor.

(2) System vendors shall provide upon request to all subscribers and participating carriers the current criteria used in ordering flights for the integrated display and the weight given to each criterion.

(c) System vendors shall not use any factors relating to carrier identity in constructing the display of connecting flights.

(1) System vendors may select the connecting points to be used in the construction of connecting flights for each city pair on the basis of any service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(2) System vendors may select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(3) System vendors shall provide all subscribers to their systems and participating carriers with information on:

- (i) All connecting points used for each market;
- (ii) All criteria used to select connecting points;
- (iii) All criteria used to "edit" connecting flights; and
- (iv) The weight given to each criterion in (ii) and (iii) above.

(d) Upon receipt of information from any carrier, system vendors shall apply the same standards of care and timeliness to loading information

concerning participating carriers (including direct updating) as it applies to the loading of its own information.

(1) If a system vendor provides special loading capability to any other carrier, it shall offer the same capability to all participating carriers in a nondiscriminatory fashion as soon as technically feasible.

(2) Each system vendor shall provide upon request to all participating carriers all current data base update procedures and data formats.

#### § 255.5 Contracts with participating carriers.

(a) No system vendor shall unjustly discriminate among participating carriers in the fees for participation in its system, or for system related services.

(b) No system vendor shall condition participation in its system on the purchase or sale of any other goods or services.

(c) In order to facilitate compliance with the provisions of this section, each system vendor shall include in every participation contract a clause providing for expedited arbitration of disputes relating to alleged discrimination in fees.

#### § 255.6 Contracts with subscribers.

(a) No subscriber contract shall have a term in excess of five years.

(b) No system vendor shall directly or indirectly prohibit a subscriber from obtaining or using any other system.

(c) No system vendor shall require use of its system, by the subscriber in any sale of its air transportation services.

(d) No system vendor shall require that a travel agent use its system as a condition for the receipt of any commission for the sale of its air transportation services.

#### § 255.7 Service enhancements.

In the event that a system vendor offers a service enhancement to any participating carrier, it shall offer it to all participating carriers on nondiscriminatory terms.

#### § 255.8 Marketing information.

Each system vendor shall make available to all participating carriers on nondiscriminatory terms all marketing, booking and sales data that it elects to generate from its system.

#### § 255.9 Exceptions.

(a) The obligations of a system vendor under this support shall not apply where a carrier refused to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee.

(b) The obligations of a system vendor under this part shall not apply to any

foreign air carrier that operates an airline computer reservation system for travel agents outside the United States that does not display the flights of all United States carriers equally with the flights of the foreign carrier.

#### § 255.10 Review and termination.

(a) The Federal agency administering this rule shall conduct a review within 5 years after its effective date.

(b) Unless extended on the basis of the review specified above, this rule shall terminate on December 31, 1991.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8046 Filed 3-26-84; 8:45 am]

BILLING CODE 6320-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 33

#### Commodity Options; Margins

##### Correction

In FR Doc. 84-6444 beginning on page 8937 in the issue of Friday, March 9, 1984, make the following corrections.

1. On page 8941, second column, in Footnote 21, last line, insert "call" after "long"; third column, in Footnote 23, eighth line from the bottom, "differerent" should read "difficult".

##### § 1.17 [Corrected]

2. On page 8945, first column, § 1.17, paragraph (h)(2)(vii)(a)(2), twenty-first line from the top, insert "not" after "have".

BILLING CODE 1505-01-M

## PEACE CORPS

### 22 CFR Part 303

#### Compliance With Public Information Act

AGENCY: Peace Corps.

ACTION: Proposed rule.

**SUMMARY:** Notice is hereby given that the Director of the Peace Corps proposes to amend Chapter III of Title 22, Code of Federal Regulations, by replacing Part 303 with a new Part 303, which provides regulations permitting the inspection and copying of documents of the Peace Corps. Originally, regulations governing dissemination of information to the public were published as Part 303 of Title 22, Code of Federal Regulations. Amended regulations with regard to the dissemination of Peace Corps records, documents and other information in

conformity with the Freedom of Information Act, 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561, were published in the *Federal Register*, Vol. 40, No. 83, April 29, 1975, as Chapter XII, ACTION, Part 1215, or Title 45, Code of Federal Regulations because the Peace Corps was a part of the ACTION Agency. Under the provisions of Pub. L. 97-113, Title VI, the Peace Corps became an independent Agency on February 21, 1982. Accordingly, the Peace Corps is now republishing amended Freedom of information Act regulations to reflect the current statutory provisions.

**DATES:** Comments must be received on or before May 29, 1984.

**ADDRESSES:** Comments should be submitted to and are available for examination from 8:30 a.m. to 5:00 p.m. Monday through Friday except holidays, at the Peace Corps, 806 Connecticut Avenue, N.W., Washington, D.C. in Room 1207, Office of the General Counsel. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Robert McClendon, Freedom of Information Act Officer, Office of Administrative Services, 202-254-6180 or Robert Martin, Associate General Counsel, 202-254-7966.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

The Peace Corps has determined that rule is not a major rule because it is not likely to result in an annual effect on the economy of \$100 million or more.

##### Paperwork Reduction Act

This rule impose no obligatory information requirements on the public.

##### Regulatory Flexibility Act of 1980

The Director certifies that this rule, if adopted will not have a significant economic impact on a substantial number of small entities.

##### Reasons for this Proposed Rule

The provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, require that each agency of the Federal government make available to the public at established places any records reasonably described in a request therefore and other records therein specified.

Accordingly it is proposed that 22 CFR Chapter III Part 303 be amended to provide a new procedure implementing the provisions of the Freedom of Information Act.

#### List of Subjects in 22 CFR Part 303

Administrative practice and procedure, Freedom of Information Records.

#### PART 303—INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH FREEDOM OF INFORMATION ACT

- Sec.
- 303.1 Purpose.
  - 303.2 Definitions.
  - 303.3 Records generally available.
  - 303.4 Availability of records.
  - 303.5 Records which may be exempt from disclosure.
  - 303.6 Manner of requesting records—appeals.
  - 303.7 Authority to release and certify records.
  - 303.8 Location of records.
  - 303.9 Identification of records.
  - 303.10 Schedule of fees.

**Authority:** 5 U.S.C. 552 Pub. L. 87-293 as amended (22 U.S.C. 2501 *et seq.*); Pub. L. 97-113, Sec 601; Executive Order 12137, May 16, 1979.

##### § 303.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, staff manuals, instructions, and other records of the Peace Corps pursuant to 5 U.S.C. 552.

##### § 303.2 Definitions.

As used in this part, the following definitions shall apply:

- (a) "The Agency" means Peace Corps.
- (b) "Records" includes all books, papers, maps, photographs, films, tapes, or other documentary material or copies thereof, regardless of physical form or characteristics, made in or received by the Peace Corps and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities but does not include books, magazines, or other materials acquired solely for library purposes and available in the library of the agency.

(c) "Identifiable" means, in the context of a request for a record, one which is reasonably described in a manner sufficient to permit the location of the material requested.

(d) "Unit" means an office of the Agency headed by a senior official who shall be responsible for making initial determinations of availability of documents or records requested hereunder. The head of any such Unit may delegate his or her responsibility hereunder to his or her Deputy or some other official during any absence of such official. At present, the units of the

Agency for the purposes hereof consist of, the Office of the Director; the Executive Secretariat; the Office of Private Sector Development; the Office of Executive Talent Search; the Office of General Counsel and Legislative Liaison; the Office of Public Affairs; the Office of the Associate Director for Marketing, Recruitment, Placement and Staging; the Office of the Associate Director for International Operations; and the Office of the Associate Director for Management.

#### § 303.3 Records generally available.

The agency will make promptly available to any member of the public the following documents:

(a) All final opinions and orders made in the adjudication of cases.

(b) Statements of policy and interpretation adopted by the agency which have not been published in the Federal Register.

(c) Administrative staff manuals and instructions to the staff which affect a member of the public.

(d) A current index, which shall be updated at least quarterly, covering so much of the foregoing materials as may have been issued, adopted or promulgated after July 4, 1967, is maintained by the Agency and copies of same or any portion thereof shall be furnished upon request at a cost not to exceed the cost of duplication. The Agency deems further publication of such index in the Federal Register both unnecessary and impractical.

(e) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(f) Brochures, flyers and other similar material shall be furnished to the extent that same are available. Copies of any such brochures and flyers which are out of print shall be furnished upon request at the cost of duplication, provided, however, that in the event no copy exists, the Agency shall not be responsible for reprinting the same.

(g) The Agency will not be required to create or compile selected items from its file and records or to provide a requester with statistical or other data unless such data has been compiled by the Agency and is available in the form of a record in which event such record shall be made available as provided in this part.

#### § 303.4 Availability of records.

All records of the Peace Corps, in addition to those ordinarily maintained and disseminated under 303.3 hereof, requested under 5 U.S.C. 522(a)(3) and reasonably described in any request

therefore shall be made promptly available upon request of any member of the public for inspection or copying upon compliance with procedures established in this part, except to the extent that a determination is made, in accord with the procedures set forth herein, that a record is exempt from disclosure, and should be withheld in the public interest. All publications and other documents heretofore provided by the Peace Corps in the normal course of business will continue to be made available upon request to the appropriate unit of the Agency. No charge will be made for such documents unless necessary by reason of the fact that such document is no longer in print in which case the charge shall not exceed the cost of duplication as set forth herein.

#### § 303.5 Records which may be exempt from disclosure.

The following categories are examples of records maintained by the Peace Corps which, under the provisions of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 12356, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(1) It is the policy of the Peace Corps not to release information which is a trade secret or commercial or financial information obtained from a person and privileged or confidential within the meaning of 5 U.S.C. 552(b)(4), and to give submitters of information which may be exempt from disclosure under 5 U.S.C. 552(b)(4) adequate opportunity to

provide information at the administrative level which may establish such exemption.

(2) A person submitting information to the Peace Corps, if previously notified by the Peace Corps of his/her right to request confidential treatment for information, must request that the information be considered exempt from disclosure at the time of submission. Failure to do so will be deemed an acknowledgement that the submitter does not wish to claim exempt status.

(3) A person submitting information not covered by paragraph (2) which is the subject of a Freedom of Information Request, and which may be exempt from disclosure, shall be given prompt written notification of such request, unless it can be established that the information should not be disclosed, or that the information has already been lawfully published or made available to the public. Such notice must afford submitters at least ten working days in which to object to the disclosure of any requested information.

(4) Each request for exemption from disclosure under 5 U.S.C. 552(b)(4) as a trade secret or privileged or confidential commercial or financial information must:

(i) Specifically identify the exact material claimed to be confidential.

(ii) State whether or not the information identified has ever been released to a person not in a confidential relationship with the submitter.

(iii) State the basis for submitter's belief that the information is not commonly known or readily ascertainable by outside persons.

(iv) State how release of the information would cause harm to the submitter's competitive position.

(5) The agency will not normally decide whether material received with a request for exemption from disclosure under 5 U.S.C. 522(b)(4) is entitled to be withheld unless a request for disclosure is made. Any reasonably segregable portion of a record will be disclosed after deletion of any portions determined to be exempt.

(6) The agency will give careful consideration to all specified grounds for exemption prior to making its administrative determination and, in all cases in which the determination is to disclose, provide the submitter with a statement of the reasons why its disclosure objection was not sustained. The Peace Corps will provide the submitter with at least ten days advance notice of the proposed release date of information in cases in which an

objection to disclosure has been rejected.

(7) The Peace Corps will notify the submitter promptly of any instance in which a requester brings suit seeking to compel disclosure of its information. Submitters should not request exemption from disclosure unless they are prepared to assist the agency in the defense of any judicial proceeding brought to compel disclosure.

(e) Interagency or intra-agency memoranda or letters which would not ordinarily be available by law to party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former and current volunteers, lists of names and home addresses and other files or material containing private or personal information, the disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files compiled for law enforcement purposes. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings; provided however, that such records shall be made available to the extent that their production will not (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by a confidential source; (5) disclose investigative techniques and procedures; or (6) endangered the life or physical safety of law enforcement personnel.

(h) In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section.

(i) Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information might pertain, and that disclosure is not prohibited by law or Executive Order.

#### § 303.6 Manner of requesting records—appeals.

(a) Requests under the Freedom of Information Act (5 U.S.C. 552) for access to Peace Corps records may be filed in person or by mail with the Director of Administrative Services, Peace Corps, 806 Connecticut Avenue N.W., Washington, D.C. 20526. All requests and the envelope in which they are sent must be plainly marked "FOIA Request." Personal written requests will be received from between 10 a.m. and 4 p.m., Monday through Friday, except for official holidays.

(b) Requested records which are reasonably described shall either be made available within ten working days after receipt of any such request or a written notice that the request cannot be complied with will be provided to the person making such request within such ten day period. Any such notice of inability to comply shall specify the reasons for refusal and the right of the person making such request to appeal such adverse determination. In the event a request for a record or document is made to the Director of Administrative Services, and such office does not have the requested material, the requester shall be immediately notified. The request shall be deemed received when actually received by the Director of Administrative Services.

(c) Upon receipt of a notice of failure to comply, a person making a request for information, records, or documents may, within 15 calendar days from the receipt of such notice, appeal such adverse determination to the Director of the Peace Corps or designee. Such appeal shall be in writing and shall specify the date upon which the notice of failure or refusal to comply was received by the person making such request. The Director or designee shall make determination with respect to such appeal within 20 working days after receipt of such appeal. Written notice of such determination shall be provided to the person making the request in writing. If the original denial of the request for records is upheld in whole or in part, such notice shall include notification of the right of the person making such request to have judicial review of the denial and appeal as

provided under the Freedom of Information Act (5 U.S.C. 552).

(d) The time limits specified above for initial compliance, and appeal from a refusal to comply, may be extended by the Agency upon written notice to the person making the request. Such notice shall set forth the reasons for such extension and the date upon which determination is expected. Such extension may be applied at either the initial stage or the appellate stage, or both, provided that the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension will include the following:

(1) Time necessary to search and collect requested records from segments of the Agency separate from the office processing the request;

(2) Time necessary to search, collect and appropriately examine a voluminous number of records demanded in a single request; or

(3) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(e) The time limits provided in this section are mandatory and a person requesting records shall be deemed to have exhausted his or her administrative remedies with respect to such request in the event the Agency fails to comply within the said applicable time limit provisions as extended in accord with this section. In unusual circumstances in which additional time is necessary to collect and review the records requested, the Act provides that a court of appropriate jurisdiction may allow the agency additional time for such purpose. Alternatively, the Agency and the person making such request may agree as to a reasonable time for completion of Agency work upon such request.

(f) Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of the persons primarily responsible for the denial of such request.

(g) Upon receipt of a request for a record or document the Director of the Office of Administrative Services will promptly make an initial determination as to whether the request for the record reasonably describes such record with sufficient specificity to determine the unit of the Agency to which such request should be referred. Upon making such initial determination, he shall immediately refer such request to the head of the unit concerned. Upon receipt

of the request the head of the unit shall promptly determine whether the description of the record contained in the request is sufficient to permit its identification and production.

(h) If the Director of Administrative Services or the head of the unit concerned determines that the description contained in the request is not sufficient to reasonably describe the record requested, the requester shall be advised and shall be permitted to amend the request to provide any additional information which would better identify the record. The requester shall be provided with appropriate assistance from the head of the unit concerned, the Director of Administrative Services or any member of their staffs. A request which is amended in accord herewith shall be deemed to have been received by the Agency on the date of receipt of the amended request.

(i) If the head of the unit concerned determines that the record requested is reasonably described so as to permit its identification, he or she shall make it available unless he or she determines, after consultation with the General Counsel, that (1) the record is exempt from disclosure and (2) it should be withheld in the public interest or to protect the rights of persons to whom the information pertains. When such a determination is made the requester shall be immediately notified in writing as provided herein.

(j) Peace Corps offices overseas are not responsible for maintenance of any Freedom of Information Act indexes, documents, or records (other than materials normally kept and maintained in such offices). Insofar as they do have any materials, they will make them available upon written or oral request to persons who are present in their respective countries addressed to the Director, Peace Corps, c/o American Embassy in the applicable country. Such requests shall be treated informally and as expeditiously as possible. In the event any such request is received for information which might be exempt from disclosure under the provisions of § 303.5 hereof, a copy of the material and the request together with any recommendation shall be forwarded to the Director of Administrative Services for processing. Such a request shall be considered received when actually received by the Director of Administrative Services.

(k) The Peace Corps maintains recruiting offices in many states. These offices are not responsible for maintaining Freedom of Information Act indexes, reading rooms, or other records or documents. Requests to any

Recruiting Office or Service Center Office for materials not given out in the normal course of business shall be referred to the Director of Administrative Services. The request shall be in writing and shall be deemed received when actually received by the Director of Administrative Services.

#### § 303.7 Authority to release and certify records.

(a) Authority is hereby delegated to the Director of Administrative Services, Office of Management, to furnish, pursuant to these regulations, copies of records to any person entitled thereto, and upon request to provide certified copies thereof for use in judicial proceeding or other official matters as provided below.

(b) The Director of Administrative Services and his or her deputy, are hereby designated to act as authentication officers. When both the authentication officers are unavailable, any other person within such office designated by the Director of Administrative Services may act in his or her place and stead. The authentication officer is hereby authorized to sign and initial certificates of authentication for and in the name of the Director of the Peace Corps. The form of authentication shall be as follows:

#### Certificate of Authenticity

In testimony whereof, I \_\_\_\_\_, Director of the Peace Corps, have hereunder caused my name to be subscribed by the authentication officer of said agency at Washington, D.C., this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Director of the Peace Corps  
By \_\_\_\_\_

Authentication Officer, Peace Corps.

(c) The authentication officer is also hereby authorized to issue such statements, certificates, or other documents as may be required in connection with judicial proceedings or other official matters to show that, after thorough search of Peace Corps records, a requested record has not been found. (See Rule 44(b) Federal Rules of Civil Procedure).

#### § 303.8 Location of records.

The Agency will maintain a central records room at its headquarters in Washington, D.C. The headquarters of the Peace Corps is presently located at 806 Connecticut Avenue, NW., Washington, D.C. The present location of the central records room shall be the Paperwork and Records Management

Branch, the location of which may change from time to time. The specific location of the records room may be determined by requesting such information from the Peace Corps receptionist in the Office of the Director of the Peace Corps.

#### § 303.9 Identification of records.

(a) In order for the Agency to locate records and make them available it is necessary that it be able to identify the specific records sought. Persons wishing to inspect or secure copies of records should therefore seek to describe and identify them as fully and as accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the records officer receiving the request will endeavor to assist the person seeking the records in filling in necessary details.

(b) Among the kinds of information which a person seeking records should try to provide in order to permit an identification of a record are the following:

- (1) The unit or program of the Agency which may be responsible for or may have produced the record.
- (2) The specific event or action, if any, and if known, to which the record refers.
- (3) The date of the record or the period to which it refers or relates, if known.
- (4) The type of record, such as an application, a contract, or a report.
- (5) Personnel of the office who may have prepared or have knowledge of the record.
- (6) Citation to newspapers or publications which are known to have referred to the record.

#### § 303.10 Schedule of fees.

(a) It is the policy of the Peace Corps to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, this policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. Search and reproduction charges will be made in accordance with subsection (b) below. The Peace Corps will conduct a thorough review of all fee waiver requests, on a case-by-case basis, and will grant waivers or reductions in fees only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public.

(b) Search and copying charges will be made as follows:

- (1) Copies made by photostat or otherwise (per page) \$.10.

(2) Search service will be charged according to current hourly rates or quarterly fraction thereof, at the first step of the FS-3/1 or FS-8/1 salary level rounded to the nearest dollar. Currently, \$16.00 per hour will be charged for a search by a professional level employee and \$7.00 will be charged for a search by a clerical level employee. Such charges will be changed on the effective date and in accordance with changes in the Foreign Service salary schedule. A charge will be made regardless of whether the search is successful in locating a requested record.

(3) When no specific fee has been established for a service, for example when the search involves computer time or special travel, transportation, or communications costs, the Director of Administrative Services will determine the direct costs of the service and include such costs in the fees chargeable under this section.

(4) In the event a request for documents or records is received which does not state that the requester will pay any or all reasonably necessary costs, or costs up to an amount specified in such request, and the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of \$25, or in excess of the limit specified in the request, the Director of Administrative Services shall so advise the requester promptly after receipt of the initial request. Such notification shall specify the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his or her request to specify fewer documents or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the receipt date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(5) Payment should be sent or delivered to the Director of Administrative Services. Such payment should be check or money order payable to Peace Corps. A receipt for fees will be provided upon request. All fees collected are deposited into the General Fund Receipt Account at the U.S. Department of the Treasury.

(c) A requester may, in his or her original request, or subsequently, ask for a fee waiver or that documents be furnished at a reduced charge. A request for documents shall not be deemed to have been received until a determination of the question of fee

waiver or reduction has been made, provided however, that such determination shall be made within five working days from the receipt of a fee waiver request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the public interest would be served by a waiver or reduction of fees. The following procedure will be followed:

(1) Upon the receipt of a fee waiver or fee reduction request the Director of Administrative Services will refer such request to the Director or such official as he or she may designate. The Director or designee will promptly determine whether such request should be granted in whole or in part, and such determination is final. The request will be reviewed in accordance with the following Freedom of Information Act fee waiver objectives: (i) The fostering of disclosure of non-exempt agency records where it will primarily benefit the general public, and (ii) the preservation of public funds where there will be insufficient public benefit derived from disclosure.

(2) There are five general factors which are considered in determining whether there is sufficient public benefit to be derived from disclosure to warrant the granting of a fee waiver.

(i) First, a determination must be made as to whether there is a genuine public interest in the subject matter of the documents for which a fee waiver is sought; absent such a public interest, there is no basis for granting a waiver. The "public" to be benefited need not be so broad as to encompass all citizens, but it must be distinct from the requester alone. An interest which is personal to the requester is insufficient, nor is it in the public interest to grant a waiver solely on the basis of a requester's indigency.

(ii) The second factor which the Agency will examine is the value to the public of the records themselves. A fee waiver is appropriate only if the disclosable contents of the records are in fact informative on the issue found to be of public interest. No matter how interesting or vital the subject matter of a request, the public is benefited only if the information released meaningfully contributes to the public development or understanding of the subject.

(iii) The third factor to be considered is whether the requested information is already available in the public domain. Where requested information is already in the public domain, the fee waiver will be denied.

(iv) Fourth, the identity of a FOIA requester is considered in acting on a

request for a fee waiver. A requester's identity and qualifications, e.g., expertise in the subject area and ability and intention to disseminate the information to the public, is evaluated. Therefore, requesters should specifically describe their qualifications, the nature of their research, and the purposes for which they intend to use the requested materials. Bare assertions by requesters that they are "researchers" or have "plans to author a book" are insufficient.

(v) The fifth criterion requires an assessment, based upon information provided by the requester as well as information independently available to the agency, of any personal interest of the requester reasonably expected to be benefited by disclosure. Such interests include any commercial interest, as well as the interests of first-party requesters in records pertaining to themselves and the interests of parties seeking records for use in litigation.

(3) Fee reductions may be based on any equitable basis, including the percentage of the material requested which meets the waiver criteria, or the extent to which the request meets the first four criteria described in paragraph 2. The requirement that it meet the fifth criteria, that the primary benefit be to the public, is absolute.

(4) A decision to grant a fee waiver or reduction with respect to records pertaining to a particular subject, or with respect to a particular requester, does not create a precedent for subsequent requests for materials relating to the same subject, or by the same requester.

(Approved by the Office of Management and Budget. OMB control number 0420-A003)

Issued at Washington, D.C. on March 22, 1984.

Loret M. Ruppe,

Director.

[FR Doc. 84-8218 Filed 3-26-84; 6:45 am]

BILLING CODE 6051-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 635

[FHWA Docket No. 84-3]

#### Participation in Contract Claim Awards and Settlements

**AGENCY:** Federal Highway Administration [FHWA], DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Highway Administration (FHWA) is requesting

comments on proposed revisions to its regulation concerning the extent to which Federal-aid highway funds may participate in awards and settlements of Federal-aid highway contract claims brought by private contractors against State highway agencies (SHA's). The revised regulation would clarify the current regulation by specifying more definitive criteria in determining eligibility for participation. It is anticipated that the revised regulation would enable SHA's to submit more specific information supporting their requests for participation and would make participation determinations more consistent State-to-State.

**DATE:** Comments must be received on or before May 29, 1984.

**ADDRESS:** Submit written comments, preferably in triplicate, to FHWA Docket No. 84-3 Federal Highway Administration, Room 4205, HCC-10, 400 7th Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul E. Cunningham, Chief, Construction and Maintenance Division, Office of Highway Operations, (202) 426-0392, or Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426-0780, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Under the Federal-aid highway program, 23 U.S.C. 101 *et seq.*, construction of Federal-aid highways is generally performed by State highway agencies through private contractors. FHWA reimburses the States for a statutory pro rata share of the construction costs that are incurred. In the course of construction, disputes between the contractor and the State's administering agency may occur. The contractors may allege that unanticipated costs were or must be incurred, and attribute the cause to matters that were under State control. For example, contractors may argue that agency administrators required them to perform work that was not contemplated by the plans and specifications, or that subsurface conditions were encountered which materially differed from those represented in the contract. Often, such disputes are resolved informally at the project level. Where the SHA initially denies liability, State law generally provides a forum for resolution of these

claims. State courts, administrative boards, arbitration panels, or other tribunals may hear and decide them, or they may be settled by the parties in lieu of such proceedings.

Under a project agreement with the SHA, entered into under 23 U.S.C. 110, FHWA agrees to reimburse the State for the estimated Federal share of the construction costs incurred, based upon a prescribed statutory rate, see 23 U.S.C. 120. State highway agencies will often request FHWA to reimburse them for a portion of the contract claim payments they must make to a contractor, on the basis that such payments reflect a cost of construction.

It has been recognized that FHWA has no inherent contractual obligation to participate in any and all contract claim settlements. "Louisiana Department of Highways v. United States," 604 F.2d 1339 (Ct.Cl., 1979). In "Commonwealth of Pennsylvania, Department of Transportation v. United States," 643 F.2d 758 (Ct.Cl., 1981), the former United States Court of Claims further found "proper" FHWA's requirement that unbudgeted settlement costs must be "reasonable" in order to be eligible for Federal participation. That court also concluded that the ultimate burden of demonstrating that the actual costs involved were "reasonable" resides with the State.

The regulation currently governing the participation of the FHWA in contract claim awards and settlements is 23 CFR 635.120. This provides in full as follows:

The eligibility for, and extent of, Federal-aid participation in claim awards made by the State to Federal-aid contractors on the basis of arbitration board awards or State court judgments shall be determined on a case-by-case basis. Generally, the criteria for establishing Federal-aid participation in claims and resultant settlements is the extent to which such settlements are grounded in contract provisions and specifications and actual costs incurred. Where legal issues arise in the course of resolving a claim, any data submitted for consideration shall include a brief from the legal counsel for the State setting forth the basis for determining the extent of the State's liability for the claim under local law.

This regulation, published in 1974, restates a policy of FHWA that has remained consistent over the years. It essentially adopts language of uncodified policy directives dating back to 1964 which indicate that the policy on eligibility incorporated therein was one that had been followed, at least informally, prior to that time.

Although this policy has been in place for a long time, questions of interpretation have been prompted by the literal language of the regulation,

particularly that of how "grounded in contract provisions and specifications" should be construed. In the "Louisiana Department of Highways" case the Court of Claims described this key eligibility language as being "far from clear," 604 F.2d at 1340, and suggested that it be clarified. This thought was again echoed in the "Pennsylvania Department of Transportation" case, 643 F.2d at 765. In 1981 the American Road and Transportation Builders Association argued that eligibility issues could best be resolved by making Federal-aid participation automatic in any case where a settlement is approved by the SHA's chief administrative officer and the State's Attorney General.

While FHWA maintains its right to exercise separate and independent judgment on claim reimbursement eligibility questions, a clearer statement of the criteria which would be employed in making such judgments appears warranted. It is also proposed to provide more guidance to SHA's as to the nature of the supporting information and documentation believed necessary for FHWA to make informed determinations.

Under proposed paragraph (a), the present case-by-case determination approach would be retained. Recurring similarities are uncommon in the ways that claims arise. While there are identifiable types of claims, the facts related to them are often very different. No categories of judgments or settlements could be identified which appear appropriate for exclusion from any review. It is also proposed not to differentiate between judgments of arbitration proceedings, administrative board determinations, or court judgments, or the settlements entered into in lieu of these proceedings. Each case and resolution would be considered on its own merits. The primary participation criterion would essentially reflect the interpretations by the former Court of Claims that the resolutions of claims and the costs incurred be "reasonable" ones, and would recognize that the burden rests with the SHA to demonstrate such reasonableness. Thus, it is proposed that Federal funds would not participate to the extent that any contract adjustments were unreasonable or unsupported. In this regard, it may be instructive to relate the comments of the former Court of Claims on the meaning of "reasonable," in the context of a claims settlement:

At a minimum, a claim against a State must have some basic merit to be considered for reimbursement as "reasonable." But the mere fact that a claim against a State may have

some legal merit does not mean any possible settlement of the claim is reasonable. We must also look as to whether the settlement, as made, appears to be reasonable on all of the facts available to a State at the time of settlement. We have, in other circumstances, characterized the duty of reasonableness in several ways, but the essence of the term is that a party must proceed prudently, wisely, and efficiently. The settlement is reasonable only to the extent it would have been made by a prudent businessman placed in a similar position. . . . Reasonableness requires, we think, not only that the State explore and adopt less expensive means of terminating a lawsuit other than by outright cash settlement but, also, that the State proceed in a manner so that its potential liability on claims is kept to a minimum.

"Commonwealth of Pennsylvania, Department of Transportation v. United States," 643 F.2d at 765, 766 (citations omitted.)

Given the fact that the burden of demonstrating reasonableness of the judgment or settlement remains with the SHA, it is proposed to disallow participation where the contract adjustments are "unsupported" by the SHA. In cases where there is a court or administrative judgment involved, such "support" may be contained in the records of these proceedings.

Contract law principles apply to these contract adjustments and the manner in which contractors might be compensated through them. To reflect this basic fact, it is proposed to retain the concept that the adjustment have a basis in the terms of the contract, which would include the contract's plans and specifications. However, use of "a basis in" rather than "grounded in" the terms of the contract is considered more direct and definitive.

Sole reliance on the literal terms of the contract can sometimes be misplaced, as where State courts have refused to give full effect to the language of particular clauses. Further, doctrines evolved through State law may be applicable in situations where no contract clauses are relevant or, if relevant, require careful interpretation. Thus, it is proposed to require that contract adjustments have a basis in "applicable State law," as "fairly construed." Again, where there has been a State court or administrative judgment rendered, the "basis in State law, as fairly construed" for the contract adjustment will ordinarily be quite apparent. However, when a careful review by FHWA of the case leads to a belief that such a basis was lacking, a recommendation to appeal may be made. This would not change from present practice.

It is also proposed to deny participation where the basis for the adjustment or compensation is "not in

accord with prevailing principles of public contract law." There would be respect under this standard for the common, State-to-State differences in substantive law, and sufficient margin would be afforded for the maturation and evolution of contract law. However, under the rule as proposed, denials of participation could be made where the State determinations clearly departed from the mainstream of thought on the particular issues presented. States may certainly choose to adopt positions that are generous in the extreme to plaintiffs in actions against it. However, in circumstances where the Federal share of any resulting awards or settlements are 75 to 90 percent or even more, the Federal interests would not appear to be appropriately served by requiring FHWA to, in effect, adhere without question to the State position. Some examples of cost items believed inappropriate for participation include consequential or punitive damages and anticipated profit, which are noted in proposed § 635.120(c). The general statement regarding nonparticipation in adjustments or compensation "not in accord with prevailing principles of public contract law" would preserve FHWA's discretion in other, similar areas.

Proposed paragraph (b) would identify for SHA's the key supporting materials which should accompany a request for participation. These include (1) information as to the legal and contractual basis for the claim, (2) the factual and cost data supporting the award or settlement, (3) an audit report, where feasible, of the actual costs incurred by the contractor, and (4) a memorandum of law from the SHA's counsel if evaluation of a legal controversy would be expected to be critical to consideration of the award or settlement for participation. Where an audit is not feasible, provision would be made for the SHA and FHWA to mutually agree on the costs which were reasonably incurred by the contractor.

When a contractor claim has been reduced to judgment, especially where a written opinion has been entered, submission of court papers, legal briefs, and key exhibits would usually suffice to meet these proposed requirements. Where cases have been settled, the case file may well contain documents supporting the settlement which may also be used for this purpose. Typical of such documents would be claim submissions themselves, contractor documents furnished in support of the claim, SHA claim review memoranda, inspector's diary entries, and pertinent correspondence on the issues raised.

The intent of proposed paragraph (b) is to identify those materials FHWA ordinarily needs in order to make informed determinations on participation. This paragraph largely restates present practice.

Under proposed paragraph (c), it would be clarified that participation would be denied to the extent to which State employees, officers, or agents acted unreasonably in project design, plan preparation, contract administration, or other activities which gave rise to the claim. This largely follows in concept a finding made by the former Court of Claims in the "Pennsylvania Department of Transportation" case that FHWA could reduce its level of participation on a claim to reflect the unreasonable failure by that State to mitigate damages by giving timely direction to the contractor. "Acted unreasonably" would set a somewhat higher standard than mere negligence, encompassing gross negligence, intentional acts or omissions, fraud, or other acts or omissions not accepted within the standards of the profession involved.

It is proposed in this paragraph to identify several cost items in which Federal participation would be clearly denied. Several of these, as noted above, represent cost elements which are routinely disallowed under prevailing concepts of public contract law. Included in this category are consequential damages, punitive damages, and anticipated profits, as well as attorney's fees awarded to an opposing party in litigation against the State. In this context, "consequential damages" means damages which are not reasonably within the contemplation of the parties at the time they contract, and which cannot be foreseen as the result of the failure of a duty. Consequential damages would thus include failure of business, losses of or on other contracts, mental anguish, and other remote, speculative, or collateral damages.

Further, it is proposed to deny participation in post- or pre-judgment and settlement interest. The one exception to this would be award of interest during the period of appeal when the State has appealed an adverse decision with prior concurrence by FHWA. This would reflect conformity with the general principle that interest is not recoverable against the United States unless specifically provided for by contract or statute (see 28 U.S.C. 276(a)). In addition, it is not believed that such interest costs may logically be considered as being a "cost of construction" (see 23 U.S.C. 101(a) and 120). Finally, except for the situation in

which the State acts upon FHWA's specific recommendation to appeal a case, the control over litigation and, especially, payments under judgments or settlement agreements are matters entirely under the discretion and control of the States. In situations, then, where State is dilatory in making payments, FHWA should not be in the position of having to absorb most of the interest costs that could be imposed.

Proposed paragraph (c) would also clarify that the rule regarding participation in contract claim awards and settlements would not govern Federal participation in tort, inverse condemnation, or other claims erroneously styled as being "claims under a contract."

Proposed paragraph (d) would be added to specify that where States affirmatively recover compensatory damages from contractors, subcontractors, or their agents, whether through contract claims, counterclaims, or crossclaims, on a project upon which there was Federal-aid participation, the Federal share of such recovery shall be credited back to the particular project account. Such credit would, in turn, increase the unobligated balance of that project's Federal-aid program category.

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under the Department of Transportation regulatory policies and procedures. The proposed revisions are intended to merely clarify current regulations by specifying relevant criteria in determining eligibility for participation. Since there is no substantive change in the approach or procedures FHWA has traditionally employed in dealing with contract claims participation requests, it is anticipated that this action will not have a significant economic effect. Therefore, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this proposal will not have a substantial economic impact on a substantial number of small entities.

The FHWA believes the paperwork burden imposed by this regulation would be reasonable but invites comments on ways to reduce the burden without jeopardizing the basic purpose of the regulation.

In consideration of the foregoing, and under the authority of 23 U.S.C. 110, 120, 315, and 49 CFR 1.48(b), the FHWA proposes to amend Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations, by revising § 635.120 to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

#### List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: March 21, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administrator.

#### PART 635—CONSTRUCTION AND MAINTENANCE

##### Subpart A—Contract Procedures— [Amended]

The Federal Highway Administration proposes to amend Part 635 of Chapter I of Title 23, Code of Federal Regulations, by revising § 635.120 to read as follows:

##### § 635.120 Participation in contract claim awards and settlements.

(a) The eligibility for, and extent of, Federal-aid participation in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration proceeding, administrative board determination, or court judgment, or a contract claim settlement entered into in lieu of such proceedings, shall be determined on a case-by-case basis. However, Federal funds will not participate to the extent that any contract adjustments made were unreasonable or unsupported, or do not have a basis in the terms of the contract and applicable State law, as fairly construed. Further, participation may be denied where the basis for the adjustment or contractor compensation is not in accord with prevailing principles of public contract law.

(b) When requesting such participation, a State shall, in writing, set forth the legal and contractual basis for the claim, together with the factual and cost data supporting the award or settlement. Federal-aid participation in such instances should be supported by an audit by the State of the actual costs incurred by the contractor. Where an audit is not feasible, or actual costs cannot be determined, the State and FHWA may agree upon a reasonable estimate of the actual costs incurred, plus profit if applicable. Where difficult, complex or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the State shall include in its submissions a brief from its counsel setting forth the basis

for determining the extent of the State's liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(c) Federal funds will not participate to the extent to which State employees, officers or agents acted unreasonably in project design, plan preparation, contract administration or other activities which gave rise to the claim. Nor will Federal funds participate in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorneys fees paid by a State to an opposing party in litigation. Payment of interest is not participating, except for pre-judgment interest which was incurred during appeal of an adverse judgment and the State appealed such judgment with prior concurrence by FHWA. Also, this section does not authorize Federal participation in tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(d) In cases where States affirmatively recover compensatory damages through contract claims, cross-claims, or counterclaims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

[FR Doc 84-8171 Filed 3-26-84; 8:45 am]

BILLING CODE 4910-22-M

#### 23 CFR 660

[FHWA Docket No. 84-2]

#### Forest Highways; Construction and Maintenance; Allocation of Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation for the construction and maintenance of forest highways as it relates to the allocation of funds. The proposed revision has been developed in accordance with the criteria specified in Section 126 of the Surface Transportation Assistance Act of 1982 (1982 STAA). This revision would provide for allocating forest highway funds based upon the relative transportation needs of the national forest system. The Forest Service (FS) has participated in the development of the proposed rule, and the chief of the

Forest Service has concurred in the allocation method.

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

**ADDRESS:** Submit written comments, preferably in triplicate, to FHWA Docket 84-2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., ET, Monday through Friday. Those desiring notification of receipt of comment must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allen W. Burden, Chief, Program Planning and Coordination, Office of Direct Federal Programs, (202) 426-0456, or Mr. Michael J. Laska, Attorney, Office of the Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On January 6, 1983, the President signed into law the 1982 STAA (Pub. L. 97-424, 96 Stat. 2097). Section 126 of the 1982 STAA amends 23 U.S.C. 202 and requires the Secretary of Transportation to allocate forest highway funds according to the relative needs of the various elements of the national forest system by taking into consideration the need for access as identified through renewable resource and land use planning and the impact of such planning on existing transportation facilities. Section 105 of the 1982 STAA increased authorization for forest highway funds from \$33 million per year to \$50 million per year.

In distributing funds prior to the 1982 STAA, including the funds made available under the FY 1983 Continuing Appropriations, the 1958 land area and land value formula were utilized for apportionments. The remaining forest highway funds, made available for FY 1983 under the 1982 STAA, were allocated using the previous apportionment values as an interim measure until such time as the relative needs of the various elements of the national forest system could be determined.

In 1983, the FHWA and the United States Forest Service (FS) jointly developed a new allocation method using values based on relative transportation needs of renewable resource outputs and costs for backlog of improvements on roads designated as forest highways.

In FY 1984, the new allocation method was used with a protection provision

that ensured each forest highway area will be allocated at least the amount of funds it received in FY 1982.

The 1958 apportionment formula values are not a complete indicator of relative needs. They are based on 1955 data which is out of date and 50 percent of the formula is based on land value. Land is difficult to determine accurately and is not a true indicator of relative transportation needs. Any new allocation method must ensure that each forest highway State has a stable funding level in order to continue with the 5 year program update as described in 23 CFR 660.109. In addition, provisions should be included to ensure that adequate funding is available for each forest highway area.

The following are factors that were considered for a new forest highway allocation:

- Timber harvest volume,
- Recreation visitor days,
- National forest land area,
- Present value benefit,
- Forest related vehicle miles of travel,
- Percent forest related traffic,
- Forest highway mileage,
- Relative condition of forest highways, and
- Relative cost to bring forest highways up to a safe and adequate standard.

National forest land area was eliminated, since it is not an accurate indicator of relative need for highway access. In some forest highway areas, a portion of the land area may be designated as roadless or have little or no need for highway access.

The present value benefit, which is an output of FS land management planning, was eliminated because it includes nonrenewable forest resources and values for nontraffic-generated benefits such as water quality. Also, the reliability of the data is questionable.

Forest highway mileage was eliminated because it is not an accurate measure of relative needs. The relative condition of forest highways was eliminated because it is already reflected in the cost factor.

It is proposed that 23 CFR 660.107, apportionments, be revised to read as "Allocations" and that funds be allocated based upon relative needs of the various elements of the national forest systems as determined by the relative percent of resource outputs and the relative percent of road related improvement costs attributed to forest traffic for the following reasons:

1. Timber Harvest Volumes (TV) and Recreation Visitors Days (RVD) are the two main National Forest's renewable resource outputs identified by land management planning as having a direct

impact on forest highway transportation needs. Table 1 and Table 2 shows the relative percent of the national total in each State for TV and RVD respectively. This data was derived from current alternative data (May 1983) which will be used in the 1985 update of the Forest and Range Land Renewable Resources Planning Act. Equal weight is being given to TV and RVD since both have similar impacts on relative transportation needs.

2. Standardized improvement cost factors were used which took into consideration road width, terrain, and type of improvement needed. In addition, bridge improvement costs were added for each bridge based upon the condition to the bridges. Roads, which are designated as forest highways, are open to public travel. As such, these roads not only serve the national forest but other areas as well. The Federal responsibility to assist in the development and improvement of forest highways as related to the national forests can be expressed as the forest related cost. The forest related cost to improve a forest highway can be determined by multiplying the relative improvement costs by the percent of forest related traffic. When this is cumulated by forest highway areas, the relative costs of forest related improvements can be determined and are summarized in Table 3.

3. Cost of improvements is indirectly related to forest highway mileage which is a product of forest highway route designation. To minimize the influence of forest highways route designation on the allocation of funds, a regional standardization factor (K) has been incorporated to ensure proper weight between benefits (resource outputs) and costs (forest highway investments) is achieved. The K value consists of relative percent of FS Regional resource outputs (TV + RVD) divided by relative percent of forest related vehicle miles of travel (VMT). For a specific area where the relative percent of resource output is constant, as the forest highway mileage is increased or decreased, VMT increases or decreases, and the "K" factor will decrease or increase respectively. When the relative forest related improvement costs are multiplied by this factor, the relative improvement costs are placed in proper balance with resource outputs. The K values are shown in Table 4. Idaho, Wyoming, and California have different K factors for the portions that are in different FS regions.

When the forest related cost of improvements in Table 3 is multiplied by the K values in Table 4 and the

product is added for all forest highway areas, the total percent is 101.35 percent. These values then can be normalized by factor of 100 divided by 101.35. The normalized values for  $(K \times \text{Cost} \times \% \text{ FS Traffic})$  are shown in Table 5.

In FY 1984, forest highway funds were distributed on a FS region basis to allow flexibility as required in certain States to meet project funding and scheduling needs. The allocation on a FS region basis does not require that the annual distribution of funds by State boundary be expended in that State that year. Transfer of funds on a borrow basis between States is allowed in order to maximize use of all available funds.

Each State will be assured that over a 3 year period (FY 1984, FY 1985, and FY 1986), the total allocated funds will be available for use on forest highways within that State boundary. Any temporary transfer (borrow) of funds shall have the concurrence of the FS and State highway administration (SHAs) affected by the transfer. The FHWA Direct Federal Division Engineer will ensure that credits are appropriately established within the overall approved forest highway program plans and schedules.

It is proposed that the following allocation formula be used without any prior fiscal year protection values:

$$\frac{1}{2} (\text{TV} + \text{RVD}) + \frac{1}{2} (K \times \text{Cost} \times \% \text{ FS Traffic}).$$

Where:

- TV is percent of total timber harvest volume.
- RVD is percent of total recreation visitors days.
- Cost is improvement cost to bring forest highways to a given standard.
- K is regional standardization factor based on ratio of relative percent resources outputs to relative percent forest related vehicle miles traveled.

Table 6 shows the regional allocation of funds for forest highways including a breakdown by State boundary.

ALLOCATION FACTORS

State boundary	Table 1— percent TV	Table 2— percent RVD	Table 3— cost × percent FS traffic (percent)	Table 4— K	Table 5— normal- ized K × cost × percent FS traffic (percent)
Alabama	0.6648	0.5032	1.7472	0.7434	1.2815
Alaska	4.0422	2.0968	0.9479	2.0000	1.8703
Arizona	3.5502	7.1710	3.8104	1.7736	6.6676
Arkansas	1.4050	0.8907	2.1029	0.7434	1.5424
California:					
Reg. 4	0.0621	1.0903	0.3560	0.9948	0.3494
Reg. 5	12.0246	21.1776	5.1159	1.0796	5.4490
Colorado	1.6266	9.4775	9.8033	1.3001	12.5747
Florida	0.5984	1.1323	1.1785	0.7434	0.8644
Georgia	0.5319	0.9645	0.4940	0.7434	0.3624
Idaho:					
Reg. 1	5.5890	2.3484	2.8088	1.7778	4.9266
Reg. 4	2.2737	4.1516	2.8401	0.9947	2.7874
Illinois	0.1374	0.3774	0.9074	0.4575	0.4096
Indiana	0.0754	0.3774	0.6326	0.4575	0.2856
Kentucky	0.3369	1.1742	0.6880	0.7434	0.5046
Louisiana	1.2854	0.2516	0.2280	0.7434	0.1672
Maine	0.0866	0.0210	0.1009	0.4575	0.0455
Michigan	1.4006	2.6000	3.1437	0.4575	1.4189
Minnesota	1.0504	2.0549	5.4587	0.4575	2.4637
Mississippi	1.9502	0.4612	1.6699	0.7434	1.2248
Missouri	0.4432	0.8807	1.8908	0.4575	0.8489
Montana	6.3026	3.5226	6.0925	1.7778	10.6860
Nebraska	0	0.1258	1.1663	1.3001	1.4960
Nevada	0	0.8387	0.9501	0.9948	0.9324
New Hampshire	0.2083	1.0065	0.7209	0.4575	0.3254
New Mexico	1.7463	2.6420	3.3819	1.7736	5.9178
North Carolina	0.6427	2.3484	4.8440	0.7434	3.5529
North Dakota	0	0	0.9480	1.7778	1.6628
Ohio	0.0621	0.2097	0.9899	0.4575	0.4468
Oklahoma	0.2349	0.1258	0.4448	0.7434	0.3263
Oregon	31.1808	7.5484	6.3937	1.0265	6.4759
Pennsylvania	0.3818	0.9645	1.0128	0.4575	0.4571
South Carolina	0.7978	0.4194	0.7147	0.7434	0.5242
South Dakota	1.3341	0.9056	1.4072	1.3001	1.8050
Tennessee	0.3238	0.9645	1.6379	0.7434	1.2013
Texas	0.8421	0.8387	1.5169	0.7434	1.1126
Utah	0.5230	6.3742	3.1266	0.9948	3.0885
Vermont	0.1241	0.3355	0.3350	0.4575	0.1519
Virginia	0.4964	1.8032	5.2968	0.7434	3.8850
Washington	13.8241	5.7033	5.1050	1.0265	5.1701
West Virginia	0.2748	0.5871	3.0860	0.4575	1.3928
Wisconsin	0.9618	0.7129	3.3056	0.4575	1.4919
Wyoming:					
Reg. 2	0.3856	1.2161	1.0950	1.3001	1.4047
Reg. 4	0.2127	1.3839	0.3780	0.9948	0.3710
Puerto Rico	0.0044	0.2307	0.1342	0.7434	0.0985
Total	100.0000	100.0000	100.0000	N/A	100.0000

TABLE 6.—ALLOCATION

[1/2 (TV+RVD) + 1/2 K cost × percent FS traffic]

Forest service region	State	State percentage	Regional percentage
1	Idaho	4.2472	
	Montana	7.7993	
	North Dakota	0.8314	12.8779
2	South Dakota	1.4625	
	Colorado	9.0634	
	Wyoming	1.0704	
3	Nebraska	0.7795	12.3756
	Arizona	6.0141	
4	New Mexico	4.0560	10.0701
	Utah	3.2586	
	Idaho	3.2003	
5	Wyoming	0.5169	
	Nevada	0.6759	
	California	0.4377	8.1894
6	California	11.0498	11.0498
	Oregon	12.9199	
8	Washington	7.4669	20.3868
	Alabama	0.9328	
9	Arkansas	1.3426	
	Florida	0.8649	
	Georgia	0.5553	
	Kentucky	0.8301	
	Louisiana	0.4679	
	Mississippi	1.2153	
	North Carolina	2.5242	
	Oklahoma	0.2533	
	South Carolina	0.5864	
	Tennessee	0.9227	
	Texas	0.9765	
	Virginia	2.5174	
	Puerto Rico	0.1080	13.8772
10	Illinois	0.3335	
	Indiana	0.2560	
	Maine	0.0502	
	Michigan	1.7088	
	Minnesota	2.0082	
	Missouri	0.7554	
	New Hampshire	0.4864	
	Ohio	0.2913	
	Pennsylvania	0.5650	
	Vermont	0.1905	
Total	West Virginia	0.9119	
	Wisconsin	1.1647	8.7025
	Alaska	2.4699	2.4699
Total		100.0000	100.0000

Since the procedures for program and project selection (23 CFR 660.109) are not being changed, it is not anticipated that this proposal will have a national significant economic effect. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities.

Comments on the proposed fund allocation are requested from all interested parties. The comments should specifically address the effects of the proposed allocation method on the effectiveness of the forest highway program.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation.

In consideration of the foregoing and under the authority of section 126 of the 1982 Surface Transportation Assistance Act, 23 U.S.C. 202 and 49 CFR 1.48(b),

the FHWA proposes to amend Part 660 of Title 23, Code of Federal Regulations, by revising Subpart A, § 660.107, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

#### List of Subjects in 23 CFR Part 660

Forest highways, Highways and roads.

Issued on: March 21, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

#### PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL) [AMENDED]

Section 660.107 of 23 CFR is revised to read as follows:

##### § 660.107 Allocations.

On October 1 of each fiscal year, the FHWA will allocate funds for forest highways using values based on relative transportation needs of the various elements of the national forest system, after deducting such sums as deemed necessary for the administrative requirements of the FHWA; the necessary expenses of the FS; and the necessary costs of forest highway research and development, and engineering studies.

[FR Doc. 84-8172 Filed 3-25-84; 8:45 am]

BILLING CODE 4910-22-M

#### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

##### 26 CFR Part 1

[LR-246-76]

##### Taxation of DISC Income to Shareholders

##### Correction

In FR Doc. 84-519 beginning on page 1075 in the issue of Monday January 9, 1984, make the following correction.

On page 1083 first column, in Example (1) to § 1.995-7(h)(5), line eleven "As part of an overall plan to section, Z transfers all the export assets that relate to the trade or business conducted by X to V Corporation in exchange for all of the stock of V" should read "As part of an overall plan to avoid the application of section 995 (e)(9) of this section, Z transfers all the export assets that relate to the trade or business conducted by X to V

Corporation in exchange for all of the stock of V."

BILLING CODE (505-0)

#### DEPARTMENT OF JUSTICE

##### Parole Commission

##### 28 CFR Part 2

##### Paroling, Recommitting and Supervising Federal Prisoners

##### Correction

In FR Doc. 84-5869 beginning on page 8446 in the issue of Wednesday, March 7, 1984, make the following correction.

On page 8447, second column, second line under the heading Part 2—[Amended], "18 U.S.C. 4204" should have read "18 U.S.C. 4203".

BILLING CODE 1505-01-M

#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

##### 30 CFR Part 902

##### Permanent State Regulatory Program of Alaska

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

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Alaska (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On February 29, 1984, Alaska requested a 12 month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA of the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments must be received by April 26, 1984 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William Thomas, Field Office Director,

Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328-5830.

**SUPPLEMENTARY INFORMATION:** On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Alaska's program, the applicable date is 12 months after the approval of the State program, or May 2, 1984.

On February 29, 1984, the State of Alaska submitted to OSM a request for a 12 month extension to submit final rules addressing the blaster certification program. The State of Alaska is in the process of developing, in conjunction with the University of Alaska, a blaster training and certification program. The State is also in the process of developing regulations addressing the training, examination and certification of blasters. Due to the problems inherent in implementing a new program such as Alaska's, the State has indicated a need for additional time in which to develop an adequate program consistent with the requirements of 30 CFR Part 850.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

#### Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 7029(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 would 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 would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would 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 902

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201-1326, 91 Stat. 40532).

Dated: March 22, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

[FR Doc. 84-8189 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-05-M

#### 30 CFR Part 914

##### Permanent State Regulatory Program of Indiana

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

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on March 5, 1984, consists of five modifications to the Indian statute pertaining to the hearing on a lands unsuitable petition, location of permit applications, permit application denials, requirements for a permittee to submit an annual status report to the State and adjustment of bond amounts.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

**DATE:** Written comments relating to Indian's proposed modification of its program not received on or before 4:00 p.m. on April 26, 1984, will not necessarily be considered in the District's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on April 23, 1984, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

**ADDRESSES:** Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

If a public hearing is held, its location will be at: OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana. Telephone: (317) 269-2600.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Comment Procedures

##### Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Indianapolis, Indiana, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

#### Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business April 16, 1984. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

#### Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

## II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments

and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, *Federal Register* (47 FR 32071-32108).

On March 5, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment is titled Senate Enrolled Act No. 30 which was signed by the Governor of Indiana on February 29, 1984. This statutory amendment proposes to amend five provisions of the approved Indiana program. Briefly, the proposed modifications and statute cites are:

1. Deleting the requirement for the hearing on a lands unsuitable petition to be conducted according to the Indiana Administrative Adjudication Act. IC 13-4.1-2-4.

2. Changing the filing location of permit applications from the county recorders' offices to the main public library in the county of operation and providing that the applicant can remove the application from public inspection at the library thirty (30) days after the final Commission decision on that application, provided that the application remains on file for public inspection at the Division of Reclamation field office. IC 13-4.1-3-3.

3. Providing that a permit can be denied if the applicant owns or controls operations currently in violation of the old Indiana Coal Mining Law, or if the applicant or operator controls or has controlled coal mining operations with a demonstrated pattern of willful violations of the old Indiana Coal Mining Laws, in addition to the existing language based on violations of the new Indiana law and Federal law. Further, the term applicant or operator is defined to include the officers, partners or directors of the named applicant, allowing the Commission to consider violations of operations owned or controlled by the persons behind the named applicant. IC 13.4.1-4-3.

4. Adding a requirement for the permittee to submit an annual status report to the Natural Resources Commission. IC 13-4.1-5-7.

5. Providing that bond amounts, once established, may be adjusted, if the permittee's history of mining and reclamation changes during the term of the permit. IC 13-4.1-6-6.

Therefore, pursuant to 30 CFR 732.17 and 732.15, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the

amendment will be incorporated as part of the approved Indiana program.

#### Procedural Matters

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 would 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 would not impose any new requirements; rather, it would 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 914

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

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1202 *et seq.*).

Dean Hunt,

Director, Office of Surface Mining.

[FR Doc. 84-2191 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-05-M

#### 30 CFR Part 931

#### Permanent State Regulatory Program of New Mexico

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

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for New Mexico (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who

are directly responsible for the use of explosives in a surface coal mining operation. On March 5, 1984, New Mexico requested a 12 month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

**DATE:** Comments must be received by April 26, 1984 at the address below, no later than 5:00 p.m.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

#### Supplementary Information

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 5, 1984, the State of New Mexico submitted to OSM a request for a 12 month extension to submit final rules addressing the blaster certification program. The State indicated that it is making considerable progress in developing a program for the training, examining and certification of blasters. The New Mexico Permanent Program Committee has developed proposed regulations that will be submitted shortly to the New Mexico Coal Surface Mining Commission, the rulemaking body. The State has indicated a need for

additional time to complete the above tasks so as to develop an adequate program consistent with the requirements of 30 CFR Part 850.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

#### Additional Determinations

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 would 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 would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would 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 931

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

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

Dated: March 22, 1984.

**Dean Hunt,**  
Director, Office of Surface Mining.

[FR Doc. 84-8190 Filed 3-26-84; 8:45 am]

**BILLING CODE 4310-05-M**

#### 30 CFR Part 935

#### Public Comment Procedures and Opportunity for Public Hearing on Proposed Amendment to the Ohio Permanent Regulatory Program

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

**ACTION:** Proposed Rule.

**SUMMARY:** OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Ohio as an amendment to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Ohio regulations concerning blaster training and certification.

This notice sets forth the times and locations that the Ohio program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing.

**DATES:** Written comments from the public must be received by 4:30 p.m., April 26, 1984 to be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendment will be held only if requested. If no one requests a public hearing, none will be held. If only one person requests a public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record. If a hearing is requested and scheduled, a notice announcing the time and location of the hearing will be announced in the **Federal Register**. Requests for a public hearing should be directed to Ms. Nina Rose Hatfield at the address or telephone number listed below by 4:00 p.m., April 11, 1984.

**ADDRESSES:** Written comments and requests for a hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will

be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5315,  
1100 "L" Street, NW., Washington,  
D.C. 20240

Ohio Division of Reclamation, Building  
B, Fountain Square, Columbus, Ohio  
43224

#### FOR FURTHER INFORMATION CONTACT:

Ms. Nina Rose Hatfield, Field Office  
Director, Columbus Field Office, Office  
of Surface Mining, Room 202, 2242 South  
Hamilton Road, Columbus, Ohio 43227;  
Telephone: (614) 886-0578.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 Federal Register (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 Federal Register.

##### II. Submission of Revisions

By letter dated March 5, 1984, Ohio submitted proposed regulations which would establish requirements for the training and certification of blasters working in surface coal mining operations. The new requirements are set forth in OAC 1501:13-14-05—*Training, Examination, and Certification of Blasters*.

At the time of the Secretary's approval of the Ohio program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Ohio program, the Secretary specified that Ohio would be required to adopt such provisions following promulgation of the Federal standards (47 FR 34688, August 10, 1982).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). OSM is seeking comment on whether the Ohio proposed rules are no less effective than

the Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program amendment submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSM's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendment. If approved, the amendment will become part of the Ohio program.

##### III. Procedural Requirements

###### 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 would 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 would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would 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 935

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

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

Dated: March 22, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

[FR Doc. 84-8182 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-05-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 84-269; RM-4572]

#### FM Broadcast Station in Humnoke, Arkansas; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of James M. Cope, proposes the assignment of Channel 269A to Humnoke, Arkansas. The assignment could provide that community with its first local FM service.

DATES: Comments must be filed on or before May 7, 1984, and reply comments on or before May 22, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

##### List of Subjects in 47 CFR Part 73

Radio broadcasting.

##### Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Humnoke, Arkansas); MM Docket No. 84-269, RM-4572.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. The Commission has before it a petition for rule making filed by James M. Cope ("petitioner") seeking the assignment of FM Channel 269A to Humnoke, Arkansas, as that community's first local FM service. Petitioner has stated his intention to apply for the channel, if assigned. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements as long as the transmitter is located at least 1.1 mile north of Humnoke to avoid a short spacing to Station KQEW, Channel 269A, at Fordyce, Arkansas.

2. We believe it would be appropriate to seek comments on the proposed assignment as it could provide Humnoke with its first local FM facility. Therefore, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules, for the community listed below:

City	Channel No.	
	Present	Proposed
Humnoke, Arkansas		269A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before May 7, 1984, and reply comments on or before May 22, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James M. Cope, 3509 N. Cypress, North Little Rock, Arkansas 72116 (Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

#### Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and

307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, it advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished by the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-8120 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 84-270; RM 4598]

#### FM Broadcast Station in Pittsburg, Texas; Proposed Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This action proposes to assign FM Channel 276A to Pittsburg, Texas, as its first FM assignment, in response to a petition filed by Charles D. Hagen and Steven Milner.

**DATES:** Comments must be filed on or before May 7, 1984, and reply comments on or before May 22, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Pittsburg, Texas); Docket No. 84-270, Rm-4598.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Charles D. Hagen and Steven Milner ("petitioners"), proposing the assignment of FM Channel 276A to Pittsburg, Texas, as its first FM service. Petitioners expressed an interest in applying for the channel, if assigned.

2. The channel can be assigned in compliance with the minimum distance

separation requirements provided there is a site restriction of 7.6 miles northwest of Pittsburg. The site restriction would prevent short spacing to FM Station KJCS on Channel 277 in Nacogdoches, Texas, and FM Station KOSY on Channel 273 in Texarkana, Texas. However, with the site restriction, it may prove difficult to provide a city-grade (70 dBu) signal to the community pursuant to the requirements of § 73.315. The petitioner, in an amendment to his petition, provided information that a site is available that appears to meet the minimum spacing requirements and at the same time provide a city-grade signal to the principal community.

3. In view of the fact that the proposed assignment could provide a first FM service to Pittsburg, Texas, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to the following community.

City	Channel No.	
	Present	Proposed
Pittsburg, Texas.....		276A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 7, 1984, and reply comments on or before May 22, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Phil Prescott, Prescott & Prescott,  
Merchants Bank Building, Suite 305,  
5217 Ross Avenue, Dallas, Texas  
75206 (Attorney for the petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202)

634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

#### Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered

if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the persons who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-8121 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 84-271; RM-4501]

#### TV Broadcast Station in Bakersfield, California; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** At the request of Stephen J. Mewhort, the Commission has proposed the assignment of UHF TV Channel 48 to Bakersfield, California, as its fifth television assignment.

**DATES:** Comments may be filed on or before May 7, 1984, and reply comments on or before May 22, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

#### List of Subjects in 47 CFR Part 73

Television Broadcasting.

#### Notice of Proposed Rule Making

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Bakersfield, California); MM Docket No. 84-271, RM-4501.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it a petition for rule making filed by Stephen J. Mewhort ("petitioner") seeking the assignment of UHF TV Channel 48 to Bakersfield, California. Petitioner has stated his intention to apply for the channel, should it be assigned.

2. Bakersfield (population 105,611),<sup>1</sup> the seat of Kern County (population 403,089), is located in southern California, approximately 170 Kilometers (102 miles) northwest of Los Angeles. The assignment would represent the fifth television channel assigned to Bakersfield. The channel can be assigned in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 miles north to avoid a short spacing to the construction permit for Station KTIE, Channel 63, Oxnard, California.

3. In view of the fact that Bakersfield could receive an additional television broadcast service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Bakersfield, California	17, 23, 29, *39	17, 23, 29, *39, 48

4. The Commission's authority to institute rule making proceedings.

<sup>1</sup> Population figures are taken from the 1980 U.S. Census.

showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 7, 1984, and reply comments on or before May 22, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows:

Mr. Edward M. Johnson, Edward M. Johnson & Associates, Suite 450, One Regency Square, Knoxville, Tennessee 37915 (Consultant to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

#### Appendix

1. Pursuant to authority found in Sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of

1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-8122 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

#### Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of termination of rulemaking.

**SUMMARY:** This notice terminates the NHTSA rulemaking action begun when this agency published a grant of petition for rulemaking on a petition by Zemco, Inc., concerning Safety Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*. In order to produce an aftermarket fuel saving device, Zemco, Inc., sought to have this agency amend the provisions of the standard requiring that the engine starter be inoperable when the transmission shift lever is in the forward or reverse position. After a limited test of the Zemco device, the NHTSA determined that the operational safety of the fuel saver may compromise safe vehicle operation. However, the agency emphasizes that if in the future a more effective and safe fuel saving device is developed, amendments to Standard No. 102 could then be considered.

**FOR FURTHER INFORMATION CONTACT:** Dr. August Burgett, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1351).

**SUPPLEMENTARY INFORMATION:** On July 31, 1980, the NHTSA published a notice

granting a petition for rulemaking by Zemco, Inc., concerning Safety Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect* (45 FR 50845). The petitioner sought to produce an aftermarket fuel saving device that automatically shuts off when the vehicle stops in traffic and would restart when the accelerator is depressed. In order to market the device, Zemco, Inc., requested an amendment to the provision in the standard mandating that the engine starter be inoperable when the transmission shift lever is either in the forward or the reverse position (49 CFR 571.102, S3.1.3). In its petition, Zemco, Inc., asserted that the device could offer fuel saving benefits without negative effects on safety. Because of the high cost and potential future shortages of gasoline and because of industry interest in developing fuel conservation devices, the NHTSA granted the Zemco petition.

#### The Zemco Fuel Economy Device

The Zemco fuel saving device is an aftermarket mechanism which can be mounted on both old and new vehicles. The device is activated by pushing the "on" button located on the command console which is affixed to the dashboard. This switch allows the operator to choose whether or not to activate the device. By design, the unit will not operate for approximately one minute after initial engine starting, to permit the engine to warm-up.

The control unit requires signals from two sensors for its operation. The first signal is received from the vehicle's brake system. When the operator applies the foot brakes, an electrical signal from the brake light switch is routed to the fuel economy control unit.

A second sensor detects the speed of the vehicle. This sensor is installed on the vehicle's drive shaft. A signal from this sensor is routed to the fuel economy control unit when the vehicle speed is 0 mph for a two second period.

Approximately two seconds after receiving signals from the brake light switch and the movement sensor, the control unit opens the ignition circuit to the coil, thereby stopping the engine. To restart the engine, the operator simply presses the accelerator, which has been fitted with a microswitch. The microswitch signals the control unit to close the ignition relay and to activate the relay for the engine starting system, resulting in a brief starting delay. After the engine is restarted, the device will not stop the engine again until the vehicle moves several feet, preventing multiple restarts.

#### Testing of Zemco Fuel Saving Mechanism

Originally, the NHTSA planned a general investigation of the concept of reduced idle time and the safety hazards it might pose in a three-year study. However, the study on fuel economy designs was not funded due to other projects with higher safety priority. The agency instead commenced a specific review of the potential safety and fuel economy effects of the Zemco fuel saving device.

The NHTSA undertook to test the operational safety of the Zemco device in house with members of the NHTSA staff. An intercity route with numerous stop lights, stop signs and differing terrain was selected. A questionnaire was prepared to elicit operator reaction to the various driving situations and conditions.

The test focused on potential safety problems. Fuel economy, reliability, maintenance and other aspects and functions of the device were not considered. Weather conditions were those typical of the Washington fall. No operations under nighttime driving or adverse weather conditions such as fog, rain or snow were undertaken. After evaluating and summarizing the responses of the drivers, several main concerns arose regarding potential safety hazards.

#### Starting Delay—Merging Traffic

After a stop, there is a brief starting delay before the engine is restarted. This delay could be hazardous when making turns across traffic. For example, a merging left turn from a stop, particularly across a divided intersection against oncoming and cross traffic, poses a potentially unsafe situation due to the delay. A similar but less hazardous set of circumstances exists on a right hand merge from a stop, especially with pedestrians in the crosswalk or with the vehicle entering a "yield" section of a high speed expressway.

#### Lack of Automatic Shut-Off

The mechanism is activated when the operator pushes the "on" button located on the command console mounted on the dash. Once the device is turned on, it stays "on" until the "off" button of the console is pushed. There is no positive signal to the driver to inform him that the device is activated. There is no automatic shut-off of the device when a driver stops the vehicle and exits without turning off the fuel saving unit. A positive signal such as a light display or sound could warn the exiting driver

that he has left the fuel-saving device "on".

A hazardous situation could also arise as to the uninformed driver. For instance, if one driver exits a vehicle without turning off the device, the next driver could enter, start the vehicle and drive off without the knowledge that the fuel saving device is activated.

The Zemco installation kit contains a small 2 1/4 x 1/2 inch gummed label, warning that the vehicle is equipped with a stop/start device. The label reads: "CAUTION—Vehicle Equipped With Fuel Saver. Engine Will Automatically Re-Start With Vehicle In Gear." There is not active warning to an uninstructed driver that the vehicle is equipped with a fuel saving unit.

The potential safety hazards to the unknowing driver could be averted by an automatic shut down system. For instance, the fuel saving unit could cease functioning automatically upon some specified signal such as turning off the ignition, leaving the driver's seat or opening the driver's door.

#### Effect on Other Vehicle Functions

The Zemco device may pose safety hazards in relation to other vehicle functions. For example, some older vehicles are equipped with vacuum or hydraulic wiper systems. When the engine shuts off, the wiper system will also stop. This condition could lead to safety problems in inclement weather by adversely affecting visibility.

Furthermore, the use of a stop/start mechanism could be unsafe for vehicles equipped with power steering or brakes. When the engine turns off there may be inadequate vacuum or pressure to keep the power steering and brake systems functioning. This problem can be averted through a special booster arrangement that provides sufficient vacuum or pressure to keep these systems operational when the engine is shut off. Such a booster is not found in the Zemco device.

#### Stalling on Restart

The Zemco fuel economy unit is an aftermarket item and could be installed in new, well-tuned vehicles as well as old, out-of-tune vehicles. The Zemco fuel saver is designed to permit only one automatic restart after a two-second stop and shutdown. The second restart is accomplished by shifting into "neutral" or "park" and cranking with the key. An older, out-of-tune vehicle may stall upon restart. Hazardous traffic delays could result because of older vehicles equipped with the Zemco mechanism.

Furthermore, this same problem may occur in any vehicle when it is cold. This

stalling problem can be avoided by delaying the functioning of the fuel saving device until after the coolant reaches a certain temperature.

#### Avoidance of Engine Shutdown

In the fuel economy unit, there may be a built-in challenge to the driver to avoid engine shut down due to the two second delay prior to shut down after a stop. In trying to prevent the two second dead stop, the driver may be motivated to effect a rolling stop at a "stop" sign, in slow moving traffic, or in slowly decelerating while approaching a red light about to change. To avoid engine shut down, the driver may continue to roll forward slowly so that the control unit will not signal the engine to shut off. Trying to avert a shutdown by creeping maneuvers will likely distract operators, resulting in hazardous driving conditions.

#### Conclusion

In light of the foregoing arguments concerning the negative effects on safety of the Zemco fuel saver, the agency is terminating its rulemaking activity on the matter. But the agency strongly encourages further research and development in the area of fuel economy devices. The termination of rulemaking in this instance reflects only on the type of design offered, not on the concept of reduced idle time. The NHTSA emphasizes that many of its safety concerns could be overcome by design modifications. The agency further stresses that if in the future a more effective and safe fuel economy device is developed, amendments to Standard No. 102 could then be considered.

Issued on: March 22, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-8226 Filed 3-26-84; 8:45 am]

BILLING CODE 4910-59-M

### INTERSTATE COMMERCE COMMISSION

#### 49 CFR Part 1048

[Ex Parte No. MC-37 (Sub-36)]

#### Proposed Supplement to the Commercial Zone Regulations in Lieu of Specific Definition of the Houston, TX Commercial Zone

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; Houston, TX commercial zone.

SUMMARY: The Port of Galveston seeks specific definition of the Houston, TX

commercial zone to assure that the present zone is unaltered by contraction of the Houston city limits through an anticipated de-annexation. Rather, than specifically define the Houston Commercial Zone, the Commission proposes to supplement its regulations so that contraction of municipal boundaries do not disturb established commercial zones.

DATES: Comments are due April 26, 1984.

ADDRESSES: The original and 15 copies of comments should be sent to: Ex Parte No. MC-37 (Sub-No. 36), Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Barry, (202) 275-7540

or

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: We propose to amend Title 49 of the CFR by adding a new paragraph (c) to § 1048.102 to read as follows:

#### § 1048.102 Controlling distances and population data.

(c) Contraction of municipal boundaries shall not alter the size of established commercial zones.

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.

This action proposed will not have an adverse effect on either the quality of the human environment or conservation of energy resources.

#### Regulatory Flexibility Statement

The Commission certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Its purpose is to maintain the *status quo* of commercial zones so as to ensure that changes in political boundary lines do not disturb commercial shipping patterns or competitive relationships.

#### List of Subjects in 49 CFR Part 1048

Motor carriers, Commercial zones.

This decision is issued pursuant to 49 U.S.C. 10321, 49 U.S.C. 10526 and 5 U.S.C. 553.

Decided: March 15, 1984.

By the Commission, Chairman Taylor, Vice  
Chairman Andre, Commissioners Sterrett and  
Cradison.

**James H. Bayne,**

*Acting Secretary.*

[FR Doc. 84-8129 Filed 3-26-84; 8:45 am]

BILLING CODE 7035-01-M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 630**

**Gulf of Mexico Fishery Management  
Council; Swordfish Public Hearings**

*Correction*

In FR Doc. 84-7132 appearing on page  
10319 in the issue of Tuesday, March 20,  
1984, the CFR Part number in the  
heading should have appeared as set  
forth above.

BILLING CODE 1505-01-M

# Notices

Federal Register

Vol. 49, No. 60

Tuesday, March 27, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

#### Feed Grain Donations for the Fort Berthold Reservation Indian Tribes in North Dakota

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Berthold Reservation in North Dakota has been materially increased and became acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Mandan, Hidatsa and Arikara Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1984, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on March 22, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service

[FR Doc. 84-8131 Filed 3-26-84; 8:45 am]

BILLING CODE 3410-05-M

### Rural Electrification Administration

#### Puerto Rico Electric Power Authority

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice.

SUMMARY: The Administrator of the Rural Electrification Administration will consider a request for financial assistance in the approximate amount of \$32,087,000 from Puerto Rico Electric Power Authority, San Juan, Puerto Rico. The proposed loan will finance 70 percent of a project which includes service for 14,766 additional electric consumers, 542 miles of distribution line, upgrading transmission facilities and various system improvements. Construction will take place throughout the island of Puerto Rico.

ADDRESS: All interested parties are invited to submit written comments to REA within 60 days. Comments should be sent to Mr. Joe S. Zoller, Assistant Administrator—Electric, REA, U.S. Department of Agriculture, Washington, D.C. 20250.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Wilfredo Marcial Gonzalez, Executive Director, Puerto Rico Electric Power Authority, GPO Box 4267, San Juan, Puerto Rico 00936 or Mr. Joseph R. Binder, Director, Southeast Area Electric REA, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 12372,

"Intergovernmental Review of Federal Programs" and in conformance with 7 CFR Part 3015 "Intergovernmental Review of U.S. Department of Agriculture Programs and Activities," REA is providing notice that the Administrator of REA intends to consider a request for financial assistance from the Puerto Rico Electric Power Authority. Interested parties may obtain information on the proposed loan, including the engineering and economic feasibility studies and the proposed schedule for advances to the

borrower of loan funds, from Mr. Wilfredo Marcial Gonzalez at the address given above.

This program is listed in the Catalog of the Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated: March 20, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-8202 Filed 3-26-84; 8:45 am]

BILLING CODE 3410-15-M

## CIVIL AERONAUTICS BOARD

[Docket 41035]

### Dominion Intercontinental Airlines, Inc. Fitness Investigation; Target Date

Section 399.62 of the Board's Policy Statements provides that in hearing cases Administrative Law Judge shall issue a notice of the target date for completion of the initial or recommended decision within 20 days of the submission of closing briefs or the conclusion or oral argument to the Judge. In accordance with that provision, notice is hereby given that the Judge shall endeavor to issue the recommended decision in this proceeding on or before April 23, 1984.

Dated at Washington, D.C., March 21, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84-8194 Filed 3-26-84; 8:45 am]

BILLING CODE 8320-01-M

[Dockets 34507, 40541, 41676; Order 84-3-91]

### El Al Israel Airlines Limited; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause: Order 84-3-91.

SUMMARY: The Board proposes to approve the following applications:

Applicant: El Al Israel Airlines Limited.

Dockets: 34507, 40541, 41676.

Dates applications filed: January 17, 1979; March 18, 1982; August 31, 1983.

Authority sought: El Al requests authority to serve Miami, Chicago, Boston and Los Angeles; to conduct beyond service from one specified U.S.

point to Mexico City, Mexico; and to perform charter flights in accordance with the terms of the August 1978 U.S.-Israel Protocol. We propose to grant the requests. In addition, we propose to: (1) authorize El Al to serve Montreal as an intermediate point (without traffic rights between Montreal and the United States)—authority consistent with the Protocol; and (2) delete the intermediate points Iceland, Greenland, the Azores, and the Provinces of Newfoundland and Quebec which are listed in El Al's current permit, but are not listed in the 1978 Protocol.

**Objections:** All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than April 9, 1984, file a statement of such objections in each docket with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Israel. A statement of objections must cite the docket numbers and must include a summary of testimony, statistical data, or other supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for objections:

Dockets 34507, 40541, 41676, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

Ruth J. Weinstein, Esq., Hale, Russell and Gray, 101 Park Avenue, New York, N.Y. 10178

Robert Reed Gray, Esq., Benjamin R. Achenbach, Jr., Esq., Hale, Russell and Gray, 1025 Connecticut Avenue, NW., Washington, D.C. 20036

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

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

By the Civil Aeronautics Board: March 21, 1984

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 84-8196 Filed 3-26-84; 8:45 am]  
BILLING CODE 6320-01-M

[Docket 40962]

**Lone Star Certificate Amendment and Transfer Case; Change of Site for Hearing**

Notice is hereby given that the site of the hearing in the above-titled matter scheduled to begin on March 28, 1984, at 10:00 a.m. (local time), has been changed to Hearing Room 540, 2120 L Street, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., March 21, 1984.

William A. Kane, Jr.,  
Administrative Law Judge.

[FR Doc. 84-8195 Filed 3-26-84; 8:45 am]  
BILLING CODE 6320-01-M

[Docket 42052; Order 84-3-86]

**Complaint of Pan American World Airways, Inc. Against the Government of Nigeria, Nigeria Airways; Order**

On March 19, 1984, Pan American World Airways, Inc. (Pan American) filed a complaint against the Government of the Federal Republic of Nigeria (Nigeria) and its flag carrier, Nigeria Airways. Pan American alleges that Nigeria has barred it from obtaining remittance in U.S. dollars of the bulk of its 1983 net airline revenues obtained in Nigerian currency for ticket sales made in Nigeria; that the value of such blocked funds for 1983 is \$17 million; and that this \$17 million is not a debt owed to Pan American as a creditor, but consists of funds owned by Pan American and held captive by Nigeria. Pan American also alleges that it was advised on February 17, 1984, by senior Nigerian officials that these funds are to be amalgamated with other funds due other claimants and no payment at all will be made for two and a half years at a minimum. Pan American claims that this action by Nigeria does grave harm to Pan American, since its costs are largely dollar costs and prevents Pan American from paying expenses incurred in its services to Nigeria with revenues earned in Nigeria.

Pan American alleges that these actions of Nigeria are in direct violation of Article 12 of the Air Transport Agreement between the United States and Nigeria, which provides for expeditious conversion and repatriation of local revenues in excess of sums locally disbursed; constitute an unreasonable restriction on its access to foreign markets; and are discriminatory in favor of Nigeria Airways *vis-a-vis* Pan American.

Pan American states that it will terminate one of its two Nigeria flights on or about April 29, 1984; that after reviewing the failure of its latest efforts to obtain repatriation of its funds held hostage in Nigeria, it will terminate all of its Nigeria service, absent a recovery of its 1983 funds and an assurance that blocks to repatriation will cease in the future; that this decision will become unchangeable on or about April 20; that to permit the U.S. Government time to resolve this problem, it will defer termination of service until June 1, 1984; and that termination of service to Nigeria necessarily also requires the termination of service between the U.S. and Kenya and the U.S. and Senegal.

Pan American requests that we exercise our authority under section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974, as amended (IATFPCA) and section 402(f) of the Federal Aviation Act of 1958, as amended (Act) to modify Nigeria Airways' foreign air carrier permit to only allow one frequency a week to the United States effective April 29, 1984, and to terminate such permit as of June 1, 1984, unless the carrier voluntarily agrees to transfer all of its dollar revenues to a third party fiduciary which will undertake to pay to Pan American such amounts as Pan American certifies are being blocked in excess of 30 days by the Nigerian Government.

The International Air Transportation Competition Act of 1979 substantially expanded our ability to deal with allegations of unfairly restrictive and discriminatory practices by foreign governments and foreign airlines. We now possess power to respond quickly to such practices through amendments to section 402 of the Act and section 2 of the IATFPCA which permit us to deny, alter, amend, modify, suspend, cancel, limit or condition any foreign air carrier permit or tariff if we find such action to be in the public interest. They also enable us to act without any hearing or to dispense with oral evidentiary hearings and base our decision on written evidence and arguments submitted by interested parties in appropriate circumstances. Furthermore, to ensure that complaints filed under this legislation receive prompt attention, section 2 of the IATFPCA provides that we shall approve, deny, dismiss or set a complaint for hearing, or institute other proceedings proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action in increments of 30

days up to 180 days, if we conclude that it is likely that the complaint can be satisfactorily resolved through negotiations.

With these considerations in mind, we have decided to invite all interested persons to answer the complaint in this docket. Answers shall include all data, evidence, and argument upon which persons rely to support their position, and shall cover all substantive and procedural issues they wish the Board to consider. We will also provide an opportunity to reply to these answers.

Answers shall be filed no later than 15 days from the service date of this order, and replies no later than 7 calendar days from that answer date.<sup>1</sup> Given the urgency of the situation described in the complaint, we will not be disposed to grant requests for extension of these dates.

After receipt and consideration of these pleadings and any evidence submitted, we will issue a further order in this proceeding. As indicated above, we may either provide for further procedures, defer action for 30 days, or grant, dismiss, or deny the complaint in whole or in part.

Accordingly,

1. We invite any interested person to file and serve upon persons named in paragraph 3, below, no later than April 5, 1984, answers to the complaint in Docket 42052. If comments are filed, replies may be filed, and must be served as above, but no later than April 12, 1984;

2. If timely and properly supported requests are filed, we will give consideration to the matters and issues raised by the requests before we take further action, provided that we may order further procedures within the statutorily determined time period; and

3. We will serve this order upon Pan American World Airways, Inc., Nigeria Airways, the Ambassador of the Federal Republic of Nigeria in Washington, D.C., and the United States Departments of State and Transportation.

We shall publish this Order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 84-8189 Filed 3-26-84; 8:45 am]

BILLING CODE 6320-01-M

<sup>1</sup> We delegate to the Director, Bureau of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearings, until further Board order.

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket No. 17-82]

#### Application for a Special-Purpose Subzone for Huffy Bicycle Plant in Celina, Ohio; Industry Impact Study Completed; Comments Invited

This notice concerns the application of the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 46 in Cincinnati, Ohio, to the Foreign-Trade Zones Board, on behalf of the Huffy Corporation for a special-purpose foreign-trade subzone at its bicycle manufacturing plant in Celina, Ohio, filed July 30, 1982 (48 FR 35543, 8/16/82). The period for public comment on this proposal closed on December 3, 1982 (47 FR 44128). During the open record period a number of comments in opposition were received from the domestic bicycle and bicycle parts industries.

In order to assist the examiners committee in its evaluation of the proposal, the Board's Executive Secretary requested an economic analysis from the Bureau of Industrial Economics, U.S. Department of Commerce. The analysis (BIE report) was completed on March 9, 1984.

Notice is hereby given that a public version of the BIE report, in which certain figures have been ranged or approximated to protect business confidentiality, is being made available for comment by interested parties. The report is available for inspection and copying at the Central Records Room (Room B-099), Import Administration, U.S. Department of Commerce, 14th and Pennsylvania, NW., Washington, D.C. 20230, (202-377-1248). Comments must be postmarked by April 30, 1984, and submitted with 12 copies to the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, NW., Room 1872, Washington, D.C. 20230.

Dated: March 21, 1984.

John J. Da Ponte, Jr.,  
Executive Secretary.

[FR Doc. 84-8215 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-DS-M

### International Trade Administration

#### Export Trade Certificate of Review

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

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade

Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

**DATE:** Comments on these applications must be submitted on or before April 11, 1984.

**ADDRESS:** Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00012."

**FOR FURTHER INFORMATION CONTACT:** Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

#### Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

#### Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the *Federal Register* identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Northwest Fruit Exporters, 1005 Tieton Drive Yakima, WA 98902, Telephone 509/453-4837.

Application #: 84-00012.

Date Received: March 6, 1984.

Date Deemed Submitted: March 12, 1984.

Members in Addition to Applicant: Andrus & Roberts Produce Company, Sunnyside, WA; C.M. Holtzinger Company, Yakima, WA; Cascadian Fruit Shippers, Wenatchee, WA; Columbia Fruit Packers, Inc., Wenatchee, WA; Diamond Fruit Growers, Hood River, OR; George F. Joseph Orchard, Yakima, WA; Hansen Fruit & Cold Storage, Yakima, WA; Highland Fruit Growers, Yakima, WA; Inland Fruit & Produce Company, Wapato, WA; Mojonner & Sons, Inc., Walla Walla, WA; Northern Fruit Company, Wenatchee, WA; Obert Cold Storage, Zillah, WA; Pacific Fruit Company, Yakima, WA; Phillippi/Pro Pack, Wenatchee, WA; Roche Fruit Company, Yakima, WA; Skookum, Inc., Wenatchee, WA; Snokist Growers, Yakima, WA; Stadelman Fruit, Inc., The Dalles, OR; Stadelman Fruit, Inc., Yakima, WA; Stemilt Growers, Wenatchee, WA; The Dalles Cherry Growers, The Dalles, OR; Washington Fruit & Produce, Yakima, WA; Wenatchee Wenoka Growers, Wenatchee, WA; and Yakima Fruit & Cold Storage, Yakima, WA.

*Summary of the Application:* Northwest Fruit Exporters (NFE) is a non-profit corporation organized in 1978 by certain sweet cherry growers, packers and shippers to represent them in connection with the export of fresh sweet cherries. As a qualified Webb-Pomerene association, NFE is already active in the Japanese market. NFE has now submitted an application seeking certification for certain activities relating to the export of fresh sweet cherries worldwide, with an initial emphasis on countries in the Far East.

The applicant intends to conduct on behalf of its members the following export trade activities and methods of operation relating to the export of fresh sweet cherries: advising and cooperating with the United States Government in establishing procedures regulating the export of this product; participating in negotiations and reaching agreements with foreign governments and private persons regarding (a) fumigating, packing and other quality control procedures, and (b) the quantities, time periods, prices and terms and conditions upon which members will export; establishing and operating fumigation facilities export quotas among growing regions and members; providing market entry and development assistance, including related administrative and promotional services; and arranging transportation services for export.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the *Federal Register* identifying the persons

submitting the application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: March 21, 1984.

Irving P. Margulies,  
Acting General Counsel.

[FR Doc. 84-8159 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-DR-M

[Case No. 644]

#### Charles J. McVey, Jr., et al.; Export Privileges

In the Matter of Charles J. McVey, Jr., 1140 North Armando, Anaheim, California 92806; Rolf Lienhard c/o Frank AG, International Transporte Frachthof West, Postfach 236, 8058 Zurich-Flughafen, Switzerland, Yuri Boyarinov c/o Electronorgtehnika, G-200, Smolenskaja pl. 32/34, Moscow, U.S.S.R.; order amending temporary denial of export privileges.

By Order of October 13, 1983 (48 FR 48699, October 20, 1983) (the "Order"), Frank A.G. was designated in Paragraph III, as a party related to one or more of the respondents and was temporarily denied, pursuant to § 386.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1983)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data.

Frank A.G. has moved to vacate the Order with respect to it on the ground it lacks any relationship with any of the respondents such that the Order should apply to it. The Department of Commerce (the "Department") has now stated that it has no objection to Frank A.G.'s motion.

Based on the representations made by Frank A.G. and by the Department, I find that the motion to vacate is justified, and that granting it will not jeopardize the purpose of the Order.

Accordingly, it is hereby Ordered, that, effective immediately, the Order of October 13, 1983 is amended by deleting, from the related parties named in Paragraph III, the following: Frank AG, aka. Frankair Frank AG Zurich, Switzerland; aka. Frankair, Postfach 236, 8058 Zurich-Flughafen, Switzerland.

A copy of this Amendment of the Order shall be served upon Frank A.G., upon each of the respondents, and upon each of the related parties named in Paragraph III of the Order, and a copy of this Amendment shall be published in the *Federal Register*.

Dated: March 20, 1984.

Thomas W. Hoya,  
Hearing Commissioner.

(FR Doc. 84-8157 Filed 3-26-84; 8:45 am)

BILLING CODE 3510-25-M

## National Oceanic and Atmospheric Administration

### Federal Consistency Appeal by Exxon Company, U.S.A. from California Coastal Commission Objection

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of Appeal.

**SUMMARY:** On March 9, 1984, the Secretary of Commerce received an appeal by Exxon Company, U.S.A. (Exxon) from an objection by the California Coastal Commission (Commission) that Exxon is proposed drilling of an exploration well at well location B in the Southwest Quarter of Lease OCS-P 0467 in the Santa Rosa Unit in the Santa Barbara Channel, as provided in Exxon's Plan of Exploration, as amended (Plan), filed with the U.S. Department of the Interior, is inconsistent with the California Coastal Management Program. This appeal has been filed pursuant to Section 307(c)(3) (A) and (B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3) (A) and (B) and implementing regulations at 15 CFR Part 930 Subpart H.

Interested persons are advised that they may submit comments to the Secretary of Commerce (Secretary) on the issues raised in this appeal within 30 days from the date of publication of this notice. Comments should be sent to: Robert J. McManus, General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th and Constitution Avenue, NW., Room 5814, Washington, D.C. 20230.

Copies of comments also should be sent to the following persons:

1. James C. Dale, Exxon Company, U.S.A., P.O. Box 4279, Houston, Texas 77210-4279;
2. Tim Eichenberg, California Coastal Commission, 631 Howard St., San Francisco, CA 94105; and
3. William Grant, Minerals Management Service, Pacific OCS Region, 1340 W. 6th Street, Los Angeles, CA 90017.

Comments should address whether Exxon's proposed exploration drilling complies with the regulatory criteria, as set forth in 15 CFR 930.121 and 930.122, to be considered by the Secretary in

deciding whether the drilling may be Federally approved under Section 307(c)(3) (A) and (B) of the CZMA notwithstanding the objection of the California Coastal Commission.

Access to Exxon's Notice of Appeal and accompanying public information, and to the public information contained in comments submitted by Federal and State agencies, will be available to the public at the following State and Federal offices during normal working hours:

1. California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, California 94105; and

2. Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Department of Commerce, Room 270, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

A copy of Exxon's notice of appeal and supporting information is also available at the Santa Barbara Public Library, 40 E. Anapamu, Santa Barbara, California 93101; and the Minerals Management Service, Pacific OCS Region, Public Information Room, 1340 W. 6th St., Los Angeles, California 90017.

#### FOR FURTHER INFORMATION CONTACT:

Bernard C. Cody, Attorney Advisor, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue NW., Washington, D.C. 20235, (202/254-7512).

#### SUPPLEMENTARY INFORMATION:

On August 26, 1983, Exxon filed an appeal with the Secretary of Commerce from the Commission's objection that Exxon's Plan of Exploration is inconsistent with the California Coastal Management Program. According to the Plan filed on February 4, 1983 with the Minerals Management Service of the U.S. Department of the Interior, Exxon proposed to drill three exploratory wells in the Southwest Quarter of Lease OCS-P 0467. The Commission's consistency objection was based primarily on its concern that the drilling operations, as proposed, would interfere with thresher shark commercial fishing normally conducted during the period December through April. Following discussions between Exxon and the Commission which led to a partial settlement of the matters in dispute, Exxon withdrew its appeal to the Secretary on December 2, 1983. As a part of that settlement, Exxon amended its Plan of Exploration on November 30, 1983, to conflict with the commercial fishing industry. On December 15, 1983, the Commission withdrew its consistency objection to the drilling of Well A. During subsequent discussions between the parties concerning Wells B and C,

Exxon agreed to delete Well C from its amended Plan. On February 8, 1984, the Commission objected to Exxon's consistency certification for Well B, on the ground that exploratory drilling in this area outside the period from December through April would interfere with thresher shark commercial fishing.

Exxon's exploratory drilling may be federally approved notwithstanding the objection of the Commission that the drilling is inconsistent with the California Coastal Management Program if the activity meets one of two tests. To meet the first test, four criteria must be satisfied: (a) The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the State management program. To meet the second test, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. If the Secretary does not find that the activity meets either of these two tests, the Federal agency shall not approve the activity.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: March 20, 1984.

Robert J. McManus,  
General Counsel, National Oceanic and Atmospheric Administration.

(FR Doc. 84-8203 Filed 3-26-84; 8:45 am)

BILLING CODE 3510-08-M

### Marine Mammals; Notice of Issuance of Permit; Mark Blane McHugh

On February 9, 1984, Notice was published in the *Federal Register* (49 FR 4962), that an application had been filed with the National Marine Fisheries Service by Mr. Mark Blane McHugh, Port Aransas, Texas 78373 for a scientific research permit to take an unspecified number of bottlenose dolphins by harassment for a period of two years.

Notice is hereby given that on March 20, 1984 the National Marine Fisheries

Service issued a Scientific Research Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) to Mr. Mark Blane McHugh subject to certain conditions set forth therein.

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.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 20, 1984.

**Richard B. Roe,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 84-8165 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals; Notice of Issuance of Permit; Moclips Cetological Society

On October 24, 1983, Notice was published in the *Federal Register* (48 FR 35694) that an application had been filed with the National Marine Fisheries Service by Moclips Cetological Society, P.O. Box 945, Friday Harbor, Washington, 98250 for a permit for potential harassment while conducting census and identification studies of killer whales, gray whales, minke whales, humpback whales, and harbor and Dall's porpoises.

Notice is hereby given that on March 16, 1984, and 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), the National Marine Fisheries Service issued a permit to Moclips Cetological Society to take an unspecified number of cetacean species, subject to certain conditions as required by the Endangered Species Act of 1973.

Issuance of this permit for humpback and gray whales 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 is the subject of the permit, and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (30 FR 41367), November 24, 1974.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: March 16, 1984.

**Richard B. Roe,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 84-8166 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

### Receipt of Application for Permit; National Zoological Park

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name: National Zoological Park (P6I), Smithsonian Institution.  
b. Address: Washington, D.C. 20008.
2. Type of Permit: Scientific Research.
3. Name and Number of Animals: California sea lions (*Zalophus californianus*), 1,200.
4. Type of Take: Capture, tag, including radio tags, metabolic studies and release.
5. Location of Activity: Channel Islands, California.
6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not

necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 20, 1984.

**Richard B. Roe,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 84-8164 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

### Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.).

Send comments on applications to: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, or, send comments to the Fishery Management Council(s) which review the application(s) as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906, 617-231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 800 South New Street, Dover, DE 19901, 802-674-2331

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803-571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809-753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813-228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council,

526 S.W. Mill Street, Portland, OR  
97201, 503-221-6352

Jim H. Branson, Executive Director,  
North Pacific Fishery Management  
Council, 605 W. Forth Avenue,  
Anchorage, AK 99510, 907-271-4064  
Kitty M. Simonds, Executive Director,  
Western Pacific Fishery Management  
Council, 1164 Bishop Street, Room  
1808, Honolulu, Hawaii 98613, 808-  
523-1368

For further information contact  
Shirley Whitted or John D. Kelly (Fees,  
Permits, and Regulations Division), 202-  
634-7432.

The Magnuson Act also requires the  
Secretary of State to publish a notice of  
receipt of all applications for such  
permits summarizing the contents of the  
applications in the *Federal Register*. The  
National Marine Fisheries Service,  
under the authority granted in a  
memorandum of understanding with the  
Department of State effective November  
29, 1983 issues the notice on behalf of  
the Secretary of State.

Individual vessel applications for  
fishing in 1984 have been received  
between March 22, 1984 and March 22,  
1985 from the Government(s), shown  
below.

Dated: March 23, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator, for Fisheries  
Resource Management, National Marine  
Fisheries Service.

Fishery codes and designation of  
regional councils which review  
applications for individual fisheries are  
as follows:

Code	Fishery	Regional council
ABS	Atlantic Billfishes and Sharks	New England, Mid- Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish	North Pacific
GOA	Gulf of Alaska	North Pacific
NWA	Northwest Atlantic Ocean	New England, Mid- Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
SMT	Seamount Groundfish (Pacific Ocean)	Western Pacific
SNA	Snails (Bering Sea)	North Pacific
WOC	Pacific Groundfish (Washington, Oregon, and California)	Pacific
PBS	Pacific Billfishes and Sharks	Western Pacific

Activity codes which specify  
categories of fishing operations applied  
for are as follows:

Activity Code	Fishing Operations
1	Catching, Processing, and Other Support.
2	Processing and Other Support, Only.
3	Other Support Only.

Activity Code	Fishing Operations
4	"Joint Venture" in Support of U.S. Vessels.

Nation, vessel name, vessel type	Application No.	Fishery	Activity
Government of Japan: Akebono Maru No. 2, Medium Stern Trawler.	JA-84-1154	BSA	1
Akebono Maru No. 22, Medium Stern Trawler.	JA-84-0317	BSA	1
Akebono Maru No. 1, Medium Stern Trawler.	JA-84-1153	BSA	1
Akebono Maru No. 3, Medium Stern Trawler.	JA-84-0105	BSA	1
Kaiyo Maru No. 11, Medium Stern Trawler.	JA-84-0313	BSA	1
Government of the Republic of Korea: Dajin No. 52, Large Stern Trawler.	KS-84-0037	GOA	1
No. 1 Han Sung, Large Stern Trawler.	KS-84-0106	GOA	1
No. 215 Tae Baek, Medium Stern Trawler.	KS-84-0105	GOA	1
No. 315 Tae Baek, Medium Stern Trawler.	KS-84-0117	GOA	1

### Korea

The Government of Korea has applied for fishing permits to engage in joint venture activities with the American partners ALASKA JOINT VENTURE FISHERIES, ALASKA CONTACT LTD., AND DAERIM AMERICAN INC. The application between Korea and the American partner Alaska Joint Venture Fisheries requests the harvest of 1,300 mt of Pacific cod, and 700 mt of other species in the GOA fishery. This joint venture will take place between the months of April-July. The application between Korea and the American partner Alaska Contact Ltd., requests the harvest of 2,000 mt of Pacific cod and 500 mt of other species in the GOA fishery. This joint venture will take place between the months of July-September. The application between Korea and the American partner Daerim American Inc., requests the harvest of 1,500 mt of Pacific cod and 1,000 mt of other species in the GOA fishery. This joint venture will take place between the months of May-December.

### Japan

The Government of Japan has applied for fishing permits to engage in joint venture activities with the American partner PETER PAN SEAFOODS, INC. The application requests 4,500 mt of yellowfin sole and 400 mt of other species. This joint venture will take place between the months of April-June and August-September.

[FR Doc. 84-8274 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

#### Research in Education of the Handicapped

AGENCY: Department of Education.

**ACTION:** Application notice establishing the closing date for transmittal of new grant applications—Research in Education of the Handicapped Program. Applications are invited for new Field-Initiated Research projects under the Research in Education of the Handicapped program.

Authorization for this program is contained in sections 641 and 642 of Part E of the Education of the Handicapped Act.

(20 U.S.C. 1441, 1442)

Applications may be submitted by State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

The purpose of the Research in Education of the Handicapped program is to make awards for research and related activities, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth.

On October 26, 1983, the Secretary published (48 FR 49533) an application notice establishing the closing date for transmittal of new grant applications for Field-Initiated Research projects. As in previous years, most of these applications for projects propose to conduct research on problems that can be addressed in a relatively short period (12 to 36 months). Certain research efforts, however, require a longer period. For example, in order to answer some research questions, a longitudinal design is necessary, or a series of studies building on one another may be required. In other instances, new measurement techniques or instruments must be developed or field tested before the principal research activities can begin. In order to provide the sustained support required for those kinds of research projects, the Secretary invites applications for new awards for Field-Initiated Research projects that require support for a 60-month period.

The appropriate study areas for proposed Field-Initiated Research projects are limited only by the purpose of the research program and the need for a 60-month period of support to accomplish the research objectives and activities.

*Closing date for transmittal of applications:* An application for a grant

must be mailed or hand delivered by May 21, 1984.

*Applications delivered by mail:* Applications sent by mail must be addressed to the Department of Education, Application Control Center, Attention: CFDA Number 84.023H, 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:* Hand-delivered applications must be taken to the 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 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

*Available funds:* It is estimated that approximately 10 awards will be made for new Field-Initiated Research projects under this program. For fiscal year 1984, the average amount of these awards will be approximately \$50,000. This estimate of funding level does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations. Grant approval is for a 60-

month period subject to an annual review of progress and availability of funds.

*Application forms:* Application forms and program information packages are expected to be ready for mailing by April 6, 1984. These materials may be obtained by writing to the Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3076), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

(OMB 1820-0028—Expires 2/28/87)

*Applicable regulations:* Regulations applicable to this program include the following:

- (a) The regulations governing the Research in Education of the Handicapped Program (34 CFR Part 324).
- (b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

**FOR FURTHER INFORMATION CONTACT:** Eileen Lehman, Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3523), Washington, D.C. 20202. Telephone: (202) 732-1120.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

Dated: March 22, 1984.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 84-8128 Filed 3-26-84; 8:45 am]

**BILLING CODE 4000-01-M**

## DEPARTMENT OF ENERGY

### Office of the Secretary

#### National Petroleum Council, Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve' Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve will meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its second meeting on Tuesday, April 3, 1984, starting at 8:00 a.m., in the Monticello Room of the Madison Hotel, 15th and M Streets, NW., Washington, D.C.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.
2. Discuss an organizational structure for the study.
3. Discuss a timetable for completion of the study.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment facilitate the orderly conduct to business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal

Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 20, 1984.

William A. Vaughan,  
Assistant Secretary Fossil Energy.

[FR Doc. 84-8064 Filed 3-26-84; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

[Docket No. ERA-FC-84-083]

### Powerplant and Industrial Fuel Use Act of 1978: Electric Utility Conservation Plans

AGENCY: Economic Regulatory Administration.

ACTION: Notice of approval of amendment to conservation plans.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has approved the proposed amendment to approved electric utility conservation plans filed by the Texas Utilities Electric Company under section 808(d)(3) of the Powerplant and Industrial Fuel Use Act of 1978, as amended, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") and 10 CFR 508.6.

The public file for Texas Utilities Electric Company containing this Notice of Approval of Amendment to the Approved Conservation Plans and all other pertinent documents is available for inspection at the Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, telephone (202) 252-6020. Approval of the amendment to the conservation plans is based on ERA's consideration of the entire record of the proceeding, including any comments received during the public comment period for the plan.

**DATE:** In accordance with 10 CFR 508.5(b), this notice shall take effect on March 27, 1984.

#### FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073 G, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8162

Marya Rowan, Office of the General Counsel, Forrestal Building, Room 6A-141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6739

**SUPPLEMENTARY INFORMATION:** Section 1023 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35

("OBRA") amended FUA by adding a new section 808, entitled "Electric Utility Conservation Plan." That section requires utilities which own or operate any existing electric powerplant which used natural gas as a primary energy source between August 14, 1980 and August 13, 1981, and which also plan to use natural gas in any electric powerplant, to develop and submit to DOE for approval a plan setting forth the means of conserving electric energy. The conservation goal, to be achieved not later than the fifth year after DOE's initial approval of the plan, is the equivalent of ten (10) percent of the utility's electric energy output attributable to natural gas generation, sold within its own system during the four calendar quarters ending on June 30, 1981, measured on an annual basis.

In 1982, DOE approved conservation plans for Dallas Power & Light Company (DP&L), FC Case No. 50736-9999-99-49 (47 FR 41163, September 17, 1982); to Texas Electric Service Company (TESCO), FC Case No. 52901-9999-99-49 (47 FR 54319, December 2, 1982); and for Texas Power & Light Company (TP&L), FC Case No. 52902-9999-99-49 (47 FR 56387, December 16, 1982), while these companies were subsidiaries of the Texas Utilities Company (TU). In 1983, subsequent to DOE's approval action, DP&L, TESCO and TP&L were merged into Texas Utilities Electric Company, another subsidiary of TU.

On January 27, 1984, Texas Utilities Electric Company filed with ERA a proposed amendment to the above-described electric utility conservation plans in which it requested that the approved programs and conservation goals of these plans be consolidated into a single plan that would be administered by Texas Utilities Electric Company, as successor to the three companies.

Notice of Receipt of the proposed amendment to the three approved conservation plans, providing for a thirty (30) day public comment period, was published in the *Federal Register* on February 14, 1984 (49 FR 5655). The comment period ended March 15, 1984. No comments on the proposed amendment to the plans were received.

Based upon the entire record of this proceeding, ERA has determined that the proposed amendment to consolidate the conservation plans and goals of each named utilities meets the requirements for approval contained in 10 CFR 508.6. Based on the information contained in the proposed amendment, ERA has determined that the conservation programs contained in the consolidated plan will remain as previously approved, at which time DOE found that they would not produce environmental

consequences significant enough to warrant detailed documentation pursuant to the National Environmental Policy Act or its implementing regulations (40 CFR Part 1500 *et seq.*). Thus, DOE's approval of the proposed amendment consolidating the plans does not represent a major Federal action significantly affecting the quality of the human environment. Pursuant to 10 CFR 508.6 and section 808(d) (1) and (3) of FUA, DOE hereby approves the amendment to consolidate the subject electric utility conservation plans.

Texas Utilities Electric Company, as the successor to the three subsidiaries, is to administer the consolidated plan and file the annual report of progress for each remaining year of the five-year plan beginning with the 1984 annual report due January 30, 1985.

Issued in Washington, D.C. on March 19, 1984.

Robert L. Davies,  
Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-8066 Filed 3-26-84; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. ER84-318-000]

### Alabama Power Co.; Filing

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Alabama Power Company (Alabama) tendered for filing Revised Sheet No. 34 to its FERC Electric Tariff, Original Volume No. 1. The purpose of this filing is to give notice that effective January 20, 1984 electric service to the Pettus Street Delivery Point of the City of Dothan was terminated. The City of Dothan requested this cancellation and the load served from the Pettus Street Delivery Point was transferred to the East Haven and South Park Avenue Delivery Points.

Copies of the filing were served upon the City of Dothan.

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 April 5, 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.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8093 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-316-000]

**Duke Power Co.; Filing**

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Duke Power Company (Duke) tendered for filing a supplement to the Company's Electric Power Contract with the City of Clinton. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 249.

Duke further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increase in contract demand: Delivery Point No. 1 from 18,000 KW to 24,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of May 18, 1984.

According to Duke Power, copies of this filing were mailed to the City of Clinton and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 5, 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.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8094 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE82-14-001]

**Kansas City Power & Light Co.; Application for Exemption**

March 20, 1984.

Take notice that Kansas City Power & Light Company (KCPL) filed an application on February 16, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290. In addition, KCPL requests a waiver of the requirement that an application for exemption shall be filed "no less than 18 months prior to the time the information would otherwise be required" (Section 290.601(a)).

In its application for exemption KCPL states, in part, that it should not be required to file the specified data for the following reasons:

Section 133 data are not needed for consideration of rate standards and policies under Title I of PURPA.

Section 133 data are not relied upon for retail rate regulatory purposes by the Missouri Public Service Commission and the Kansas Corporation Commission.

The cost of collecting, analyzing, and reporting the data necessary to satisfy Section 133 requirements exceed the value and benefits realized by the consumer and the state regulatory commissions.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal

Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the *Federal Register*. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Robert B. Sullivan, Director of Rates and Regulatory, Kansas City Power & Light Company, 1330 Baltimore Avenue, Kansas City, Missouri 64105.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8095 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-15-004]

**Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff**

March 21, 1984.

Take notice that on March 13, 1984, Mid Louisiana Gas Company (Mid Louisiana) re-submitted for filing the following proposed changes in its FERC Gas Tariff:

Substitute Forty-Fourth Revised Sheet No 3a  
Substitute Alternate Forty-Fourth Revised Sheet No. 3a.

In addition, Mid Louisiana filed the following exhibits: Revised Exhibit A, page 14; Exhibit A, page 14A; and Exhibit A, page 14B.

Mid Louisiana states that copies have been sent to Gulf States Utility Company and its attorneys, and to the Louisiana Public Service Commission.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 2, 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.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8096 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-319-000]

**Pennsylvania Power & Light Co.; Filing**

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Pennsylvania Power & Light Company (PP&L) tendered for filing as a rate schedule an executed agreement dated as of February 15, 1984 between PP&L and Power Authority of the State of New York (NYPA).

PP&L state that the rate schedule provides for a maximum energy reservation charge rate of \$24.70 per megawatt hour and an energy charge rate based upon the incremental cost of providing the energy.

PP&L requests an effective date of March 12, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon NYPA and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 5, 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.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 84-6097 Filed 3-25-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER84-317-000]

**Public Service Company of New Mexico; Filing**

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Public Service Company of New Mexico (PNM) tendered for filing proposed changes in its Rate Schedule FPC No. 31. On said date, PNM tendered for filing Amendment No. 4 (the Amendment) to Service Schedule B of the Master Interconnection Agreement between PNM and Plains Electric Generation and Transmission Cooperative, Inc. (Plains).

PNM states that the proposed Amendment provides for an extension of the term of Service Schedule B from May 31, 1984, to December 31, 1984, and specified minimum amounts of power that Plains will purchase from PNM in 1983 and 1984.

PNM further states that the primary purpose of the proposed Amendment is to extend the term of Service Schedule B for seven months to coincide with the anticipated in-service date of Plains' Electric Generation Station Unit One:

PNM requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Plains and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 5, 1984. Protests will be considered by the Commission, 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.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 84-6098 Filed 3-26-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-279-000]

**Algonquin Gas Transmission Co.; Application**

March 22, 1984.

Take notice that on March 2, 1984, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP84-279-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of an existing meter station located in Uncasville, Connecticut, to allow for increased deliveries of authorized contract quantities to an existing customer, The Connecticut Light and Power Company (CL&P), formerly the Connecticut Gas Company, and to authorize Applicant to reflect such change of name, all as more fully set forth in the application which is

on file with the Commission and open to public inspection.

It is asserted that CL&P has requested that Applicant deliver larger quantities of gas at higher pressures than are now being delivered at the Uncasville meter station, which would enable CL&P to render service to its Montville electric generating plant. It is stated that CL&P has certificated that its downstream distribution facilities are suitable for the higher pressure resulting from the proposed modifications.

Applicant proposes to modify the Uncasville meter station by installing facilities capable of receiving and measuring gas at a higher pressure and higher rate. Applicant states that it would install piping, an enlarged heater, and measurement equipment together with related facilities. Applicant asserts that such modifications would enable CL&P to make such higher volume and higher pressure deliveries to the Montville plant whenever Applicant's line pressure is adequate. Applicant further asserts that the proposal does not represent an increase in the annual contractual quantity that CL&P currently purchases from Applicant.

Applicant further requests authority to change the name of its existing customer, CL&P, formerly The Connecticut Gas Company, reflecting such change of name in its authorization for service.

Applicant estimates cost of the proposed modifications to the Uncasville meter station to be \$128,100 with such costs being reimbursed by CL&P to Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 12, 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.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.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8177 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2098-000]

**John W. Ellis; Application**

March 22, 1984.

The filing individual submits the following:

Take notice that on March 14, 1984, John W. Ellis filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, President, and Chief Executive Officer, Puget Sound Power & Light Company

Director, Washington Mutual Savings Bank

Director, SAFECO Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 16, 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 available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8179 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-320-000]

**Iowa-Illinois Gas and Electric Co.; Filing**

March 22, 1984.

The filing company submits the following:

Take notice that on March 13, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing a proposed change in its Rate Schedule WES (applicable only to Sherrard Power System Orion, Illinois), FPC Wholesale Electric Tariff, Original Volume No. 1. The change reflected in 4th Revised Sheet No. 5, proposed to be effective May 14, 1984, would increase revenues from jurisdictional sales and service by \$1,962,060 based on the 12-month period ending December 31, 1982.

Iowa-Illinois alleges that the reason for the proposed increased revenues is because its operating outcome has declined to a level which provides an inadequate return. It further alleges that it is essential in the interest of preserving its financial integrity that its revenues and operating income be necessary to provide good electric service and to attract the additional capital required.

Copies of the filing were served upon Sherrard Power System and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 9, 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.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8178 Filed 3-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-34-000]

**Kansas City Power & Light Co.; Application**

March 22, 1984.

Take notice that on March 12, 1984, Kansas City Power & Light Company filed an application with the Federal

Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than \$300 million of Short-Term Debt and Commercial Paper on or before June 30, 1986, which would mature no later than December 31, 1987.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before April 12, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8180 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-251-000]

**K N Energy, Inc.; Application**

March 22, 1984.

Take notice that on February 22, 1984, as supplemented March 1, 1984, K N Energy, Inc. (K N), P.O. Box 16265, Lakewood, Colorado 80215, filed in Docket No. CP84-251-000 an application, pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing K N to establish a new delivery point with respect to the sale of gas to a new customer, Iams Company, Inc. (Iams), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that it was authorized to provide natural gas service to an alfalfa dehydration mill near Odessa, Nebraska, pursuant to order issued in Docket NO. G-1857 on June 30, 1954. It is further stated that Iams has obtained from the owner of the plant the right to purchase gas from K N but that Iams desires to have its gas delivered at a location in the vicinity of Aurora, Nebraska, for use in a new agricultural processing plant that would produce pet food. In order to assist Iams, K N requests authorization to install a delivery point and related facilities approximately 4.5 miles west of Aurora in Hamilton County, Nebraska. It is stated that Iams would fully reimburse K N for the cost of constructing the new delivery point.

K N states that the total volumes that would be delivered to Iams at Aurora would not exceed the total volumes authorized at Odessa. It is further stated that the annual volumetric limitation on the gas delivered to Iams at the Odessa delivery point would be 185,000 Mcf. K N indicates that the change in delivery points and volume reassignment would not be prohibited by any of K N's existing tariffs. Furthermore, K N avers that it has sufficient capacity to make the proposed deliveries without detriment or disadvantage to its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 12, 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 K N to appear or be represented at the hearing.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 84-8181 Filed 3-26-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER84-322-000]

**Pacific Gas and Electric Co.; Filing**

March 22, 1984.

The filing Company submits the following:

Take notice that on March 15, 1984, Pacific Gas and Electric Company (PGandE) tendered for filing a notice of change in rates and charges under electric resale rate Schedule Nos. 84, 85, 72, 53 and R-2. The proposed rates are based on formulas contained in rate settlements reached between PGandE and the City and County of San Francisco, Sierra Pacific Power Company, CP National Corporation, the Shasta Dam Area Public Utility District, the City of Santa Clara and the Northern California Power Agency, respectively.

PGandE states that the proposed changes would increase revenues from jurisdictional sales and service by a total of \$3,559,597 based on the 12 month estimated test period ending December 31, 1984.

PGandE requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the affected customers and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should 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 April 9, 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.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 84-8182 Filed 3-26-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP84-20-002]

**Panhandle Eastern Pipe Line Co.;  
Change in FERC Gas Tariff**

March 22, 1984.

Take notice that on March 16, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet Nos. 3-E, 3-U and 32-V

Panhandle states that these sheets are submitted to include the GRI Funding Unit Charge in the rates authorized in Panhandle's Rate Schedule AIC.

Panhandle requests that these sheets become effective on January 1, 1984 as this is the date upon which the new GRI rate became effective pursuant to the Commission's order dated October 28, 1983.

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, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 3, 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.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 84-8183 Filed 3-26-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. QF84-195-000]

**Schoeller Technical Papers, Inc.—  
Pulaski Facility; Application for  
Commission Certification of Qualifying  
Status of a Cogeneration Facility**

March 22, 1984.

On March 2, 1984, Schoeller Technical Papers, Inc., (Applicant) of P.O. Box 250, Pulaski, New York 13142, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Centerville Road, Pulaski, New York. The facility will consist of an existing combustion turbine generator unit, a new waste heat recovery boiler, and associated equipment. The primary energy source for the facility will be natural gas. The useful thermal energy output, which is in the form of process steam, will be utilized in paper production processes. The net electric power production capacity of the facility will be 2,850 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8184 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-264-000]

**United Gas Pipe Line Co.; Request Under Blanket Authorization**

March 22, 1984.

Take notice that on February 27, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-264-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate a sales tap for the delivery of natural gas under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to install a sales tap on a 2-inch pipeline and to provide daily requirements on natural gas to David G. LaRosa in St. Tammany Parish, Louisiana. It is stated that service would be rendered for commercial use through Louisiana Gas Service Company (Louisiana Gas). It is stated further that the current sale to the distributor is under Rate Schedule G-N pursuant to a service agreement between United and Louisiana Gas dated July 30, 1979. United proposes to supply approximately 19 Mcf of natural gas per day and states that the proposed tap would not cause an increase in the customer's contractual maximum daily quantity nor an increase in its entitlements under United's effective curtailment plan. United further states that gas volumes delivered through the

proposed sales tap would have no significant effect on existing service requirements either with respect to peak day and/or annual gas deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8185 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-268-000]

**United Gas Pipe Line Co.; Request Under Blanket Authorization**

March 22, 1984.

Take notice that on February 29, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-268-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate two sales taps for the delivery of natural gas to its distributor-customer, the Utility Board of the Town of Citronelle, Alabama (Citronelle), under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Tap No. 1 would serve daily requirements to Citronelle's residential customers and Tap No. 2 would be used only to aid deliveries during periods of low pressure. It is stated that both taps would connect the system of Citronelle to United's system in Mobile County, Alabama, the first tap to be connected into United's Baxterville-Mobile 20-inch pipeline and the second tap into United's Lirette-Mobile 30-inch line. United states that the requested sales taps would not cause an increase in the customer's contractual maximum daily quantity nor its entitlements under United's effective

curtailment plan. United further states that it has sufficient capacity to provide gas service to its other existing customers. It is stated that United sells natural gas to Citronelle pursuant to a service agreement between the parties dated April 1, 1983, under United's Rate Schedule G-N. As proposed, Citronelle would reimburse United for all costs connected with the construction of the proposed taps.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-8186 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[OPTS-00048; BH-FRL 2553-8]

**Administrator's Pesticide Advisory Committee (Proposed); Meeting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The proposed Administrator's Pesticide Advisory Committee (APAC) will hold a preliminary meeting to discuss the operation of the proposed Committee and to identify and evaluate issues to be addressed by the Committee in future meetings. General activities of the Office of Pesticide Programs (OPP) will also be discussed. The meeting will be open to the public.

**DATE:** The preliminary meeting will take place on Wednesday, April 11, 1984, at 9:00 a.m. and adjourn by 4:30 p.m.

**ADDRESS:** The preliminary meeting will be held in: Rm. M-2409, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Betty Winter, Designated Federal

Official/Executive Secretary, (Proposed) Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-637, 401 M St., SW., Washington, D.C. 20460, (202-382-2910).

**SUPPLEMENTARY INFORMATION:** The principal agenda items for the preliminary meeting of the proposed APAC will be the identification of pesticide administrative and legislative issues appropriate for consideration by the proposed Committee and the manner in which these issues should be addressed. The agenda will also include briefings and discussions of interest to the proposed Committee. The EPA Administrator, William D. Ruckelshaus, and the Assistant Administrator for Pesticides and Toxic Substances, John A. Moore, will brief the proposed Committee and solicit discussion on topics of interest in the area of pesticide regulation.

The meeting will be open to the public, and time will be set aside for public comments concerning the future work of the proposed Committee. Any member of the public wishing to present an oral or written statement relating to the proposed Committee's work should contact the proposed APAC Federal Designee at the address or phone number listed above.

Currently, this proposed Committee and its functions are under review by the General Services Administration (GSA) Committee Management Secretariat. EPA is continuing to coordinate with GSA to assure the most expeditions review and concurrence on the establishment of this Committee.

Dated: March 22, 1984.

John A. Moore,  
Assistant Administrator for Pesticide and  
Toxic Substances.

(FR Doc. 84-6124 Filed 3-26-84; 8:45 am)

BILLING CODE 6580-50-M

[FRL-2553-6]

### Region 6; Rescission of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA) rescinded Prevention of Significant Deterioration (PSD) permits for the following:

1. PSD-TX-21; United States Steel Corporation; permit issued on July 20, 1977, for the construction of a pipe mill at the existing Texas Works facility located on FM Road 1405, approximately 6 miles southeast of Baytown, Chambers County, Texas; rescinded on May 13, 1982.

2. PSD-TX-69; Val Verde International, Inc. (now Rio Grande Recovery); permit issued on March 30, 1978, for the construction of an atmospheric crude oil topping plant capable of processing waste slop oil located at 3550 Terminal Road, Brownsville, Cameron County, Texas; rescinded on April 8, 1983.

3. PSD-TX-78; Texas Industries, Inc.; permit issued on March 2, 1979, for the construction of a coal strip mining and cleaning plant located on Jaybird Road, approximately 1.5 miles south of Thurber, Erath County, Texas; rescinded on April 12, 1983.

4. PSD-TX-161a; Texas Bitulithic Company; permit issued on December 21, 1978, for the construction of a hot mix asphaltic concrete plant located approximately one mile west of the intersection of State highways 289 and 121, approximately 4 miles south of Frisco, Collin County, Texas; rescinded on February 12, 1982.

5. PSD-TX-167; K.O. Steel Castings, Incorporated; permit issued on January 19, 1979, for the construction of a steel castings foundry at the existing Plant No. 2 located at 3700 Pitluk Road, San Antonio, Bexar County, Texas; rescinded on July 10, 1981.

6. PSD-TX-169a; Board of Trustees of the Galveston Wharves (now FAR-MAR-CO, Incorporated); permit issued on January 19, 1979, for the construction of an export grain elevator in replacement of the damaged grain elevator located at 32 Wharf Road, Galveston, Galveston County, Texas; rescinded on January 21, 1983.

7. PSD-TX-175; Coastal States Petroleum Company; permit issued on July 20, 1979, for the modification of the existing refinery located on Interstate Highway 27, in Corpus Christi, Nueces County, Texas; rescinded on February 11, 1982.

8. PSD-TX-195; Chickasha Cotton Oil Company; permit issued on August 22, 1979, for the construction of a cottonseed oil solvent extraction plant located at East South 8th Street and Elgin Avenue in Lamesa, Dawson County, Texas; rescinded on June 15, 1983.

9. PSD-TX-196a; Lufkin Industries, Incorporated; permit issued on March 30, 1979, for the modification of the Main Bay Foundry from a dry sand molding process to a "no-bake" process located near downtown Lufkin, Angelina County, Texas; rescinded on March 15, 1982.

10. PSD-TX-197; Enserch Exploration, Incorporated; permit issued on November 29, 1979, for the construction of an ethane recovery plant located approximately 12 miles from Cisco,

Eastland County, Texas; rescinded on February 11, 1982.

11. PSD-NM-208; Navajo Refining Company; permit issued on July 19, 1979, for the replacement of an existing Thermofor Catalytic Cracking Unit with a used Fluid Catalytic Cracking Unit at the existing refinery located at 501 East Main Street, Artesia, Eddy County, New Mexico; rescinded on December 14, 1981.

12. PSD-TX-213a; Consolidated Foundry, Incorporated; permit issued on April 19, 1979, for the construction of a new gray iron jobbing foundry located on FM Road 1346 near San Antonio, Bexar County, Texas; rescinded on April 26, 1982.

13. PSD-OK-223a; Phillips Petroleum Company; permit issued on August 22, 1979, for the expansion of the existing carbon black pilot plant research facility located at Bartlesville, Osage County, Oklahoma; rescinded on March 4, 1982.

14. PSD-LA-238a; R.L. Abshire Construction, Incorporated; permit issued on July 9, 1979, for the construction of a new asphaltic concrete plant located in Lake Charles, Calcasieu Parish, Louisiana; rescinded on August 7, 1981.

15. PSD-TX-241; Marathon Oil Company; permit issued on March 3, 1980, to replace the existing No. 5 topping crude heater, firing refinery gas, with a new heater firing natural gas and No. 6 fuel oil, at the existing refinery located on 6th Street, Texas City, Galveston County, Texas; partially rescinded on October 4, 1982.

PSD-LA-250; Uniroyal Chemical; permit issued on September 26, 1980, for the construction of a 25 MMBtu/hr waste incinerator at the existing chemical plant located in Geismar, Ascension Parish, Louisiana; partially rescinded on April 23, 1982.

17. PSD-TX255a; United States Gypsum Company; permit issued on February 13, 1980, for the construction of a new wallboard manufacturing facility located 2.8 miles east of Sweetwater, Nolan County, Texas; rescinded on December 16, 1982.

18. PSD-TX265a; GAF Corporation; permit issued on February 27, 1980, for the construction of a new asphalt roofing machine facility located at 2600 Singleton Boulevard, Dallas, Dallas County, Texas; rescinded on September 18, 1981.

19. PSD-LA-270a; Uniroyal Chemical; permit issued on January 14, 1980, for the construction of a para amino diphenylamine (UBOB) manufacturing facility located at the existing complex in Geismar, Ascension Parish, Louisiana; rescinded on May 13, 1983.

20. PSD-TX-272a; Luling Iron Foundry; permit issued on January 11, 1980, for the construction of a gray iron castings foundry located at 800 North Magnolia, Luling, Caldwell County, Texas; rescinded on March 30, 1982.

21. PSD-TX-288a; W-K-M Valve Division of ACF Industries, Inc.; permit issued on February 22, 1980, for the construction of a no-bake molding facility at the existing foundry located at 126 Collins Road, Richmond, Fort Bend County, Texas; rescinded on May 17, 1983.

22. PSD-TX-360; Shell Oil Company; permit issued on March 27, 1981, for the construction of two internal combustion compressor engines at the existing CO<sub>2</sub> injection facility located on State Highway 67, approximately 5 miles west of McCamey, Upton County, Texas; rescinded on July 9, 1982.

Part 52.21(w) of the PSD regulations amended on August 7, 1980, states that any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21, as in effect on June 19, 1978, may request that the Administrator rescind the permit, or a particular portion of the permit, if the applicant shows that the PSD regulations, as amended on August 7, 1980, would not apply to the source or modification. All the sources listed above, except for PSD-TX-241 and PSD-TX-250, no longer constitute a major stationary source since, under the new definition of "potential to emit", their controlled emissions are not large enough to constitute a major stationary source or a major modification. Therefore, EPA determined that a PSD permit is no longer required for these facilities and is giving notice that it has rescinded the permits. PSD-TX-241 was partially rescinded because there was a net decrease in the nitrogen oxide (NO<sub>x</sub>) emissions and, therefore, NO<sub>x</sub> was not subject to PSD review. This source is still subject to the PSD regulations for sulfur dioxide emissions. PSD-TX-250 was partially rescinded because the emissions of sulfur dioxide (SO<sub>2</sub>) and particulate matter (PM) from this project are insignificant, as defined in 40 CFR 52.21(b)(23) as in effect on August 7, 1980, and, therefore, the SO<sub>2</sub> and PM emissions are no longer subject to the PSD regulations. The source is still subject to the PSD regulations for nitrogen oxide emissions.

Notices of EPA's proposed action to rescind, or partially rescind, these PSD permits were published in newspapers in the affected area of each facility. No comments were received regarding the proposed rescissions. Documents relevant to the rescission requests are

available for public inspection during normal business hours in the offices of the Air Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of Executive Order 12291.

Dated: March 14, 1984.

Dick Whittington,

Regional Administration, Region 6.

[FR Doc. 84-8137 Filed 3-26-84; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Advisory Committee on DBS Standards; Working Group on Signal Format, and Sub-Committee on Transmission Standards; Changed Meeting

March 16, 1984.

Notice of: (1) Date and Room Change of a Meeting of the FCC Advisory Committee on DBS Standards, and (2) Sub-Committee Meeting on Transmission Standards.

Public Notice No. 2845, dated March 9, 1984, indicated that the Working Group on Signal Format will meet on March 20, 1984 in FCC/OST Conference Room No. 7317. This has been changed to March 22, 1984 (all day). The meeting location is now FCC Conference Room No. 5115, 2025 M Street, NW.

There will be a meeting of the Sub-Committee on Transmission Standards on March 30, 1984. The meeting location is CBS, 1800 M Street, 3rd fl.

Those seeking further information may contact B. Pattan, FCC/OST at (202) 653-9098, or chairman of the above groups.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-8114 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-274, File No. BPCT-830818K1, et al.]

### Retherford Publications, Inc., et al.; Hearings Designation Order

Adopted: March 13, 1984.

Released: March 19, 1984.

By Chief, Mass Media Bureau.

In re Applications of Retherford Publications, Inc., Sheboygan, Wisconsin, MM Docket No. 84-274, File No. BPCT-830818K1; Sheboygan County Broadcasting Co., Inc., Sheboygan, Wisconsin, MM Docket No. 84-275, File No. BPCT-831011KH; Hometown Television, Inc., Sheboygan, Wisconsin, MM Docket No. 84-276, File No. BPCT-831018KN; for construction permit.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Retherford Publications, Inc. (Retherford), Sheboygan County Broadcasting Co., Inc. (Sheboygan County), and Hometown Television, Inc. (Hometown) for authority to construct a new commercial television station on Channel 28, Sheboygan, Wisconsin; (2) a petition to deny Retherford's application filed by Sheboygan County; (3) an opposition filed by Retherford; and (4) a reply to the opposition filed by Sheboygan County.

2. On October 18, 1983, Sheboygan County filed a petition to deny the Retherford application on the grounds that Retherford does not have a site available to it. Generally, petitions to deny filed by one applicant against another are treated as pre-designation petitions to specify issues. As such, they are dismissed (without prejudice to raising the issues before the Administrative Law Judge) because such petitions to specify issues are no longer permitted. *Revised Procedures for the Processing of Contested Broadcast Applications*. (General Docket No. 79-137), 72 FCC 2d 202, 214 (1979). In this case, the petition raises a disqualifying issue which could not be discovered by the staff in the ordinary course of processing. We believe, therefore, that this is a matter appropriately addressed here. To the extent that other issues are raised by the petition, however, the petition will be dismissed.<sup>1</sup>

3. Retherford proposes to locate its transmitter at a site owned and controlled by a competing applicant, Sheboygan County. The site is that of Sheboygan County's Stations WHBL(AM) and WWJR(FM), Sheboygan, Wisconsin. Sheboygan County states that Retherford has never sought permission to use the site and that the site would not be made available to Retherford. Retherford responded that permission was given by telephone to use the WWJR(FM) tower

<sup>1</sup> On November 17, 1983, Retherford filed an opposition to the petition to deny. On November 23, 1983, Sheboygan County filed a reply to the opposition.

coordinates for the purposes of Retherford's application. Retherford, however, concedes that " \* \* \* the tower may not be available for leasing when a license is granted." Retherford does not state when the alleged telephone call was made nor to whom it was made.

4. The Commission has long held that an applicant need not demonstrate absolute assurance of site availability nor legal control over the proposed site; rather, there must be a showing of "reasonable assurance" that the site is available. *John Hutton Corp.*, 27 FCC 2d 214 (1971); *North American Broadcasting Co.*, 15 FCC 2d 984 (1969). The indication that the site will be available must, obviously, be obtained from a person who has authority to give such assurances, i.e., the property owner. It is a well established Commission policy that "neither absolute assurance nor legal control of a site is necessary, but only that when an applicant proposes a site, he must have done so in good faith that the site will be available to him." *Alabama Citizens for Responsive Television Inc.*, 59 FCC 2d 1, 2-3 (1976). Since the specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available, a failure to inquire as to the availability of the site specified in the application is inconsistent with such a representation. Accordingly, an issue will be added as to whether Retherford has a site at the time its application was filed, and whether it now has "reasonable assurance" of the availability of its site.

5. The proposed antenna of Sheboygan County is to be mounted on one of the towers of its own AM Radio Station WHBL, Sheboygan, Wisconsin. The proposed tower of Retherford is to be located 0.04 miles from the directional array of WHBL. Consequently, any grant of a construction permit to either applicant will be conditioned to ensure that WHBL's radiation pattern is not adversely affected by the construction of the proposed TV station.

6. Section 73.636(a)(1) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly controls one or more AM and/or FM broadcast stations and the grant of such license would result in the Grade A contour of the proposed television station encompassing the entire community of license of the AM and/or FM broadcast station. However, Note 8 to this rule provides, *inter alia*, that applications for UHF television facilities " \* \* \* will be

handled on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest." Since Sheboygan County is the licensee of Stations WHBL(AM) and WWJR(FM), Sheboygan, Wisconsin, an appropriate issue will be specified to determine whether the common ownership, operation or control of Stations WHBL(AM) and WWJR(FM), and the proposed television station would be consistent with the public interest.

7. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Sheboygan County has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

8. Hometown has neither shown that it is financially qualified nor certified that it is financially qualified. Its Exhibit No. 2, however, states that as soon as financial arrangements are completed, the applicant will make the appropriate certification. Accordingly, the applicant will be given 20 days from the date of the release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

9. Hometown intends to operate the proposed facility as a satellite of commonly-owned station WLRE(TV), Channel 26, Green Bay, Wisconsin. Since the other applicants do not propose a satellite operation, it follows that Hometown must justify the need for a satellite. Accordingly, an appropriate issue will be specified as to the need for a satellite operation.<sup>2</sup>

<sup>2</sup> The issue to be specified as to whether circumstances exist which make the "satellite" form of operation necessary in Sheboygan will be a qualifying issue, for if it is resolved in the negative, the application proposing a satellite operation could not be granted.

10. No determination has been made that the tower height and location specified by Hometown would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether, at the time it filed its application, Retherford had reasonable assurance that its proposed site would be available to it for the proposed use and, if not, the effect thereof on the applicant's basic or comparative qualifications;

2. To determine whether Retherford now has reasonable assurance that its proposed site will be available to it for the proposed use.

3. To determine, with respect to Hometown, whether circumstances exist which would make operation as a "satellite" necessary for Sheboygan, Wisconsin.

4. To determine, with respect to Hometown, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

5. To determine, with respect to Sheboygan County, whether its interests in Radio Stations WHBL(AM) and WWJR(FM), Sheboygan, Wisconsin, and the proposed television station would be consistent with the public interest.

6. To determine 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.

13. It is further ordered, That, in the event of a grant of the application to either Sheboygan County or Retherford, the construction permit shall be conditioned as follows:

During the installation of the antenna authorized here, AM Station WHBL

shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values within authorized limits. Upon completion of the installation, common point impedance measurements on the AM array shall be made and a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

14. It is further ordered, That, Sheboygan County shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

15. It is further ordered, That Hometown shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days of the date of the release of this Order.

16. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 4.

17. It is further ordered, That the petition to deny filed by Sheboygan County is granted to the extent indicated and otherwise is dismissed.

18. It is further ordered, That, to avail themselves of the opportunity to be heard, the applications and the party respondent 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.

19. 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 within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**  
Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 84-8116 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

### Telecommunications Industry Advisory Group Steering Committee; Meeting

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 April 9, 10, 11, 12, and 13, 1984. The meeting will be held at the office of AT&T, 1120 20th Street, NW., Washington, D.C., 10th Floor, Conference Room A&B and will be open to the public. The meeting time for the first day of the meeting is 10:00 AM.

The agenda is as follows:

- I. Review of Minutes of Previous Meeting
- II. General Administrative Matters
- III. Review of Entire USOA Revision
- IV. Other Business
- V. Presentation of Oral Statements
- VI. Adjournment

With prior approval of Gerald P. Vaughan, Chairman, 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. 84-8115 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

### FEDERAL MARITIME COMMISSION

#### Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 9522-48.

Title: Med-Gulf Conference.

Parties: Atlantrafik Express Service, Achille Largo, C.I.A. Venezolana de Navegacion, Constellation Lines, Costa Line, D'Amico Line S.N.p.A., Egyptian Navigation Co., Ltd., Farrell Lines, Inc., Flota Mercante Grancolombiana S.A., Italian Line, Jugolinija, Jugooceanija, Lykes Lines, Nedlloyd Lines, Nordana Line/Dannebrog Lines, Spanish Line, Zim Israel Navigation Co., Ltd.,

Synopsis: The proposed amendment would provide for conference U.S. and Puerto Rican intermodal authority; eliminate the requirement that a member give a 120 days' notice before offering a service within the conference's scope; require a vote of unanimous less one for conference action on rates and rules applicable to cargo movements to points in states bordering the Pacific Ocean and establish a conference-wide right of independent action on 30 day's notice.

Filing Party: Warren L. Lewis, Esquire, Billig, Sher & Jones, 2033 K Street, NW., Suite 300, Washington, D.C. 20006.

Agreement No.: 10064-5.

Title: Colombia/U.S. Gulf Equal Access Agreement.

Parties: Coordinated Caribbean Transport, Flota Mercante Grancolombiana, S.A. Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment will permit Coordinated Caribbean Transport to become a member of the agreement and an associate of Grancolombiana under the Colombian Government's cargo preference laws in the trade between U.S. Gulf ports and Colombian ports.

Filing Party: R. J. Finnan, Director of Pricing, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

By Order of the Federal Maritime Commission.

Dated: March 21, 1984.

Francis C. Hurney,  
Secretary.

[FR Doc. 84-8127 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

### Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573. Robert H. Metti, 18982 Laurel, Livonia, Michigan 48152.

By the Federal Maritime Commission:

Dated: March 21, 1984.

Francis C. Hurney,  
Secretary.

[FR Doc. 84-8125 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

### Independent Ocean Freight Forwarder License No. 1376-R

#### Sunvan International, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Sunvan International, Inc., 7700 Second Ave., Seattle, WA 98108 was cancelled effective March 16, 1984.

By letter dated February 24, 1984, Sunvan International, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1376-R would be automatically revoked unless a valid surety bond was filed with the Commission.

Sunvan International, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder

License No. 1376-R be and is hereby revoked effective March 16, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 1376-R issued to Sunvan International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Sunvan International, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-8126 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

### [Docket No. 84-10]

#### The Coca-Cola Export Corporation v. Peruvian Amazon Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Coca-Cola Export Corporation against Peruvian Amazon Line was served March 16, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with the rate assessed against a particular shipment of complainant.

This complainant has been assigned to Administrative Law Judge John E. Cogrove. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the 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. 84-8199 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

### [Docket No. 84-9]

#### Ingersoll Rand Company v. Maersk Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ingersoll Rand Company against Maersk Line was served March 16, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with the rate assessed against a particular shipment of complainant.

This complaint has been assigned to Administrative Law Judge John E.

Cogrove. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the 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. 84-8197 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

### [Docket No. 84-11]

#### Ingersoll Rand Company v. U.S. Lines, S.A. (Formerly Moore McCormack Lines, Inc.); Filing of Complaint and Assignment

Notice is given that a complaint filed by Ingersoll Rand Company against U.S. Lines, S.A. (formerly Moore McCormack Lines, Inc.) was served March 16, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with the rate assessed against a particular shipment of complainant.

This complaint has been assigned to Administrative Law Judge John E. Cogrove. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the 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. 84-8198 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

### FEDERAL RESERVE SYSTEM

#### Fleet Financial Group, Inc., 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 Company Act (12 U.S.C. 1843(c)(8)) and § 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 banking 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1984.

**A. Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financing Group, Inc.*, Providence, Rhode Island; to engage through its subsidiary, Fleet Mortgage Corporation, Milwaukee, Wisconsin, in making, acquiring, selling or servicing of mortgage loans or other extensions of credit; consumer finance; and acting as insurance agent or broker with respect to credit life and credit accident and health insurance that is directly related to a mortgage loan or consumer loan made, acquired, sold or serviced by such subsidiary. Comments on this application must be received not later than April 16, 1984.

**B. Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *First Community Bancorp, Inc.*, Rockford, Illinois; to engage through its subsidiary, First Community Credit Insurance Company, in reinsurance of

credit life and credit accident and health insurance in the State of Illinois, principally the Rockford metropolitan area. Comments on this application must be received not later than April 16, 1984.

**C. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alaska Mutual Bancorporation*, Anchorage, Alaska; to engage *de novo* through its subsidiary, Alaska Mortgage Company, Anchorage, Alaska, in making and servicing loans as would be made by a mortgage company. These geographic areas to be served are the states of Alaska, Arizona, California, Oregon, and Washington.

2. *Fresno Bancorp*, Fresno, California; to engage *de novo* through its subsidiary, Fresno Bansystems, Inc., Fresno, California, in providing data processing and transmission services, facilities, software, hardware or access to such services.

3. *U.S. Bancorp*, Portland, Oregon; to engage *de novo* through its subsidiary, U.S. Bancorp Mortgage Company, Portland, Oregon, in making, acquiring and servicing of loans and other extensions of credit secured by mortgages or deeds of trust on real property, and to act as insurance agent with regard to credit life and disability insurance solely in connection with extensions of credit by Bancorp Mortgage. Comments on this application must be received not later than April 16, 1984.

Board of Governors of the Federal Reserve System, March 22, 1984.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 84-8221 Filed 3-26-84; 8:45 am]

**BILLING CODE 6210-01-M**

### **Key Bancshares, Inc.; Formation of Bank Holding Company**

The company listed in this notice has applied for the Board's approval under sections 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. Interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written

presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Key Bancshares, Inc.*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The Key Bank of Tampa, Tampa, Florida. Comments on this application must be received not later than April 11, 1984.

Board of Governors of the Federal Reserve System, March 22, 1984.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 84-8219 Filed 3-26-84; 8:45 am]

**BILLING CODE 6210-01-M**

### **Summit Holding Corporation, et al.; Formations, Acquisitions, 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 18, 1984.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Summit Holding Corporation*, Beckley, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Big Clock

National Bank, Beckley, West Virginia, successor by merger to Raleigh County National Bank, Beckley, West Virginia.

**B. Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Michigan Financial Corporation*, Crowell, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Crowell, Crowell, Michigan.

2. *First of Charlevoix Corp.*, Charlevoix, Michigan, to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Charlevoix, Charlevoix, Michigan. Comments on this application must be received not later than April 19, 1984.

**C. Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mammoth Bancorp, Inc.*, Brownsville, Kentucky; to become a bank holding company by acquiring 85.7 percent of the voting shares of Brownsville Deposit Bank, Brownsville, Kentucky.

**D. Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *South St. Paul Bancshares, Inc.*, South St. Paul, Minnesota; to become a bank holding company by acquiring 92.5 percent of the voting shares of Summit State Bank of South St. Paul, South St. Paul, Minnesota. Comments on this application must be received not later than April 19, 1984.

**E. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bolder Bancorporation*, Boulder, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Boulder, Boulder, Colorado.

2. *First Flo Corporation*, Florence, Colorado; to become a bank holding company by acquiring 85.5 percent of the voting shares of First National Bank of Florence, Florence, Colorado.

**F. Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Citizens-Texas Banc Shares, Inc.*, Buffalo, Texas; to acquire 100 percent of the voting shares of Citizens National Bank, Teague, Texas, a *de novo* bank.

2. *Jersey Village Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Sterling Bank, N.A., Houston, Texas, a *de novo* bank.

Comments on this application must be received not later than April 19, 1984.

3. *Waskom Bancshares, Inc.*, Waskom, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Waskom, Texas.

Board of Governors of the Federal Reserve System, March 22, 1984.

James McAfee,  
*Associate Secretary of the Board.*

[FR Doc. 84-8220 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92-463 (5 U.S.C. Appendix I), the fiscal year 1983 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

#### Mine Health Research Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287-6310). Additionally, on weekdays the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245-6791).

Dated: March 16, 1984.

William C. Watson, Jr.,  
*Acting Director, Centers for Disease Control.*

[FR Doc. 84-7981 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-19-M

### Food and Drug Administration

[Docket No. 83F-0320]

#### Quaker Chemical Corp.; Withdrawal of Petition for Food Additive

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the withdrawal without prejudice of the petition (FAP 3B3722) proposing that the food additive regulations be amended to provide for the safe use of polyethyleneamino-fatty (C<sub>16</sub>-C<sub>18</sub>) amide

ethyl sulfate as a softener and debonder of pulp in paper and paperboard in contact with food.

**FOR FURTHER INFORMATION CONTACT:** James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Quaker Chemical Corp., Conshohocken, PA 19428, has withdrawn its petition (FAP 3B3722), notice of which was published in the Federal Register of October 17, 1983 (48 FR 47073).

Dated: March 13, 1984.

Richard J. Ronk,  
*Acting Director, Bureau of Foods.*

[FR Doc. 84-8099 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0073]

#### Rohm and Haas Co.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene copolymers in coatings on paper and paperboard intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3785) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that the food additive regulations be amended to provide for the safe use of styrene copolymers with methacrylate and acrylate comonomers in coatings on paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the

notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) [proposed December 11, 1979; 44 FR 71742].

Dated: March 17, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-8100 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84D-0016]

### Medical Device Notification and Voluntary Safety Alert; Availability of Draft Guideline

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability for public review and comment of a draft guideline entitled "Medical Device Notification and Voluntary Safety Alert" prepared by FDA's Center for Devices and Radiological Health (CDRH) (formerly National Center for Devices and Radiological Health). The draft guideline sets forth the procedure that FDA proposes to follow when requiring responsible persons to notify device users of an unreasonable risk of substantial harm presented by any medical device. Persons that voluntarily alert device users of risks posed by medical devices are encouraged to follow the guideline. The draft guideline is being made available for public comment to provide the agency with views to be considered for incorporation into a final guideline.

**DATES:** Comments by May 29, 1984. FDA will begin following the draft guideline immediately.

**ADDRESSES:** Written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the draft may be obtained by submitting a written request to the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Leonard J. Stauffer, Center for Devices and Radiological Health (HFZ-321), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8110.

**SUPPLEMENTARY INFORMATION:** FDA has observed that when manufacturers, distributors, or other responsible persons discover a risk presented by a medical device, they often voluntarily

alert appropriate persons of the risk to reduce or eliminate it. In such cases, the responsible persons have used "advisories," "alerts," or other similarly designated communications to inform the recipient of the steps to be taken to reduce or eliminate the risk.

Under section 518(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h(a)), FDA may order that appropriate persons be notified if FDA determines (1) that a device in commercial distribution and intended for human use presents an unreasonable risk of substantial harm to the public health, (2) that notification is necessary to eliminate such risk, and (3) that no more practicable means are available under the act to eliminate such risk. Such order shall require that adequate notification be provided by the persons and means best suited to all health professionals who prescribe or use the device and to any other person who should receive such notification to eliminate the risk.

CDRH has prepared a draft guideline to set forth the procedures that FDA intends to use in implementing section 518(a) of the act and that FDA recommends manufacturers, distributors, or other responsible persons follow in notifying or alerting health professionals or other persons of an unreasonable risk of substantial harm to the public health presented by a medical device.

The draft guideline, entitled "Medical Device Notification and Voluntary Safety Alert," refers to a notice intended to reduce or eliminate an unreasonable risk of substantial harm to the public health issued voluntarily by any person (including FDA) as a "safety alert" and such notice issued by a manufacturer, distributor, or other responsible person pursuant to an order under section 518(a) of the act as a "notification." Also, the draft guideline describes the following: (1) The factors FDA would use in determining whether to issue a notification order; (2) FDA's responsibility to consult with responsible persons before issuing a notification order; (3) the expected content and distribution of, and followup to a notification or safety alert; (4) the relationship between a notification or safety alert and a recall under 21 CFR Part 7 (FDA's recall guidelines); and (5) other information intended to give manufacturers, distributors, and other responsible persons guidance when notifying appropriate persons of an unreasonable risk of substantial harm presented by a device.

This draft guideline is being made

available for public comment before being issued by the agency as its formal position. If, following the receipt of comments, FDA concludes that the guideline reflects acceptable procedures for decisionmaking with respect to application of section 518(a) of the act, the guideline will be formalized and made available under § 10.90(b) of the agency's administrative practices and procedures regulations (21 CFR 10.90(b)). That regulation provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. The agency is prepared to meet with persons who choose to depart from a guideline to discuss the matter further to prevent unnecessary expenditure of resources for actions that the agency may later determine to be unacceptable.

The draft guideline is available for public examination in the Dockets Management Branch (address above). Written requests for single copies may be submitted to Leonard J. Stauffer (address above). FDA advises that the agency intends to implement the procedures set forth in the draft guideline upon publication of this notice in the **Federal Register**. The agency encourages persons that voluntarily alert device users to risk posed by medical devices to follow the draft.

Interested persons may, on or before May 29, 1984, submit to the Dockets Management Branch (address above) written comments regarding this draft guideline. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Comments received will be considered in developing a final guideline and in determining whether revision of the draft guideline is warranted.

Dated: March 22, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8239 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-01-M

**Health Care Financing Administration****Medicaid Program; Preventive Services Under Medicaid**

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

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to encourage States to maximize the availability of preventive services to their Medicaid populations, and to solicit public comment on the criteria HCFA plans to use to evaluate new State plan amendments concerning preventive services. We are also soliciting public comment on the benefits and costs of preventive services. By using the methods described in this notice, States will be able to make a wider range of preventive services available and accessible to Medicaid-eligible individuals.

**DATE:** To assure consideration, comments must be received by May 29, 1984.

**ADDRESS:** Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-285-N, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-285-N.

Comments will be available for public inspection beginning approximately 2 weeks from publication in Room 309-G of the Department's office at 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:40 a.m. to 5:00 p.m. (202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Bill Ullman, 301-594-9827.

**I. Background**

Preventive services are acknowledged to be of great value in helping an individual to maintain health and well-being. These services can assist an individual in avoiding or minimizing the occurrence of disease and disability. A corollary result is that individual health care costs may be reduced. We have developed this notice to encourage States to maximize the availability of preventive services to their Medicaid populations and to provide guidelines for State plan amendments on coverage of these services.

A number of States already offer an effective package of preventive care under their Medicaid programs. Other States have included coverage of at least some preventive services under their Medicaid programs. Often, however, a wide range of preventive services may already be available in a State, but the services are fragmented among numerous agencies and programs in addition to Medicaid. As a result, Medicaid-eligible individuals may not receive a complete and coordinated program of preventive care. To address this problem, this notice also provides guidance as to how a State Medicaid agency can use increased coordination and referrals to create a more unified program of preventive care.

**II. Discussion**

The following sections of this notice discuss:

- The nature of preventive services and of scientific and professional opinion regarding their effectiveness;
- Information about preventive services currently available under various Federal programs;
- The various preventive service coverages under the Medicaid program, both within various benefits and separately as optional "preventive services";
- A program for self-evaluation of a State Medicaid program's approach to the overall issue of prevention, and steps to take as a means of assuring that the Medicaid program offers maximum use of existing resources both within and outside of the current State plan; and
- Criteria HCFA will be using to evaluate new State plan amendments concerning preventive services.

**A. Types of Preventive Care**

Preventive services traditionally have been divided into three categories:

1. Primary prevention that consists of actions, such as immunizations and prenatal care, which are directed at well persons and are intended to help avoid entirely the occurrence of disease and other impairments to health;
2. Secondary prevention that involves detecting the presence of a disease or other impairment in its earliest stages (for example, through screening procedures), when the condition may be most responsive to medical intervention; and
3. tertiary prevention that involves treatment of an already-established medical condition in order to avoid further damage and arrest the process of deterioration.

An additional distinction is made between personal preventive services

(which are performed on a one-to-one basis by a qualified health care professional for the purpose of preventing disease or maintaining health) and preventive efforts that are applied at a community level (which involve no direct patient care). Broadly defined, the term "preventive services" can encompass a large range of activities of both types, including interventions applied directly to individuals (such as immunizations and screening for disease) as well as environmental interventions applied at a community level (such as water purification).

For the purpose of Medicaid coverage of preventive services, however, it is necessary to make a further distinction between those services that are medical or remedial in nature and those that are not. The statute defines Medicaid as a program of medical assistance, and repeatedly uses the terms "medical" and "remedial" to describe the general types of care for which Medicaid will make payment (see sections 1903(a)(1), 1905(a)(6), and 1905(a)(18) of the Social Security Act). Since the inception of the Medicaid program, this medical-remedial orientation has been interpreted to include those services that: (1) Involve direct patient care, and (2) are for the express purpose of treating or preventing, or minimizing the adverse effects of illness, injury, or other impairments to an individual's physical or mental health. In order for any service to be covered under the Medicaid program, it must meet both of these elements. Therefore, preventive services applied at the community level are excluded from Medicaid coverage, since they do not involve direct patient care. Preventive services that are furnished to individuals but deal with external social or environmental factors are also excluded, since they do not directly address an individual's physical or mental health. Some examples of non-covered preventive services at the community level and nonmedical services that address broader social or environmental concerns are as follows:

- Activities such as fluoridation of a community's water supply are not covered under Medicaid, since there is no direct patient care involved. However, fluoride dental treatments furnished directly to a Medicaid-eligible individual are covered.
- Investigations to determine the source of a child's elevated blood level are patient-oriented and, therefore, covered; however, environmental interventions to remove the lead source are not.

• Nonmedical preventive services that address broader social or environmental concerns are not covered under Medicaid, even when furnished directly to individuals (e.g., counseling on the importance of smoke detectors, instruction on traffic safety, etc.).

At present, there is no uniformly accepted nationwide standard that specifies a single set of preventive services, or a particular schedule for their delivery, as being the most effective (and we do not attempt to prescribe one here). Medical professional organizations and scientific bodies have given considerable thought to recommendations about those preventive procedures which should be offered to individuals. Groups such as the Canadian Task Force on the Periodic Health Examination, the Ad Hoc Committee of the Institute of Medicine, the American Cancer Society, and the Public Health Service Advisory Committee on Immunization Practices have recommended schedules of diagnostic tests and other preventive services to be administered in the context of periodic examinations over a person's entire lifetime. In addition, certain professional medical groups have developed preventive services guidelines that apply to specific patient populations. These groups include organizations such as the American College of Obstetricians and Gynecologists, the American Academy of Pediatricians, the American College of Physicians and the American Medical Association.

The presence (or absence) of agreement among various professional and scientific groups regarding the application of individual services and procedures can, in large part, be attributed to the strength of the scientific data base supporting the efficacy of each service or procedure. For example, while there is extensive scientific evidence to support the efficacy and schedule of administration of most immunizations, the data to support many counseling services are not as complete. Decisions regarding coverage of particular services or procedures generally should be guided by criteria which include evidence of the efficacy, acceptability and safety of the procedure, the availability of effective interventions for diseases detected in the asymptomatic state, and the prevalence of the condition in the population at risk. They should also reflect advances in medical research as the scientific data base which supports preventive services is updated. (See section D(1) for criteria that HCFA will use in evaluating States' proposals for

coverage of preventive care under Medicaid.)

#### *B. Federal Funding for Preventive Care*

In addition to Medicaid, various other programs provide Federal funding of personal preventive services. For example, the Center for Prevention Services, a component of the Centers for Disease Control makes grants to State health departments to help ensure that children receives appropriate immunizations. Other Federal programs may also fund preventive services that do not involve direct, medically-oriented care of individual patients, but instead address broader social or environmental conditions that also may affect health. These services might include such activities as removal of lead-based paint from the home or promotion of good health through injury prevention.

Additionally, a large portion of the Federal funding for preventive care (other than under the Medicaid program) takes place under the authority of the Public Health Service (PHS) Act. As a result of the Omnibus Budget Reconciliation Act of 1981, a number of former categorical grant programs were consolidated into several PHS block grants. Specifically, this legislation amended title XIX of the PHS Act to establish the Alcohol and Drug Abuse and Mental Health Services Block Grant, and the Preventive Health and Health Services Block Grant. It also amended title V of the Social Security Act to establish the Maternal and Child Health Services Block Grant. Under these block grants, States fund varied services of a preventive nature.

#### *C. Medicaid Coverage of Preventive Care*

Medicaid program funding can support preventive care in a variety of contexts. For example, the preventive aspects of some services are specifically included in the definitions of those services in the Medicaid regulations. These services include outpatient hospital services (42 CFR 440.20(a)), clinic services (§ 440.90), dental services (§ 440.100(a)), services for individuals with speech, hearing, and language disorders (§ 440.110(c)(1)), and prescribed drugs (§ 440.120(a)). The Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program for individual under age 21 has a definite preventive orientation, since its purpose is to detect and treat physical and mental health problems in their early stages (§ 440.40(b)). For example, initial and periodic health examinations, and certain dental care, immunizations, and necessary hearing and vision services are mandatory under EPSDT.

Other covered Medicaid services may also include preventive elements. For example, physicians generally include, as part of the services furnished to a patient who is recovering from a heart attack, counseling on the effect of diet, exercise, and smoking. (Such counseling is an inherent part of the physician's covered services for which payment has already been made; thus a separate, additional payment for the counseling aspect of the services would not be made, since this would represent a duplicate payment.)

In addition to inclusion as an integral component of other covered services, preventive care can be furnished as a separate optional Medicaid benefit. Additional diagnostic, screening, or rehabilitative services also can be covered at State option (see 42 CFR 440.130 for definitions of those services). An informal telephone survey recently indicated that a wide variety of preventive care currently is being covered under the preventive services option (§ 440.130(c)). Including are such services as immunizations, medical check-ups, fluoride treatment of teeth, well-baby and well-child care, vision screening, and genetic screening. States may include other types of personal preventive services under this option that are medical or remedial in nature and which are delivered on a personally-oriented basis. In developing an approach to preventive care, each State should consult with local health authorities to identify the most effective set of preventive services for its Medicaid population. We encourage States to share with us their experiences in offering various types of preventive services and informing Medicaid-eligible individuals of their availability.

#### *D. State Preventive Initiatives*

States that are interested in initiating or expanding a Medicaid preventive care effort can take a two-fold approach: A) Medicaid funding of the medically-oriented personal preventive services for which Federal financial participation (FFP) is available under title XIX; and E) increased coordination between Medicaid and other programs that fund or provide preventive care, including referral to social and environmental programs and services.

1. *HCFA Criteria for Evaluating Medicaid Preventive Services Proposed by States.* As discussed in section A above, there currently is no single set of preventive services or schedule for their delivery that is uniformly acknowledged to be the most effective. In light of this, and in keeping with the nature of the Federal-State partnership in

administering the Medicaid program, we believe that States which wish to cover preventive services should have the flexibility to design their own packages of preventive care. States should be aware of certain general criteria which HCFA plans to use in reviewing plan amendments for preventive services coverage:

- The proposed services must be preventive in nature and must fit within the basic medical-remedial framework of the Medicaid program (see section A).
- The proposed services must be directed at the patient rather than at the patient's environment.
- The proposed services must not be otherwise available to recipients without cost, nor may they duplicate other Federally-funded services.
- The proposed services must not entail an additional payment for a service which is logically an inherent part of otherwise paid-for services (see section C).

Although the Medicaid statute does not preclude States from funding experimental types of care if they so choose, we encourage States to consider, in addition, the following guidelines when they develop proposals for coverage of preventive services:

- Services to detect disease in its early state should be those proven to be safe and reliable and should be directed at diseases for which an effective intervention exists.
- Services proposed to prevent occurrence of disease or disability (including those to modify predisposing risk factors) should have a demonstrated efficacy in preventing disease or disability.

We welcome any public comments regarding our criteria for evaluating Medicaid State plan amendments that contain preventive care proposals.

#### 2. Coordination With Other Programs.

Although the range of currently available preventive services (described in sections B and C above) is quite broad, these services sometimes are fragmented among a number of agencies and programs. In the absence of interaction between these agencies and programs, there may be little or no overall coordination in the provision of preventive care. As a result, a Medicaid-eligible individual may not know that many of these preventive services are available, or how to obtain them. We believe that the benefits an individual derives from the preventive services that are covered under Medicaid can be significantly enhanced when these services are provided in coordination with the preventive care available under other programs. In an effort to maximize scarce Medicaid dollars available for

preventive services, many States have sought the cooperation and active participation of other public as well as voluntary health agencies, such as State, county, and local health agencies, Head Start, Public Health Service community health centers, neighborhood health centers, and others. All States considering the inclusion of preventive services in their plans are encouraged to follow this example. Such coordination and joint planning avoids costly duplication and overlapping of services. Coordination can be achieved through interagency agreements, informal cooperative arrangements and increased referrals between the Medicaid agency and other programs that offer preventive care.

Medicaid regulations (42 CFR Part 431, Subpart M) and the Medical Assistance Manual (section 5-40-000) contain requirements and options for interagency agreements. These include the following:

- The Medicaid agency is required to have an interagency agreement with the State health agency and the State vocational rehabilitation agency, as well as the title V program. The agreements are designed to make maximum use of the services of these agencies. (Specific characteristics of agreements between the EPSDT program and title V are described in section 5-70-71 of the Medical Assistance Manual.)

• The Medicaid agency, in addition, may execute interagency agreements with other health and social service agencies and organizations, involving services that utilize Federal, as well as State or local funds. For children, youth and pregnant women, these programs could include Head Start, title XX (Social Services Block Grant), certain education programs, and the Special Supplemental Food Program for Women, Infants and Children (WIC).

- Examples of services furnished by other programs and reimbursed by Medicaid through interagency agreements include examinations, immunizations and treatment services, and such activities as informing recipients about available health services, assisting recipients with transportation to health services and health care case management (ensuring continuity of care).

The Medicaid agency can perform a valuable referral function for Medicaid-eligible individuals and can help to supplement the preventive services available to them under the State plan, by directing them to appropriate preventive care available from other sources. In certain situations, the State agency can also help to utilize available Federal funds most effectively by

coordinating Medicaid-funded preventive services activities with those of other programs offering related services. (Information on funding arrangements is contained in section 5-40-000 (H) and (I) of the Medical Assistance Manual.)

The use of preventive services holds promise for the Medicaid population, both in terms of improvements in individual health and reductions in the cost of treating illness and injury. We encourage States to review their current programs and determine the desirability of making a wider range of preventive services available and accessible to Medicaid-eligible individuals.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 21, 1984.

Carolyn K. Davis,  
Administrator, Health Care Financing  
Administration.

[FR Doc. 84-8212 Filed 3-26-84; 8:45 am]

BILLING CODE 4120-03-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. D-84-732; FR-1903]

### Delegation of Authority With Respect to Programs Transferred to the Revolving Fund (Liquidation Programs)

#### Correction

In FR Doc. 84-6660 beginning on page 9476 in the issue of Tuesday, March 13, 1984, make the following correction.

On page 9477, first column, the **EFFECTIVE DATE** now reading "March 1984" should read "March 13, 1984".

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

### Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer and the Office of Management and Budget Interior Department Desk

Officer, Washington, D.C. 20503, telephone (202) 395-7313.

Title: *Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs of the Department of the Interior. 43 CFR Part 17 Subpart B.*

Abstract: Section 504 of the Rehabilitation Act requires that all recipients perform a self-evaluation of their programs in order to achieve compliance with the Act. Recipients employing fifteen or more employees must maintain records of persons consulted and a description of areas examined, problems identified, and corrective actions taken.

Bureau Form Number: 1084-0009.

Frequency: One-time requirement.

Description of Respondents: State and local governments receiving Federal financial assistance from the Department of the Interior.

Annual Responses: 12,500.

Annual Burden Hours: 6,250.

Bureau Clearance Officer: Alfred R. Gordon, (202) 343-4331.

Dated: March 21, 1984.

Edward E. Shelton,

Director, Office for Equal Opportunity.

[FR Doc. 84-6161 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[M-58031(SD), M-58034(SD)]

### Reality Action; South Dakota; Competitive Reoffering of Two Parcels of Public Land in Lyman County

**AGENCY:** Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

**ACTION:** Amended notice of reality action M-58031(SD) and M-58034(SD); competitive reoffering of two parcels of public land in Lyman County, South Dakota.

**SUMMARY:** The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976) at no less than fair market value:

#### 5th Principal Meridian

M-58031(SD), Appraised Value \$2,500

T. 103 N., R. 75 W.,

Section 22; Lot 4

Containing 28.70 acres.

M-58034(SD), Appraised Value \$500

T. 103 N., R. 78 W.,

Section 29; Lot 1

Containing 2.60 acres.

These lands are being rescheduled for sale due to protests received on the original sale held on December 21, 1983.

These lands will be offered for sale by *Sealed Bid Only* utilizing competitive bidding procedures on May 2, 1984, at 1:30 p.m., MST, at Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

M-58031(SD) Township 103 North, Range 75 West, Section 22, Lot 4. This parcel is located approximately 13 miles southeast of Kennebec, South Dakota, in Lyman County. These lands are along the White River with some being rolling grasslands (White River Breaks) with shale slide banks near the river.

M-58034(SD) Township 103 North, Range 78 West, Section 29, Lot 1. This parcel is located approximately 16 miles southwest of Presho, South Dakota, in Lyman County. The parcel is along the White River with cottonwoods, ash trees and shrub undergrowth.

The above parcels have section line access and are being offered for sale because they are isolated from other blocks of public land and are difficult and uneconomical to manage. The proposed sale is consistent with the Bureau's planning system and Lyman County government officials have been notified of the sale. The transfer of the tracts into private ownership will benefit the public interest and provide for better land management.

#### Terms and Conditions

The terms and conditions applicable to this sale are as follows:

1. All minerals will be reserved to the United States together with the right to explore, prospect for, mine, and remove same under applicable law and regulations.

2. A right-of-way for ditches or canals will be reserved to the United States on M-58034(SD) in accordance with 43 U.S.C. 945.

3. The sale of these lands will be subject to all valid existing rights and reservations of record.

4. Access for these parcels must be in compliance with County and State regulations.

5. Any actions on these parcels must be in compliance with County and State floodplain ordinances and regulations.

**FOR FURTHER INFORMATION CONTACT:** Information related to the sale, including environmental assessment, and the record of public discussions is available for review at the South Dakota Resource Area Office, Belle Fourche, South Dakota.

#### SUPPLEMENTARY INFORMATION:

**Bidder Qualifications:** The bidder must be a U.S. citizen or, in the case of a

corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

**Bid Standards:** No bid will be accepted for less than the appraised value of \$2,500 on M-58031(SD) or \$500 on M-58034(SD). Bids must be individually submitted for each parcel in this notice.

**Method of Bidding:** The land will be sold by *Sealed Bid Only*. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of Interior, Bureau of Land Management, for not less than one-fifth (20%) of the amount bid.

Sealed bids will be received at the Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107, until 1:00 p.m. MST, May 2, 1984. Sealed bids will be opened in the Montana State Office, 222 North 32nd Street, Billings, Montana 59107.

The sealed bid envelope must be marked in the lower left-hand corner, as follows: Public Land Sale: M-58031(SD); or M-58034(SD) (whichever applies to bid). Date: May 2, 1984.

If two or more valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying sealed bid shall then be publicly declared.

**Sale Continuation:** In the event these parcels are not sold at the initial sale offering, the parcels will then be available for sale over the counter on a first come, first served basis, at the Montana State Office, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

**Final Details:** Once a high bid price is accepted, the successful bidder shall submit the remainder of the full bid price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: March 20, 1984.

Ray Brubaker,  
District Manager.

[FR Doc. 84-6100 Filed 3-26-84; 8:45 am]  
BILLING CODE 4310-ON-M

[C-36674 (D-I)]

**Colorado: Notice of Realty Action: Sale of Public Land in Delta County**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Announcing sale of public land in Delta County, Colorado.

**SUMMARY:** The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 45 U.S.C. 1713), at no less than the appraised fair market value. Further, except for oil, gas and coal these lands have been determined to have no mineral values. Therefore, the successful high bidder must apply for all the minerals except oil, gas and coal.

Parcel	Legal description	Acreage	Appraised value
C-36674	Delta, County, 6th Principal Meridian, Colorado.		
D	T. 15 S., R. 95 W., Sec. 13, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .	40.00	\$8,000
E	T. 15 S., R. 94 W., Sec. 19, NE $\frac{1}{4}$ SE $\frac{1}{4}$ .	40.00	8,000
F	T. 15 S., R. 94 W., Sec. 29, W $\frac{1}{2}$ NE $\frac{1}{4}$ .	80.00	16,000
G	T. 15 S., R. 94 W., Sec. 32, W $\frac{1}{2}$ NW $\frac{1}{4}$ .	80.00	20,000
H	T. 15 S., R. 94 W., Sec. 28, NW $\frac{1}{4}$ SW $\frac{1}{4}$ .	40.00	6,000
I	T. 15 S., R. 94 W., Sec. 32, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .	40.00	6,000

**Bidding:** The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or in the case of a corporation, be subject to the laws of any state of the United States. Bids may be made by a principal (the one desiring to purchase the land) or his duly qualified agent. Each bid must be for all the land in a specified parcel.

Sealed bids must be in a separate sealed envelope with the lower left-hand corner marked (Sealed Bid, Public Land Sale C-36674, Parcel No. \_\_\_\_\_ (D, E, F, G, H or I), Sale to be May 30, 1984". The sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the "Dept. of the Interior—BLM" for no less than one-fifth (20%) of the bid. Bids must be received by the Montrose District Office, Bureau of Land Management, 2465 South Townsend Ave., Montrose, CO, 81401 before 10:00 a.m. on May 30, 1984.

Sealed bids will be opened at 10:00 a.m. on May 30, 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 allowing those bidders to resubmit a new bid. The successful high bidder will be required to submit the remainder of the bid offer by certified check, cash, bank draft, money order, or any combination of these within 30 days after the determination of the highest bid.

In addition the high bidder will be required to apply for all the minerals—except the oil, gas and coal—beneath the parcel bid upon and submit a \$50.00 non-refundable filing fee with the application. Failure to deposit 20% of the bid price or to file an application for the minerals will result in the disqualification of the high bidder.

If final payment is not received within the specified 30 days, the high bid will be rejected, the deposit will be forfeited, and the land will be offered to the second highest bidder, subject to the same terms and conditions. All unsuccessful sealed bids will be returned within 30 days of the sale.

If valid bids are not received for any of the parcels by May 30, 1984, the unsold parcels will be offered over the counter on a continuing basis beginning on May 31, 1984 at 7:45 a.m. at the Montrose District Office until the parcels are sold or withdrawn.

Patents will contain the following reservations to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, and coal, with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe (43 U.S.C. 1719).

Further, patents will be subject to:

1. All valid existing rights,  
2. Oil and gas leases involving all parcels.

The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

Comments: Detailed information regarding this sale, including the planning documents and Environmental Assessment, is available for review in the Montrose District Office. For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Montrose District Office. Any adverse

comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. If the absence of any action by the District Manager, this Realty Action will be the final determination of the Department of the Interior.

Paul W. Arrasmith,  
Montrose District Manager.

[FR Doc. 84-6106 Filed 3-26-84; 8:45 am]  
BILLING CODE 4310-JB-M

[M-60210]

**Realty Action—Exchange; Montana**

**AGENCY:** Bureau of Land Management, Lewistown District Office, Interior.

**ACTION:** Notice of Realty Action M-60210—Exchange of public and private lands, in Phillips County, Montana.

**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:

**Principal Meridian Montana**

T. 29 N., R. 27 E.,  
Sec. 17, NE $\frac{1}{4}$ NW $\frac{1}{4}$ .  
T. 29 N., R. 28 E.,  
Sec. 5, lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Sec. 19, W $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and  
NW $\frac{1}{4}$ SE $\frac{1}{4}$ .  
T. 35 N., R. 29 E.,  
Sec. 26, SE $\frac{1}{4}$ NW $\frac{1}{4}$ .  
T. 28 N., R. 31 E.,  
Sec. 32, E $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ SW $\frac{1}{4}$   
(excluding a one acre tract in  
NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 33, W $\frac{1}{2}$ SW $\frac{1}{4}$ .  
T. 31 N., R. 31 E.,  
Sec. 19, lot 3, S $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$  and  
SE $\frac{1}{4}$ .  
T. 36 N., R. 32 E.,  
Sec. 27, SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 34, NW $\frac{1}{4}$ NE $\frac{1}{4}$ .  
T. 34 N., R. 33 E.,  
Sec. 31, SE $\frac{1}{4}$ .

The area described, aggregates 1,480.24 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

**Principal Meridian Montana**

T. 31 N., R. 31 E.,  
Sec. 13, SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 14, W $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 22, N $\frac{1}{2}$ N $\frac{1}{2}$ .  
T. 36 N., R. 31 E.,  
Sec. 3, lot 1 and SE $\frac{1}{4}$ ;  
Sec. 10, E $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$ .  
T. 28 N., R. 32 E.,  
Sec. 32, N $\frac{1}{2}$ .  
T. 33 N., R. 32 E.,  
Sec. 2, E $\frac{1}{2}$ SW $\frac{1}{4}$ .

T. 29 N., R. 34 E.,

Sec. 27, NW ¼NW¼, S ½N ½, NE ¼SW ¼  
and N ½SE ¼.

T. 35 N., R. 34 E.,

Sec. 2, lots 1 to 3, inclusive.

T. 36 N., R. 34 E.,

Sec. 35, NW ¼SE ¼, NE ¼SW ¼, SE ¼SW ¼  
and S ½SE ¼.

The area described aggregates 1,704.54

**DATES:** For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

**SUPPLEMENTARY INFORMATION:** The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals on one parcel of land and oil and gas in the balance of lands being transferred out of Federal ownership.
3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).
4. Value equalization by cash payment or acreage adjustments.
5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials. The public interest will be served by completion of this exchange.

Dated: March 18, 1984.

David E. Little,

Acting District Manager.

[FR Doc. 84-8110 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-DN-M

### Amendment of a Notice of Intent To Prepare Management Framework Plan Amendments, New Mexico, Interior.

**AGENCY:** Bureau of Land Management (BLM), New Mexico, Interior.

**ACTION:** Amendment of a Notice of Intent to prepare wilderness plan amendments and a statewide environmental impact statement published in the *Federal Register* January 28, 1982, pages 4154-4155.

**SUMMARY:** The Interior Board of Land Appeals (IBLA) remanded to the BLM some decisions regarding designation of Wilderness Study Areas (WSA's) in New Mexico.

Portions of the Florida and Cedar Mountains were re-evaluated to determine if they met the minimum requirements to become a WSA. Within the Las Uvas Mountains, the portion of the Rustler Fire Trail past Chivatos Tank was re-evaluated to determine if the trail met the definition of a road.

An area of 22,336 acres in the Florida Mountains met the minimum requirements and is designated as a WSA.

An area of 13,126 acres in the Cedar Mountains did not meet the minimum requirements and is released from further wilderness review. The Rustler Fire Trail met the definition of a road and is cherry-stemmed into the Las Uvas Mountains WSA.

**FOR FURTHER INFORMATION CONTACT:** Joseph Sovcik, Environmental Coordinator, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Telephone: (505) 988-6565; FTS 476-6565.

**SUPPLEMENTARY INFORMATION:** As a result of this decision, the table in the Notice of Intent in the *Federal Register*, Vol. 47, no. 19, on page 4154, published January 28, 1982, is amended as follows: Florida Mountains—New WSA acreage—22,336

Leroy C. Montoya,  
Acting State Director.

[FR Doc. 84-8102 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-FB-M

### Availability of Draft Steens Mountain Recreation Management Plan and Notice of Public Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Draft Steens Mountain Recreation Management Plan availability and notice of public meeting.

**SUMMARY:** This notice sets forth the public comment period of the Steens

Mountain Recreation Plan draft and the schedule for the public meeting.

**DATES:** April 23, 1984—Draft document available; May 10, 1984—Public Meeting at Harney County Courthouse from 7:00 P.M. to 9:00 P.M. in Burns, Oregon; May 25, 1984—30-day public comment period ends.

**FOR FURTHER INFORMATION CONTACT:** Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720, Telephone (503) 573-5241.

**SUPPLEMENTARY INFORMATION:** The Draft Steens Mountain Recreation Management Plan will be available for public review and comment after April 23, 1984. Copies of the draft document can be obtained by contacting the following BLM offices: Burns District Office, 74 South Alvord, Burns, OR 97720, Oregon State Office (912), 825 NE Multnomah, Portland, OR 97208.

During the public comment period, a meeting open to the public will be held at the Harney County Courthouse in Burns, Oregon, on Thursday, May 10th from 7:00 P.M. to 9:00 P.M.

All public comments on the Draft Steens Mountain Recreation Management Plan will be accepted at the Burns District Office from April 23rd to May 25th, 1984.

Dated: March 16, 1984.

Joshua L. Warburton,  
District Manager.

[FR Doc. 84-8101 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-33-M

### Montrose District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Montrose District Grazing Advisory Board meeting notice.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92-463 that the Montrose District Grazing Advisory Board will meet on April 23, 1984. The Board will convene at 10:00 a.m. in the conference room of the United States Forest Service Building, 216 North Colorado Avenue, Gunnison, Colorado. The business meeting will include the following topics:

1. Election of Officers;
2. Discussion of the Taylor Grazing Act 50th Anniversary;
3. Discussion on the CCA/CWGA Steering Committee Tour;
4. Review applicants nominated for Cooperative Management Agreements;
5. Briefing on the DOW Wildlife Feeding Program;

6. Update on the San Juan/San Miguel RMP/EIS effort;

7. Follow-up discussion on the 1983 Summer Range/Wildlife Tour;

8. Advisory Board expenditures for Range Improvement Work;

9. Arrangements for the next meeting.

The meeting is open to the public. Anyone wishing to make an oral statement, must notify the District Manager, BLM, 2465 South Townsend, Montrose, Colorado 81401 by April 18, 1984. Depending on the number of persons requesting time, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Paul W. Arrasmith,

*District Manager.*

[FR Doc. 84-8103 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-JB-M

#### Phoenix District Advisory Council; Meeting

The Phoenix District Advisory Council meets April 24 and 25 in Tucson, Arizona. The first day will be devoted to a field trip. The Council will depart the Phoenix District office, 2015 W. Deer Valley Road, Phoenix at 8:15 a.m. Members of the public may accompany the Council, but must provide their own transportation, meals, and lodging. A formal meeting will be held on the second day at the Tucson Hilton Inn, 1601 N. Miracle Mile, from 8:30 a.m. until noon.

The Council has been established by, and will be managed according to, the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

Inspection of erosion control and grass seeding programs on public rangelands.

Inspection of mining operations, springs and other naturally-occurring water sources on public lands.

Discussion of Cooperative Management Agreement Policy.

BLM management updates.

Business from the floor.

Public comment and statements.

Future meetings and agenda topics.

The meeting is open to the public.

Interested persons may make oral statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Bureau of Land

Management, 2015 W. Deer Valley Road, Phoenix, Arizona, 80527 (telephone 602 863-4464) by April 19, 1984. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be set.

Dated: March 18, 1984.

Deane H. Zeller,

*Acting District Manager.*

[FR Doc. 84-8104 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-32-M

[W-81862, W-81931]

#### Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, petitions for reinstatement of oil and gas lease W-81862 for lands in Converse County, Wyoming and oil and gas lease W-81931 for lands in Sheridan 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 16-2/3 percent, respectively. The lessees have paid the required \$500.00 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 Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-81862 effective November 1, 1983, and lease W-81931 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. 84-8105 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-32-M

#### Minerals Management Service

##### Development Operations Coordination Document; Notice of Receipt

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on

Lease OCS-G 4845, Block 438, Brazos Area, offshore Texas. 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 Port O'Connor, Texas.

**DATE:** The subject DOCD was deemed submitted on March 1, 1984.

**ADDRESSES:** 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. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0873.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 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 § 250.34 of Title 30 of the CFR.

Dated: March 19, 1984.

John L. Rankin,

*Regional Manager, Gulf of Mexico Region.*

[FR Doc. 84-8107 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-MR-M

#### National Park Service

##### Intention To Issue Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to issue a concession permit with Ye Olde Sun Shack, Inc. authorizing it to continue to provide umbrella/chair rental and surf shop sales facilities and services for the public at Jacob Riis Park, Breezy Point District, Gateway National Recreation Area, for a period of FIVE (5) years from

January 1, 1984, through December 31, 1988.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1983, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision in effect, grants Ye Olde Sun Shack, Inc. the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by Ye Olde Sun Shack, Inc. If Ye Olde Sun Shack, Inc. amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new permit will be negotiated with Ye Olde Sun Shack, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed permit.

Dated: March 16, 1984.

**Herbert S. Cables, Jr.**  
Regional Director, North Atlantic Region,  
National Park Service.

[FR Doc. 84-8175 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-70-M

#### Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Yosemite Medical Group, authorizing it to continue to provide medical, emergency surgical and related services; the prescription and sale of drugs, medicines, medical appliances and supplies for the public at Yosemite

National Park for a period of approximately ten (10) years from January 1, 1985.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1984, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Yosemite Medical Group the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Yosemite Medical Group. If Yosemite Medical Group amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Yosemite Medical Group.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: March 13, 1984.

**John D. Cherry,**  
Acting Regional Director, Western Region.

[FR Doc. 84-8174 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-70-M

#### Intention To Negotiate Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Mr. Robert F. Bevington, Jr., authorizing him to continue to provide service station facilities and services for the public at El Portal Administrative

Site adjacent to Yosemite National Park for a period of five (5) years from January 1, 1985, through December 31, 1989.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1984, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision, in effect, grants Mr. Robert F. Bevington, Jr. the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Mr. Robert F. Bevington, Jr. If Mr. Robert F. Bevington, Jr. amends his proposal, and the amended proposal is substantially equal to the better offer, then the proposed new permit will be negotiated with Mr. Robert F. Bevington, Jr.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Yosemite National Park, for information as to the requirements of the proposed permit.

Dated: March 12, 1984.

**John D. Cherry,**  
Acting Regional Director, Western Region.

[FR Doc. 84-8173 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-70-M

#### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 16, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written

comments should be submitted by April 11, 1984.

Carol D. Shull,  
Chief of Registration, National Register.

#### ALABAMA

##### Colbert County

Tuscumbia, Norman, Felix Grundy, House,  
401 W. Main St.

##### Madison County

Huntsville, White-Turner-Sanford House, 601  
Madison St.

Madison, Bibb, James H., House, 11 Allen St.

##### Marshall County

Guntersville, Saratoga Victory Mill, 1821  
Gunter Ave.

#### ARIZONA

##### Mohave County

Littlefield vicinity, Horse Valley Ranch, Lake  
Mead National Recreation Area

#### FLORIDA

##### Brevard County

Melbourne Beach, Melbourne Beach Pier,  
Ocean Ave. and Riverside Dr.

##### Leon County

Tallahassee, Bradley's Country Store  
Complex, Moccasin Gap Rd.

Tallahassee, Magnolia Heights Historic  
District, 701-1005 E. Park Ave and Cadiz  
St.

##### Sarasota County

Sarasota, Bay Haven School (Sarasota  
MRA), 2901 W. Tamiami Circle

Sarasota, City Waterworks (Sarasota MRA),  
1015 N. Orange Ave.

#### ILLINOIS

##### DuPage County

Glen Ellyn, Glen Ellyn Main Street Historic  
District, Main St. between Cottage Ave.  
and Maple St.

#### IOWA

##### Allamakee County

Postville, Postville Public School, Ogden and  
Post Sts.

##### Mahaska County

Oskaloosa, Stock Judging Pavilion, Southern  
Iowa Fairgrounds

##### Monroe County

Albia, Noble-Kendall House, 209 E. Benton  
Ave.

##### Montgomery County

Red Oak, Hebard, Alfred, House, 700 8th St.

##### Polk County

Des Moines, First Methodist Episcopal  
Church, 10th and Pleasant Sts.

##### Pottawattamie County

Council Bluffs, State Savings Bank, 509 W.  
Broadway

##### Van Buren County

Mount Zion vicinity, Martin, Abner, House, S  
of Mount Zion off IA 1

#### KENTUCKY

##### Hancock County

Hawesville, Hawesville Historic District,  
Main, Water, Main Cross, and Clay Sts.

##### Pike County

Pikeville, College Street Historic District  
(Pikeville MRA), Roughly College St. from  
Elm St. to Huffman Ave.

Pikeville, Commercial Historic District  
(Pikeville MRA), Main St. and Division  
Ave.

Pikeville, Greer, R.T., and Company  
(Pikeville MRA), Auxier St.

Pikeville, Huffman Avenue Historic District  
(Pikeville MRA), Huffman Ave. and Main  
St.

Pikeville, Odd Fellows Building (Pikeville  
MRA), 333 Second St.

Pikeville, Scott Avenue Historic District  
(Pikeville MRA), Scott Ave., 6th and 7th  
Sts.

Pikeville, Third Street Historic District  
(Pikeville MRA), 3rd St. and Scott Ave.

Pikeville, York House (Pikeville MRA), Main  
St.

Pikeville, York Mansion (Pikeville MRA), 209  
Elm St.

#### LOUISIANA

##### Avoyelles Parish

Bunkie, Epps, Edwin, House, U.S. 71

##### Grant Parish

Boyce vicinity, Kateland, N of Boyce off LA 8

##### Terrebonne Parish

Schriever vicinity, Armitage, LA 20 and  
Colonial Dr.

#### MARYLAND

##### Dorchester County

Cambridge, Christ Episcopal Church and  
Cemetery, High St.

#### NEW YORK

##### Monroe County

Rochester, Nazareth House, 94 Averill Ave.

##### Ontario County

Canandaigua, Adelaide Avenue School  
(Canandaigua MRA), 108-116 Adelaide  
Ave.

Canandaigua, Benham House (Canandaigua  
MRA), 280-282 S. Main St.

Canandaigua, Brigham Hall (Grove Home)  
Canandaigua MRA, 229 Bristol St.

Canandaigua, Building at 426 South Main  
Street (Canandaigua MRA), 426 S. Main St.

Canandaigua, Canandaigua Historic District  
(Canandaigua MRA), Roughly Main St. from  
Chapel to Saltonstall Sts.; Howell, Gibson,  
Gorham, Bristol, Bemis, and Center Sts.

Canandaigua, Chapin, Thaddeus, House  
(Canandaigua MRA), 128 Thad Chapin St.

Canandaigua, Cobblestone Manor  
(Canandaigua MRA), 495 N. Main St.

Canandaigua, Granger Cottage (Canandaigua  
MRA), 60 Granger St.

Canandaigua, Granger Francis, House  
(Canandaigua MRA), 426 N. Main St.

Canandaigua, Marshall House (Canandaigua  
MRA), 274 Bristol St.

Canandaigua, Saltonstall Street School  
(Canandaigua MRA), 47 Saltonstall St.

##### Otsego County

Onetonta, Bresee Hall, Hartwick Dr.

#### NORTH DAKOTA

##### Richland County

Wahpeton, Red River Valley University (Old  
Main), N. 6th St.

##### Ward County

Minot, Carr, Andrew Sr., House, 510 Fourth  
Ave. NW

Minot, Tufveson House, 426 Fourth Ave. NW

#### TEXAS

##### Harris County

Barker-Cypress Archeological Site (41  
HR436)

#### VERMONT

##### Windham County

Brattleboro, Brattleboro, Retreat, Linden St.  
and Upper Dummerston Rd.

#### WASHINGTON

##### Clark County

Vancouver, U.S. National Bank Building, 601  
Main St.

##### Cowlitz County

Longview, Tennant, J.D., House, 420  
Rutherglen Rd.

##### San Juan County

Friday Harbor, San Juan County Courthouse,  
350 W. Court St.

#### WEST VIRGINIA

##### Randolph County

Elkins, Davis Memorial Presbyterian Church,  
450 Randolph Ave.

#### WISCONSIN

##### La Crosse County

Sand Lake Archeological District

#### WYOMING

##### Goshen County

Jay Em, Jay Em Historic District, Main St.

[FR Doc. 84-8170 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-70-M

#### INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

##### Agency for International Development

##### President's Task Force on International Private Enterprise; meeting

Pursuant to the Federal Advisory  
Committee Act, notice is hereby given of  
a meeting sponsored by the President's  
Task Force on International Private  
Enterprise which will be held on April  
9-10, 1984 at the U.S. State Department,  
Washington, D.C.

This will be the seventh meeting of  
the Task Force.

The meeting will be closed on Monday, April 9, 1984 from 9:00 AM to 12:00 PM under the authority of section 10(d) of the Federal Advisory Committee Act under the exemption of Section 552b(c)(1) of Title 5, United States Code. The Task Force will hear and discuss classified matters concerning international economic policy and China. The remainder of the meeting will be open to the public. The Task Force will review and discuss findings and proposed recommendations.

There will be an AID representative at the meeting. It is suggested that those in need of further information contact Birge Watkins, Assistant Director, on (202) 944-3350 or by mail c/o The President's Task Force on International Private Enterprise, Agency for International Development, Washington, D.C. 20523.

Dated: March 15, 1984.

Christian R. Holmes,  
Executive Director, The President's Task  
Force on International Private Enterprise.

[FR Doc. 84-8163 Filed 3-23-84; 8:45 am]

BILLING CODE 6116-01-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30142 (Sub-1)]

### Railcarriers; Southern Railway Company and Virginia and Southwestern Railway Co.; Exemption; Extension of Lease

March 19, 1984.

Southern Railway Company (SRC) leases and operates the properties of its wholly-owned subsidiary the Virginia and Southwestern Railway Company (VSW), consisting of approximately 100 miles of railroad line in Tennessee and Virginia, by virtue of a 1958 lease, and a one-year extension previously granted by the Commission. The extension expired by its terms on March 14, 1984.<sup>1</sup> The two railroads are considering a merger, and have agreed to another one-year extension of the lease (until March 14, 1985). On March 7, 1984, SRC and VSW filed a notice of exemption, under 49 CFR 1180.2(d)(3) for the one-year extension.

This is a transaction wholly within a corporate family which is exempt as a class because it does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

<sup>1</sup> A one-year extension was granted in Finance Docket No. 30142, *Southern Railway Company and Virginia and Southwestern Railway Company—Exemption—Extension of Lease* (not printed), served March 31, 1983.

As a condition to the use of this exemption, any rail employees affected by this transaction shall continue to be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

By the Commission.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8130 Filed 3-26-84; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

#### Notice of Lodging of Final Judgment on Consent Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 12, 1984 a proposed Consent Decree in *United States v. Northland Gold Dredging, Ltd.*, Civil Action No. CV 83-350 was lodged with the United States District Court for the District of Alaska. The proposed Consent Decree concerns defendant's violations of the Clean Water Act by discharge of pollutants from its gold placer mining operation into the Tuluksak River near Nyac, Alaska, without a National Pollutant Discharge Elimination System ("NPDES") permit. The Consent Decree assesses civil penalties in the amount of \$25,000. In addition, the Consent Decree imposes injunctive relief requiring, *inter alia*, that defendant comply with effluent limitations for discharge of settleable solids, turbidity, and other pollutants. The injunctive provisions are enforced by stipulated civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Northland Gold Dredging, Ltd.* Ref. 90-5-1-1-1995.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Alaska, United States Courthouse, 701 C Street, Anchorage, Alaska 99513 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue,

N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and  
Natural Resources Division.

[FR Doc. 84-8106 Filed 3-26-84; 8:45 am]

BILLING CODE 4410-01-M

### Antitrust Division

#### Competitive Impact Statements and Proposed Consent Judgments; *United States v. South Water Market Credit Association*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois in *United States v. South Water Market Credit Association*, Civil Action No. 84 C 1896. The defendant in the case is South Water Market Credit Association. The Complaint in this case alleges that the Association and co-conspirators agreed to fix credit terms employed in the sale of produce, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed judgment enjoins the Association for a period of ten years from participating in: (1) Any agreement concerning the amount, duration, or any other term of credit extended to any customer, and (2) any agreement to withhold credit from any person. The proposed judgment also enjoins the Association from using any form or form letter that contains any reference to bills being due within a specified period or on any day of the week. The proposed judgment preserves the right of the Association to circulate credit information to its members.

The proposed judgment requires that notices detailing the rights and obligations of members be sent to members of the Association, and requires the Association to provide a copy of the proposed judgment to anyone who requests one and pays a reasonable copying fee. It further requires the Association for three years to report to the United States actions taken to ensure compliance with the proposed judgment, to provide the

United States with a copy of any new rule or bylaw promulgated by the Association, and to provide the Department of Justice access, upon reasonable notice, to the Association's records and personnel to determine its compliance with the judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the *Federal Register* and filed with the Court. Comments should be directed to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202-724-6327).

Joseph H. Widmar,  
Director of Operations, Antitrust Division.

U.S. District Court, Northern District of Illinois

*United States of America, Plaintiff, v. South Water Market Credit Association, Defendant.*  
Civil Action No.

Filed: March 1, 1984.

#### Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that the Court may file and enter a Final Judgment in the form attached to this Stipulation, on the Court's own motion or on the motion of any party at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), and without further notice to any party or other proceedings, if plaintiff has not withdrawn its consent, which it may do at any time before the entry of the judgment by serving notices of its withdrawal on defendant and filing that notice with the Court.

2. In the event Plaintiff withdraws its consent of if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the plaintiff: J. Paul McGrath, *Assistant Attorney General, Antitrust Division*, Joseph H. Widmar, Alan L. Marx, Kenneth L. Jost, Angela L. Hughes, *Attorneys for the United States, United States Department of Justice, Antitrust Division, Washington, D.C. 20530.*

For the defendant: Le Roy W. Gudgeon, 540 W. Frontage Road, Northfield, Illinois 60093, *Attorney for the South Water Market Credit Association.*

U.S. District Court, Northern District of Illinois

*United States of America, Plaintiff, v. South Water Market Credit Association, Defendant.*  
Civil Action No.

Filed: March 1, 1984.

#### Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on March 1, 1984, and defendant, by its attorney, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

#### I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted under Section 1 of the Sherman Act, 15 U.S.C. 1.

#### II

As used in this Final Judgment:  
A. "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;

B. "Produce" means fresh fruits and vegetables;

C. "Member" means any member of the defendant pursuant to the terms specified in its bylaws; and

D. "The date of entry" means the date on which this Final Judgment is entered by this Court. Acts required to be done "on" an anniversary of the date of entry must be done on or before that date.

#### III

This Final Judgment applies to the defendant and to its officers, directors, managers, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

#### IV

The defendant is enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or maintaining any contract, understanding, rule, bylaw, regulation, plan, or program with or affecting any member, or urging any member to engage in any practice, which:

(a) fixes, maintains, or establishes the length of time which that member grants or allows customers before payment for produce sold becomes due;

(b) prevents or interferes with the granting of credit to any person by member; or

(c) fixes, maintains, or establishes the amount or any term or condition of credit which any member grants or offers to any person in connection with the sale of produce.

#### V

The defendant is enjoined from using any stationery, form, or form letter which (a) refers to bills being due on Thursday or any other specified day of the week following purchase, or within any other specified time

after purchase, except as provided in the notice that this Final Judgment requires the defendant to provide to its members, or (b) states that customers who do not pay their bills on time will be denied credit by members.

#### VI

A. Nothing contained in this Final Judgment shall prevent the defendant from circulating to members (1) information concerning the payment history of any person, or (2) the fact that information concerning the credit worthiness of any person is unavailable.

B. Nothing contained in this Final Judgment shall prevent the defendant from (1) conducting credit investigations on behalf of members for the purpose of obtaining credit information for circulation to members, or (2) conducting its business in any other reasonable, lawful, commercial fashion.

#### VII

The defendant is hereby ordered:

A. To inform members by providing them with a notice in the form of Exhibit A attached hereto, within thirty (30) days of the date of entry, again six months after the date of entry, and on the anniversary of the date of entry for three (3) years: (a) of the substance of the terms of the Final Judgment; (b) that each of them must individually establish terms and conditions of sale; and (c) that each of them is free to extend credit to any person or firm whatsoever;

B. Within thirty (30) days from the date of entry, and on the first anniversary of the date of entry for three (3) years, to notify each of its officers, managers, and employees who have contact with members or their customers, of the obligations imposed on each of them by this Final Judgment;

C. To have copies of this Final Judgment, including Exhibit A, available for public inspection in its offices, and to provide a copy to any person who requests one for a reasonable copying fee; and

D. Within sixty (60) days from the date of entry, and on the anniversary of the date of entry for a period of three (3) years, to inform plaintiff of actions taken to ensure compliance with this Final Judgment, and to provide plaintiff a copy of any rule or bylaw enacted by the defendant within the preceding year.

#### VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to

any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to the defendant before divulging the material in any legal proceedings (other than a grand jury proceeding) to which the defendant is not a party.

#### IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for the enforcement of compliance with it or for the punishment of any violation of it.

#### X

This Final Judgment shall be in effect for the period of ten years following the date of entry.

#### XI

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_

United States District Judge

Exhibit A

Notice to Members of the South Water Market Credit Association

The United States Department of Justice, on March 1, 1984, filed a complaint in United States District Court in Chicago alleging that the South Water Market Credit Association (the "Association") had violated the Sherman Antitrust Act by engaging in a combination and agreement to fix and maintain credit terms employed in the sale of produce. The

complaint alleged that in pursuit of their agreement, the Association and others, among other things, had:

(a) agreed to fix the length of time for which Association members extend credit to customers;

(b) agreed to withhold credit from customers who did not pay their bills within the terms the Association established; and

(c) agreed to withhold credit from customers who did not establish credit through the Association.

The Association, without making any admission of wrongdoing or violation of any laws, entered a consent decree with the government settling the lawsuit. The decree has now been entered by the Court. It requires that we publish this notice so that you understand the decree. A copy of the entire decree is attached, and copies of the decree will be available at the Association's office. Violations of the decree can be punished as civil or criminal contempt of court. The Association and any person who participated in any such violation could be prosecuted, so it is important that you understand and comply with the decree.

Under the decree, the Association cannot have any agreement like those described above with any member. Accordingly, you are free to establish your own credit terms with your customers. You can extend credit to anyone you like, including accounts who have not furnished a financial statement to the Association and accounts identified as delinquent. Previous Association Credit Rules to the contrary are no longer valid. You can extend credit for any period of time you desire.

The Association will continue to distribute information to you concerning the identity of persons who do not pay their bills on time and provide other credit information regarding your customers. You can use this information as you see fit.

The U.S.D.A. regulations regarding prompt payment continue to be in effect. If you and your customer do not discuss when payment of a credit bill is due, and you have no announced terms, then payment is due in 10 days under current regulations. However, under the regulations, you can establish any other length of credit you desire, and payment within those terms constitutes the prompt payment required by the Perishable Agricultural Commodities Act of 1930 (commonly known as the "PACA").

Finally, in choosing what terms of sale you offer to your customers, you cannot reach any understanding or agreement with any other Association member regarding credit terms. Any such agreement or understanding would violate the Sherman Antitrust Act and could subject you to civil or even criminal prosecution. You may, of course, make any credit terms of sale with your customers as you see fit. You may require that payment of credit purchases be made in any period of time that is agreeable to you and your customer.

U.S. District Court Northern District of Illinois

United States of America, Plaintiff, v. South Water Market Credit Association, Defendant.  
Civil Action No.

Filed: March 1, 1984.

#### Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

#### I.

##### Nature and Purpose of the Proceeding

On March 1, 1984, the United States filed a civil antitrust suit alleging that the South Water Market Credit Association (the "Association") and its predecessor, the Chicago Produce Trade and Credit Association, participated in a conspiracy to fix credit terms in the sale of produce from 1902 until the date of filing of the complaint. The Association is an Illinois corporation doing business in Chicago, Illinois. It is an organization with approximately 25 members, most of which are independent wholesale produce firms doing business in the terminal market on South Water Market Street in Chicago.

The complaint alleges that the Association and co-conspirators agreed to fix credit terms employed in the sale of produce in violation of Section 1 of the Sherman Act (15 U.S.C. 1). The complaint asks the Court to: (1) find that the defendant violated the Sherman Act; (2) enjoin the defendant from continuing or renewing the conspiracy; and (3) require that notices be sent to Association members informing them of entry of the judgment.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation, and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify or enforce compliance with the provisions of the proposed Final Judgment.

#### II

##### Practices and Events Giving Rise to the Alleged Violation

Association members are independent produce distributors. The Association disseminates credit information and lists of delinquent customers to its members weekly. The Association's predecessor, the Chicago Produce Trade and Credit Association, was formed in 1902. The predecessor organization's statement of purpose included several objects, including the regulation of credits and collection of debts. That goal is still considered to be one of the primary purposes of the Association.

The Association's current rules were adopted in 1941 and include several provisions dealing with members' credit practices. The rules state that (1) with specified exceptions, customers of members must pay their bills by Thursday of the week following the sale; (2) members are to report to the Association customers who do not pay on time; (3) the Association will circulate a list of delinquent accounts to all members; (4) no member can extend credit to a delinquent

account; and (5) new customers are to file a financial statement with the Association, which will investigate the customer before members extend it credit. The form financial statement states that bills are due on a specified day of the week following the sale and that delinquent accounts will not be given credit by members. Essentially the same rules are printed on the form cover sheet for the weekly list of delinquent accounts. Thus each week the members are reminded of the Association's credit restrictions.

In December 1982 the Antitrust Division opened an investigation to determine whether the Association was violating or had violated the Sherman Act. The basis for the investigation was a newsclipping which described the Association and stated that its bylaws fixed the term of credit offered by its members and that it circulated a "blacklist" identifying those who did not pay on time. The investigation revealed, as the complaint alleges, that the defendant and co-conspirators had agreed to fix and maintain credit terms employed in the sale of produce.

### III

#### *Explanation of the Proposed Final Judgment*

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment does not constitute an admission by any party as to any issue of law or fact. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, the defendant is enjoined from repeating the behavior that constituted the conspiracy. Second, the proposed judgment places an affirmative obligation on the defendant to provide notice of this action to persons affected by the Association's credit rules.

#### *A. Prohibited Conduct*

Section IV of the proposed judgment enjoins certain agreements with members. Section IV(a) enjoins all agreements on the time for which members extend credit. This was the heart of the alleged violation. Section IV(b) bans agreements to withhold credit from any person. This prohibits the alleged ancillary agreements to withhold credit from delinquent and unapproved accounts. Finally, Section IV(c) enjoins agreements regarding the amount or any other term of credit that members grant. This covers agreements on dollar limits, interest charges, or any other term of credit.

Section V rejoins use of forms and form letters that contain any reference to bills being due within a specified number of days, or on any day of the week. As indicated above, the Association has employed several forms of this nature. This prohibition is meant to bring the impropriety of Association use of such forms to the attention of Association officials and to ensure that such forms will not be used in the future.

Section VI confirms that the proposed judgment does not interfere with the

legitimate functions of the Association. It states that the Association can circulate credit information and that it can conduct its business in any other reasonable, lawful, commercial fashion.

#### *B. Affirmative Obligations of the Defendant*

Section VII requires that notice of the judgment be sent to members. The notice, attached as an exhibit to the proposed judgment, spells out the rights and obligations of members and the Association so that all know what is allowable behavior.

The notice refers to the Perishable Agricultural Commodities Act of 1930, 7 U.S.C. 499(a)-(s). That Act requires, *inter alia*, that dealers must pay promptly for fresh fruits and vegetables. 7 U.S.C. 499(b)(4). United States Department of Agriculture rules provide that prompt payment within the meaning of the Act is payment within any agreed-upon time period or, in the absence of agreement, payment within ten days. 7 CFR 46.2(aa). The proposed judgment does not interfere with this scheme.

Section VII B requires that the Association, within 30 days of entry of the judgment and annually for three years, notify its officers, managers, and certain employees of the obligations imposed on each of them by the proposed judgment. Section VII C requires the Association to provide a copy of the proposed judgment to anyone who requests one and pays a reasonable copying fee. Section VII D requires the Association for three years to report to the United States actions taken to ensure compliance with the proposed judgment and to provide a copy of any new rule or bylaw. Thus, the United States will receive reports which will allow it to police compliance with the notice provisions.

Finally, under Section VIII of the proposed Final Judgment, the Justice Department will have access upon reasonable notice, to the defendant's records and personnel to determine its compliance with the Final Judgment and may require the defendant to submit written reports with respect to any of the matters contained in the Final Judgment.

### IV

#### *Competitive Effect of the Proposed Final Judgment*

The relief encompassed in the Final Judgment is aimed at preventing any recurrence of the activities described in the complaint, and at educating Association members concerning their right to negotiate terms of sale. Agreements on credit terms interfere with the normal operation of competitive forces in the marketplace and, accordingly, result in artificially determined price levels.

Entry of the Final Judgment will ensure that each member of defendant independently determines its terms and conditions of credit in the sale of produce. This assurance is primarily provided by Sections IV and V, which forbid all agreements relating to credit and prohibit the Association from using forms which suggest the existence of common credit terms among members. In addition, the notice requirements of Section VII will ensure that members will receive notices informing them that any Association member is free to

offer whatever credit terms it chooses. This should stimulate competition in credit terms and allow the level of credit in the market to reach its competitive equilibrium.

### V

#### *Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

### VI

#### *Procedures Available for Modification of the Proposed Final Judgment*

The proposed Final Judgment is subject to a stipulation between the United States and the defendant providing that the United States may withdraw its consent to the proposed judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the Court's determination that the proposed judgment is in the public interest. Under Section IX of the proposed Final Judgment, the Court would retain jurisdiction over this action in order, among other things, to permit either party to apply for any necessary or appropriate modification of the proposed judgment or construction of its provisions.

The Antitrust Procedures and Penalties Act provides a period of at least sixty days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States will evaluate the comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the *Federal Register* in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to: Alan L. Marx, Chief, General Litigation Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

### VII

#### *Alternatives to the Proposed Final Judgment*

This proceeding does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of the Final Judgment. All relief requested in the complaint is included in the proposed Final Judgment.

### VIII

#### *Determinative Documents*

There are no materials or documents that the United States considered determinative in formulating this proposed Final Judgment.

Accordingly, none are being filed along with this Competitive Impact Statement.

Dated: \_\_\_\_\_

Respectfully submitted,

Kenneth L. Jost, Angela L. Hughes,  
Attorneys for the United States, United States Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724-6468.

[FR Doc. 84-8123 Filed 3-26-84; 8:45 am]

BILLING CODE 4410-01-M

## National Institute of Justice

### Solicitation; Improving Evidence Gathering Through Police and Prosecutor Coordination

Police and prosecutor coordination is essential if felony case attrition is to be kept at a minimum. The problem of felony arrests resulting in no conviction has been estimated to be as high as fifty percent. While a certain amount of this attrition is warranted, a portion results from either the poor quality of the arrest cases when they are presented to the prosecutor, or to problems in coordination and cooperation between law enforcement and prosecuting agencies.

To address the problem of felony case attrition the National Institute of Justice announces a competitive research grant program on "Improving Evidence Gathering Through Police and Prosecutor Coordination". Proposals are requested for experimental research designed to reduce the rate of avoidable felony case attrition through improved case preparation and policy coordination between police and prosecutors.

This solicitation requests proposals from organizations desiring either: (1) to develop, implement and assess new methods of improving felony case evidence gathering and preparation or, (2) to evaluate the effects of an already existing program or policy aimed at enhanced felony case evidence gathering and preparation. It is anticipated that three to five awards will be made from the \$500,000 planned for this program.

Both the qualifications of the research team and evidence of cooperation of the participant jurisdiction are among the review criteria.

All proposals must be received no later than June 1, 1984.

A copy of the solicitation may be obtained by sending a self addressed mailing label to: Announcement Request, Improving Evidence Gathering, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: March 16, 1984.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 84-8156 Filed 3-26-84; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 10, 1984, 9:30 a.m., Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

*Purpose:* To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information contact: Fernand Lavallee, Acting Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, March 20, 1984.

Signed at Washington, D.C. this 20th day of March 1984.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 84-8224 Filed 3-26-84; 8:45 am]

BILLING CODE 4510-28-M

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Forms Submitted to OMB for Review

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 CFR Chapter 35). The current valid OMB clearance expires on March 31, 1984.

Subject: 12 CFR 701.31  
Nondiscrimination Requirements (3133-0068).

This regulation requires a Federal Credit Union to keep a copy of the property appraisal. It also requires that

a Federal Credit Union using geographic factors in evaluating real estate loan applications must disclose such fact on the appraisal and state its justification.

Respondents: Federal Credit Unions  
OMB Desk Officer: Judith McIntosh.  
Copies of the above information collection clearance packages can be obtained by calling the National Credit Union Administration, Special Projects Officer, on 202-357-1080.

Written comments and recommendations for listed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Judith McIntosh.

Dated: March 19, 1984.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 84-8162 Filed 3-26-84; 8:45 am]

BILLING CODE 7535-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Linguistics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.  
Date and Time: April 12 and 13, 1984; 9:00 a.m. to 5:00 p.m. each day.  
Place: National Science Foundation, 1800 G Street, NW., Room 338, Washington, D.C. 20550.

Type of Meeting: Part Open—Open 4/13—9:00 a.m. to 11:00 a.m., closed 4/12—9:00 a.m. to 5:00 p.m., closed 4/13—11:00 a.m. to 5:00 p.m.

Contact Person: Dr. Paul G. Chapin, Program Director, Linguistics Program, Room 320, National Science Foundation, Washington, D.C. 20550, (202) 357-7696.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: Open—General discussion of the current status and future plans of the Linguistics Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

March 22, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-8217 Filed 3-26-84; 8:45 am]

BILLING CODE 7555-01-M

### Subpanel on Regulation and Policy Analysis Advisory Panel for Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel on Regulation & Policy Analysis of the Advisory Panel for Social & Economic Science.

Date/Time: April 13, 1984—8:00 a.m. to 6:00 p.m.

Place: National Science Foundation, 1800 G St., NW. (Rm 643) Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Laurence C. Rosenberg, Program Director Regulation & Policy Analysis, National Science Foundation, Washington, DC 20550, Room 335, Phone (202) 357-7417.

Purpose of Subpanel: To provide advice and recommendations concerning research in Regulation and Policy Analysis.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (b) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-8216 Filed 3-26-84; 8:45 am]

BILLING CODE 7555-01-M

### NUCLEAR REGULATORY COMMISSION

#### Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of section 29 and 182b. of the Atomic

Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on April 5-7, 1984, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on March 27, 1984.

The agenda for the subject meeting will be as follows:

#### Thursday, April 5, 1984

8:30 a.m.—8:45 a.m.: *Chairman's Report (Open)*—The ACRS Chairman will report briefly to the Committee regarding items of current interest.

8:45 a.m.—12:00 noon: *Maintenance Policies and Practices (Open/Closed)*—The members will hear and discuss the report of its subcommittee and members of the NRC staff regarding maintenance policies and practices in nuclear power plants.

A portion of this session will be closed to discuss information provided in confidence by a foreign source.

1:00 p.m.—2:00 p.m.: *Items for Meeting with NRC Commissioners (Open)*—The members will discuss the ACRS position regarding matters to be discussed with the NRC Commissioners including the proposed NRC Safety Research Program for FY 1985, ACRS activities related to QA/QC practices in the nuclear industry, and establishment of an NTSB type board for evaluation of nuclear power plant accidents.

2:00 p.m.—3:30 p.m.: *Meeting with NRC Commissioners (Open)*—The members will meet with the NRC Commissioners to discuss items noted above.

3:30 p.m.—4:15 p.m.: *Implementation of Regulatory Guide 1.97, Instrumentation of Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident (Open)*—The members will hear a briefing regarding the status of implementation of Regulatory Guide 1.97.

4:15 p.m.—5:00 p.m.: *Subcommittee Action (Open)*—The members will hear and discuss reports of designated Subcommittees regarding the status of assigned activities including provisions for ECCS and decay heat removal.

#### Friday, April 6, 1984

8:30 a.m.—11:30 a.m.: *GINNA Nuclear Power Plant (Open)*—The members will hear and discuss reports from its subcommittee, the NRC Staff, and the Licensee regarding the request for a full term operating license for this facility.

Portions of this session will be closed as necessary to discuss Proprietary Material applicable to this matter.

11:30 a.m.—12:30 p.m.: *Activities of NRC Regional Offices (Open)*—The members will hear and discuss a report

from an NRC Regional Director regarding the activities of NRC regional offices.

1:30 p.m.—2:30 p.m.: *Severe Accident Policy (Open)*—The members will hear a briefing by a representative of the NRC Staff regarding the status of a proposed NRC policy statement regarding consideration of severe nuclear power plant accidents in the regulatory process.

2:30 p.m.—3:30 p.m.: *Nuclear Power Plant Operating Experience (Open)*—The Committee will hear and discuss a proposed NRC Bulletin regarding operation of undervoltage trip devices in nuclear power plant circuit breakers.

3:30 p.m.—4:00 p.m.: *Passive Containment System (Open)*—The Committee will discuss a proposed ACRS reply to the request for a preapplication review of the passive containment system.

4:00 p.m.—5:00 p.m.: *Preparation of ACRS Reports (Open/Closed)*—The Committee will discuss proposed ACRS reports/letters regarding items considered during the meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being considered and to discuss information involved in an adjudicatory proceeding.

#### Saturday, April 7, 1984

8:30 a.m.—9:15 a.m.: *Appointment of ACRS Members (Closed)*—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

9:15 a.m.—12:30 p.m.: *Preparation of ACRS Reports (Open/Closed)*—The Committee will complete preparation of reports/letters regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being considered and information involved in an adjudicatory proceeding.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with the procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring

to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d), Pub. L. 92-463, that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)), information involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meetings has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 a.m. and 5:00 p.m. est.

Dated: March 22, 1984.

Samuel J. Chilk,  
Secretary of the Commission.

[FR Doc. 84-8208 Filed 3-26-84; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-302]

#### Florida Power Corp.; Order Confirming TMI Commitments; Correction

On March 2, 1984 (49 FR 7895), an Order issued by the U.S. Nuclear Regulatory Commission (NRC) was published in the *Federal Register*. This Order confirms commitments made by the Florida Power Corporation for Post-TMI related issues involving the Crystal River Unit 3 Nuclear Generating Plant, which is located in Citrus County, Florida.

The March 31, 1984 completion date for completion of Emergency Response Facilities, appearing in Page 2 of the

Attachment to the Order, has been changed to July 2, 1984.

For additional details, see NRC's letter to the licensee dated March 15, 1984.

Dated at Bethesda, Maryland, this 15th day of March 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,  
Chief, Operating Reactors Branch #4,  
Division of Licensing.

[FR Doc. 84-8207 Filed 3-26-84; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-220; License No. DPR-63 EA 83-137]

#### Niagara Mohawk Power Corp. (Nine Mile Point Station, Unit 1); Order Modifying License Effective Immediately

I

Niagara Mohawk Power Corporation (the "licensee") is the holder of Facility Operating License No. DPR-63 issued December 26, 1974 which authorizes the licensee to operate the Nine Mile Point Station, Unit 1 (the "facility") in Scriba, New York.

II

Recent violations at Nine Mile Point Station, Unit 1, including violations of technical specification limiting conditions for operation and technical specification surveillance requirements, indicate a lack of management attention to the control of safety related activities at the facility. These violations represent a continuing negative trend in operations at Nine Mile Point Station, Unit 1. They involve inattentiveness to plant parameters by plant personnel, lack of awareness of plant conditions, and failure to adhere to plant procedures. For example, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to Nine Mile Point Station, Unit 1 on October 6, 1983 for violations which involved the following:

(1) Failure to adequately perform required checks of main steam line radiation monitors in that the readings of two of the monitors were significantly different from the reading of two other monitors, yet no action was taken to determine the cause of this discrepancy, the monitors were not declared inoperable, and appropriate action was not taken as required by the technical specification;

(2) A reactor building inner track bay door was open when the outer door was not sealed, in violation of a plant operating procedure;

(3) A motor starter circuit breaker for a core spray isolation valve was in the off position but not locked in that position, in violation of a technical specification limiting condition for operation.

Further, on November 15, 1983, an enforcement conference was conducted to discuss violations identified during NRC inspection 50-220/83-24, conducted October 1-31, 1983 and Inspection 50-220/83-29 conducted November 9-10, 1983. These violations involved: (1) The failure to maintain primary containment integrity while the reactor was critical as required by technical specifications, and (2) two reactor coolant system isolation valves, required by a technical specification surveillance requirement to be tested for closure times at least once per operating cycle, which had not been tested for closure time during the past five operating cycles, a period of ten years.

III

Such violations demonstrate the need for increased corporate management involvement in plant activities to foster an attitude that will ensure increased personnel attentiveness to plant parameters, increased personnel awareness of plant conditions, and strict adherence by operating personnel to plant procedures and, as a result, increased compliance with NRC requirements. Accordingly, I have determined that the actions set forth below are required by the public health, safety, and interest, and therefore, should be imposed by an immediately effective Order.

IV

In view of the foregoing, pursuant to Sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered effective immediately that:

Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for an independent appraisal of site and corporate management and their functions to evaluate their effectiveness and to develop recommendations for the purpose of increasing corporate management involvement in plant activities to foster an attitude that will ensure increased personnel attentiveness to plant parameters, and increasing personnel awareness of plant conditions, and strict adherence by operating personnel to plant procedures

to ensure that the facility is operated in accordance with license requirements.

The plan shall include, but shall not be limited to, the following elements:

(1) An appraisal conducted by an independent third party management consultant organization retained by the licensee to evaluate current organizational structure and responsibilities, management controls, communication systems and management practices, both at the Nine Mile Point Nuclear Station, Unit 1, and the corporate offices.

This appraisal shall also include an evaluation of how the preoperational, start-up and eventual operating activities at Unit 2 will interface with and affect the management system for the operation of Unit 1.

(2) A description of the appraisal program, the qualifications of the appraisal team, a discussion of how the appraisal is to be documented, and the schedule of completion of appropriate milestones.

(3) Recommendations for changes in the areas mentioned in Item 1 that will provide assurance that the licensee will effectively implement NRC requirements.

Upon approval of the plan by the Regional Administrator, Region I, the plan shall be implemented. Scheduled milestone completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the approved independent management consultant organization to submit to the Regional Administrator, Region I, a copy of any report of the appraisal and recommendations resulting from the appraisal, and any drafts thereof at the same time they are sent to the licensee or any of its employees or contractors. Prior notice shall be given to the Regional Administrator, Region I, of any meeting or discussion between the licensee and the organization to discuss the results, recommendations, or progress made on the appraisal in sufficient time for the Regional Administrator to determine whether NRC participation is required. In addition, the licensee shall consider the recommendations resulting from the appraisal and provide to the Regional Administrator, Region I, an analysis of each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

The Regional Administrator, Region I, may relax or terminate in writing any of the preceding conditions for good cause.

## V

The licensee may request a hearing on this Order. A request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region I, 631 Park Avenue, King of Prussia, PA 19406. Any request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland this 20th day of March 1984.

For the Nuclear Regulatory Commission,  
Richard C. DeYoung,  
Director, Office of Inspection and Enforcement.

[FR Doc. 84-8208 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410; Construction Permit No. CPPR-112 EA 83-137]

## Niagara Mohawk Power Corp. (Nine Mile Point Station, Unit 2); Order

### I

Niagara Mohawk Power Corporation (the "licensee") is the holder of construction permit CPPR-112 issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the construction of the Nine Mile Point Station, Unit 2 (the "facility"). The facility is under construction in Scriba, New York.

### II

A Construction Appraisal Team ("CAT") inspection was conducted at the facility during the period of November 7 through 19, and November 28 through December 9, 1983. The objective of this CAT inspection was to evaluate the adequacy of construction at the facility which the licensee estimates as currently about 80 percent complete. An additional aspect of the CAT inspection was the review of the licensee's project management involvement with site construction activities to determine whether adequate control existed to meet Commission requirements.

Significant deficiencies in your Quality Assurance program were identified during the CAT inspection as described in Appendix A to the January

31, 1984 Inspection Report (Report No. 50-410/83-18). These findings include, but are not limited to, the following:

(1) The program for review and acceptance of radiographs was found to be deficient. The deficiencies identified included weld quality, radiographic film quality, missing film, and quality of documentation. Some similar deficiencies had previously been identified by the licensee site quality assurance/quality control programs, but timely actions to correct the deficiencies had not been initiated.

(2) The document control system is inadequate as evidenced by the number and type of problems identified. These deficiencies indicate that crafts and inspectors may not be using the latest design documents. Inspection reports often do not reflect the applicable drawing revision. Project Procedure 77, Advance Change Notices (ACN), requires that ACN's be incorporated into the appropriate drawings within a 60-day time period. Because of a large backlog of ACN's, an Interoffice Memorandum dated November 11, 1983 was issued which removed the 60-day time period for incorporating changes into drawings. Therefore, ACN's do not receive full engineering review until the appropriate drawing is revised. This change was made as an expedient action, rather than taking appropriate measures to identify and correct the reasons for a high ACN generation rate.

(3) Deficiencies were identified in the site auditing program, the corrective action system, and the procurement quality assurance program. Audits were not effective in the identification of hardware and program deficiencies, nor in resolving problems in a timely manner. Corrective action systems were deficient with regard to the correction of nonconformances identified and the associated documentation. In addition, several discrepancies were identified during the review of hardware which raise questions as to the adequacy of the Stone and Webster Procurement Quality Assurance Program. Review of a small sample of hardware revealed a number of installed materials and equipment that did not comply with purchase documents.

(4) A number of deficiencies were found in the QA/QC program as evidenced by problems identified in the electrical and mechanical areas. These deficiencies included inadequate acceptance criteria to perform appropriate quality control inspections; failure to perform adequate quality control inspections; and failure to take appropriate actions when deficiencies were identified. The low number of

quality control inspected items as compared to the much larger number of installed items reflects a quality control program that is not timely in accomplishing required work. Although further opportunities may exist to detect existing deficiencies prior to plant operation, the deficiencies identified by the CAT inspection had already evaded the existing quality control program. Failure of the licensee to detect these deficiencies raises serious questions as to the effectiveness of that program.

(5) The prequalification testing program for concrete expansion anchor bolts was found to be inadequate since it did not establish that torque values required in the site specifications were adequate to ensure that the anchor bolts were properly set. The concrete anchor bolts were tested in a 1000 psi concrete mix, rather than a minimum 3000 psi concrete mix which is the concrete mix most representative of field conditions.

(6) Power Generation Control Complex (PGCC) cable and wiring installations exhibited significant deficiencies relative to separation criteria. The applicant's program of quality control inspection does not provide adequate consideration or establish the appropriate procedural controls to assure that specification separation criteria have been satisfied.

These and other deficiencies are described in the CAT Inspection Report (Report No. 50-410/83-18) issued January 31, 1984. A number of the findings identified during the CAT inspection are similar to deficiencies previously identified by Region I. These Region I findings are documented in the NRC Region I Report 50-410/SALP, which covers the period of October 1, 1982 to September 30, 1983. The results of the SALP were discussed during a meeting with the licensee on January 11, 1984, and the report was issued February 23, 1984.

### III

The nature and number of the NRC-identified deficiencies, most of which were in areas which had already received licensee's quality control inspection and acceptance, raise serious questions concerning the adequacy of the licensee's management control over the construction process and whether construction that has been completed and the demonstration of its quality has been achieved in accordance with the Commission's requirements.

I have determined that further information is necessary concerning the licensee's ability to manage construction and to determine the adequacy of the construction work completed to date.

### IV

In view of the foregoing, pursuant to Sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered that:

A. Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for a review of the CAT inspection findings, the most recent SALP report and licensee-identified deficiencies (both past and current). The plan shall include a description of the scope of the proposed review, the qualifications of the review team and a schedule for completion of appropriate milestones. The review shall determine whether the licensee has correctly identified the underlying/fundamental causes for these deficiencies and whether the licensee's corrective actions have adequately addressed the underlying/fundamental causes as well as adequately addressing the specific deficiencies. This review shall include a thorough reinspection of identified deficiencies. Neither the manager of the review (the reviewer) nor any member of the review team shall have been involved in performing any of the work under review.

Upon approval of the plan by the Regional Administrator, Region I, the plan shall be implemented. Scheduled milestone completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the reviewer to submit to the Regional Administrator, Region I, a copy of any report, and any drafts thereof, at the same time they are sent to the licensee or any of its employees or contractors. The reports and recommendations shall be submitted to the Regional Administrator, Region I, by a date agreed upon by the licensee and the Regional Administrator.

The licensee shall consider the recommendations resulting from the review and provide to the Regional Administrator, Region I, an analysis of each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

B. Within 60 days of the effective date of this Order, the licensee shall establish, define and submit to the Regional Administrator, Region I, a listing of performance indicators to be used to measure and monitor quality construction performance in the future.

These indicators should address but not be limited to, those areas required to be reviewed by Section A of this Order. These indicators should also address the implementation of corrective actions, and changes made or planned based on deficiencies identified. The licensee shall periodically discuss with the Regional Administrator, Region I, the status of construction as measured by these performance indicators as well as modifications or additions to these performance indicators.

C. Within six months of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for an independent third party to conduct an appraisal of organizational responsibilities, management controls, staffing levels, communications, and operating practices both at the facility and the corporate office. This appraisal shall be initiated after the most recent changes are in effect but no later than one year from the effective date of this Order.

Additionally, this appraisal shall also address the adequacy of actions implemented in response to items A, B and C of this Order. This independent third party shall be directed to make recommendations for changes in the areas reviewed.

The plan shall include a description of the appraisal program, the qualifications of the appraisal team, a discussion of how the appraisal is to be documented, and the schedule of completion of appropriate milestones. Upon approval of the plan by the Regional Administrator, Region I, the plan shall be implemented. Scheduled milestone completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the approval independent management consultant organization to submit to the Regional Administrator, Region I, a copy of any report of the appraisal and recommendations resulting from the appraisal, and any drafts thereof at the same time they are sent to the licensee or any of its employees or contractors. Prior notice shall be given to the Regional Administrator, Region I, of any meeting or discussion between the licensee and the organization to discuss the results, recommendations, or progress made on the appraisal in sufficient time for the Regional Administrator to determine whether NRC participation is required. In addition, the licensee shall consider the recommendations resulting from the appraisal and provide to the Regional Administrator, Region I, an analysis of

each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

D. The Regional Administrator, Region I, may relax, or terminate in writing any of the preceding conditions for good cause.

#### V

The licensee may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, PA 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

This Order shall become effective upon the licensee's consent or upon expiration of the time within which the licensee may request a hearing or, if a hearing is requested by the licensee on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland this 20th day of March 1984.

For the Nuclear Regulatory Commission.

**Richard C. DeYoung,**

*Director, Office of Inspection and Enforcement.*

[FR Doc. 84-8209 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket No. 50-395]

#### **South Carolina Electric & Gas Co. and South Carolina Public Service Authority (Virgil C. Summer Nuclear Station, Unit No. 1); Exemption**

#### I

The South Carolina Electric & Gas Company (SCE&G) and South Carolina Public Service Authority hold operating license number NPF-12 which authorizes the operation of the Virgil C. Summer Nuclear Station, Unit No. 1. The facility consists of one pressurized water reactor located at the licensees' site near Jenkinsville, South Carolina.

#### II

Section IV.F.1.a. of Appendix E to 10 CFR Part 50 requires each licensee to hold emergency preparedness exercises

at a frequency which will enable each State and local government within the plume exposure pathway emergency planning zone to participate in at least one full-scale exercise per year.

SCE&G's letter of January 18, 1984, to Harold R. Denton, Director, Office of Nuclear Reactor Regulation, requested that an exemption be granted from the requirements of 10 CFR 50, Appendix E, Section IV.F.1.a. as it applies to participation by State and local government agencies in the planned March 21, 1984, full-scale emergency preparedness exercise to be held at the Virgil C. Summer Nuclear Station, Unit 1.

SCE&G bases this request for exemption on the previous successful participation by State and local government agencies in full-scale and limited-scale exercises in May 1981 and March 1983, which resulted in favorable findings by FEMA and NRC. SCE&G contends that the experience gained by the State and local government agencies during the exercises is sufficient basis for relief from the annual exercise frequency requirement.

The NRC staff has reviewed the participation of the State in an October 1983 exercise with the H. B. Robinson Nuclear Power Station and the local government agencies in the March 1983 exercise for the V. C. Summer Nuclear Station. The staff determined that the agencies demonstrated a capability to respond effectively to nuclear power station emergency conditions. Based on this review, the staff concludes that an exemption pursuant to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.1.a., is justified, subject to the condition that the State and local government agencies may be required to provide such minimal support as may be essential to the conduct of the March 21, 1984, onsite emergency preparedness exercise.

Based on our evaluation, the staff has concluded that non-participation by State and local government agencies in the March 21, 1984, emergency preparedness exercise for the Virgil C. Summer Nuclear Station, Unit 1 will not adversely affect the overall state of emergency preparedness for the V. C. Summer Nuclear Station and that the requested exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.1.a. should be granted.

#### III

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.

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) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 84-8210 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket No. 50-397]

#### **Washington Public Power Supply System (WPPSS Nuclear Project No. 2); Issuance of Director's Decision Under 10 CFR 2.206**

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated October 14, 1983, filed by Eugene Rosolie, on behalf of the Coalition for Safe Power. The petitioner had requested that the Nuclear Regulatory Commission institute show cause proceedings to determine whether the construction permit for the Washington Public Power Supply System Nuclear Project No. 2 (WNP-2) should be revoked, a stay of construction imposed, the pending application for an operating license denied and hearings instituted. The Director, Office of Inspection and Enforcement, has decided to deny the petitioner's request.

The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD-84-7), which is available for public inspection in the Commission's public document room, 1717 H Street, N.W., Washington, DC, and in the local public document room for the WNP-2 facility, located at the Richland Public Library, Swift and Northgate Street, Richland, WA 99352.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 19th day of March, 1984.

For the Nuclear Regulatory Commission.  
**Richard C. DeYoung,**  
*Director, Office of Inspection and Enforcement.*

[FR Doc. 84-8211 Filed 3-26-84; 8:45 am]  
 BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:**  
 Tracy Spencer, 202-632-6000.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on February 26, 1984 (49 FR 7318). Individual authorities established or revoked under Schedules A, B, or C between February 1, 1984 and February 29, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

### Schedules A and B

No Schedule A or B exceptions were established or revoked during the month of February.

### Schedule C

The following exceptions are established:

#### *Department of Agriculture*

One Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective February 6, 1984.

One Private Secretary to the General Counsel, Office of the General Counsel. Effective February 10, 1984.

One Confidential Assistant to the Director, Office of Rural Development Policy. Effective February 23, 1984.

One Confidential Assistant to the Director, Office of Equal Opportunity. Effective February 24, 1984.

One Special Assistant to the Director, Office of Transportation. Effective February 24, 1984.

#### *Department of the Army*

One Staff Assistant to the Special Assistant to the President for Public Liaison. Effective February 24, 1984.

#### *Department of Commerce*

One Confidential Assistant to the Director General of U.S. and Foreign Commercial Service, International Trade Administration. Effective February 3, 1984.

One Private Secretary to the Deputy Under Secretary, Office of the Secretary. Effective February 10, 1984.

One Confidential Assistant to the Director General of the U.S. and Foreign Commercial Service, International Trade Administration. Effective February 16, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for Industry Projects, International Trade Administration. Effective February 21, 1984.

One Special Assistant to the Under Secretary for Travel and Tourism. Effective February 22, 1984.

One Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective February 22, 1984.

One Special Assistant to the Assistant Director for Communications, Bureau of the Census. Effective February 23, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration. Effective February 23, 1984.

One Congressional Affairs Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective February 24, 1984.

#### *Department of Defense*

One Personal and Confidential Assistant to the Deputy Secretary of Defense. Effective February 16, 1984.

#### *Department of Education*

One Executive Assistant to the Assistant Secretary for Legislation and Public Affairs. Effective February 3, 1984.

One Confidential Assistant to the Director of Regional Liaison, Office of the Under Secretary. Effective February 3, 1984.

One Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective February 3, 1984.

One Legislative Liaison to the Director, Legislative Liaison Staff, Office of Legislation and Public Affairs. Effective February 8, 1984.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective February 10, 1984.

One Executive Director, Intergovernmental Advisory Council on Education, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective February 23, 1984.

One Confidential Assistant to the Under Secretary, Office of the Under Secretary. Effective February 29, 1984.

#### *Department of Energy*

One Staff Assistant to the Assistant Secretary for Internal Affairs. Effective February 1, 1984.

One Private Secretary to the Chairman, Federal Energy Regulatory Commission. Effective February 24, 1984.

One Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission. Effective February 24, 1984.

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 24, 1984.

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 24, 1984.

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 27, 1984.

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 27, 1984.

#### *Department of Health and Human Services*

One Director, Intergovernmental and Congressional Affairs in Dallas, Texas, Office of the Secretary. Effective February 3, 1984.

One Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration. Effective February 8, 1984.

#### *Department of Housing and Urban Development*

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 1, 1984.

One Staff Assistant (Typing) to the Assistant Secretary for Community Planning and Development. Effective February 3, 1984.

One Special Assistant to the Secretary. Effective February 6, 1984.

One Executive Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 9, 1984.

One Confidential Assistant to the Under Secretary. Effective February 16, 1984.

One Senior Assistant for Legislation to the Deputy Assistant Secretary for Legislation. Effective February 21, 1984.

One Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective February 24, 1984.

One Executive Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 27, 1984.

One Special Assistant to the Secretary, Office of the Secretary. Effective February 27, 1984.

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 29, 1984.

#### *Department of the Interior*

One Special Assistant to the Deputy Director, National Park Service. Effective February 21, 1984.

One Special Assistant to the Secretary. Effective February 21, 1984.

One Confidential Assistant to the Special Assistant to the Secretary. Effective February 24, 1984.

#### *Department of Justice*

One Confidential Assistant (Private Secretary) to the Assistant Attorney General, Antitrust Division. Effective February 1, 1984.

One Special Assistant to the Deputy Assistant Attorney General, Tax Division. Effective February 3, 1984.

One Secretary (Typing) to the Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

#### *Department of Labor*

One Special Assistant to the Assistant Secretary for Employment and Training. Effective February 1, 1984.

One Special Assistant to the Deputy Under Secretary for Employment Standards. Effective February 6, 1984.

One Assistant to the Assistant Secretary for Legislative Affairs. Effective February 17, 1984.

One Staff Assistant to the Chief of Staff, Office of the Secretary. Effective February 24, 1984.

One Special Assistant to the Administrator, Pension and Welfare Benefit Programs. Effective February 29, 1984.

#### *Department of State*

One Special Assistant to the Under Secretary for Management. Effective February 6, 1984.

One Secretary (Stenography) to the Ambassador, U.S. Permanent Representative to the Organization of

American States. Effective February 17, 1984.

#### *Department of Transportation*

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective February 1, 1984.

One Secretary (Typing) to the Deputy Secretary. Effective February 2, 1984.

One Director, Office of Public Affairs, Urban Mass Transportation Administration. Effective February 8, 1984.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective February 10, 1984.

One Special Assistant for Marketing to the Administrator, Saint Lawrence Seaway Development Corporation. Effective February 14, 1984.

One Special Assistant to the Director, Office of Intergovernmental Affairs. Effective February 24, 1984.

One Chief, Minority Business Resource Center, to the Director, Office of Small and Disadvantaged Business Utilization. Effective February 24, 1984.

One Deputy Director, Office of Congressional Affairs. Effective February 24, 1984.

One Special Assistant to the Deputy Assistant for Governmental Affairs. Effective February 27, 1984.

One Confidential Assistant to the Assistant Secretary for Governmental Affairs. Effective February 29, 1984.

#### *Department of the Treasury*

One Staff Assistant to the Principal Deputy Assistant Secretary (International Affairs). Effective February 10, 1984.

#### **Action**

One Special Assistant to the Assistant Director of Policy and Planning. Effective February 10, 1984.

One Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations. Effective February 16, 1984.

#### *Administrative Office of the U.S. Courts*

One Attorney-Advisor (Legislative) to the Legislative Affairs Officer. Effective February 3, 1984.

#### *Agency for International Development*

Special Assistant to the Assistant Administrator, Bureau for Program and Policy Coordination. Effective February 9, 1984.

One Deputy Assistant to the Administrator for Interbureau Affairs and Special Projects. Effective February 24, 1984.

#### *Commission on Civil Rights*

One Public Affairs Officer to the Assistant Staff Director for

Congressional and Public Affairs, Office of the Staff Director. Effective February 29, 1984.

#### *Commodity Futures Trading Commission*

One Special Assistant to a Commissioner. Effective February 23, 1984.

#### *Consumer Product Safety Commission*

One Special Assistant (Legal) to the Chairman. Effective February 2, 1984.

#### *Environmental Protection Agency*

One Congressional Liaison Specialist to the Director, Office of Congressional Liaison. Effective February 6, 1984.

#### *Equal Employment Opportunity Commission*

One Deputy Director, Office of Public Affairs. Effective February 9, 1984.

#### *Executive Office of the President*

One Secretary to the Associate Director for Management, Office of Management and Budget. Effective February 29, 1984.

#### *Export-Import Bank of the United States*

One Secretary (Typing) to the President and Chairman, Office of the Board of Directors. Effective February 3, 1984.

#### *Federal Emergency Management Agency*

One Special Assistant to the Administrator, Federal Insurance Administration. Effective February 27, 1984.

#### *International Trade Commission*

One Staff Assistant (Economics) to a Commissioner. Effective February 24, 1984.

#### *National Credit Union Administration*

One Confidential Assistant to a Member of the Board. Effective February 1, 1984.

#### *National Endowment for the Arts*

One Director, Media, News and Special Events. Effective February 22, 1984.

#### *Office of Personnel Management*

One Special Assistant to the Assistant Director for Public Affairs. Effective February 3, 1984.

One Special Assistant to the Director, Office of the Director. Effective February 27, 1984.

One Confidential Assistant (Typing) to the Director, Office of Government Ethics. Effective February 27, 1984.

*Securities and Exchange Commission*

One Supervisory Public Affairs Specialist to the Chairman. Effective February 24, 1984.

One Confidential Assistant to a Commissioner. Effective February 29, 1984.

*Small Business Administration*

One Confidential Assistant to the Regional Administrator in New York, New York. Effective February 21, 1984.

One Special Assistant to the Administrator, Office of the Administrator. Effective February 21, 1984.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-8153 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

**Proposed Extension of a Form**

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice of Proposed Extension of BRI 49-233, "Continuance of Child's Eligibility to Receive Benefits".

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) this notice announces a proposed extension of a form which collects information from the public. The BRI 49-233, Continuance of Child's Eligibility to Receive Benefits, was developed by the Office of Personnel Management, Civil Service Retirement System (OPM/CSRS), to determine continued survivor annuity eligibility for dependent children between the ages of 18 and 22 years. The form is sent at the end of each school year to collect information regarding the student's marital status and immediate plans to continue in school on a fulltime basis. Upon receipt of this completed form, OPM/CSRS determines whether or not benefits should be continued. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

**DATES:** Comments on this proposal should be received on or before April 2, 1984.

**ADDRESSES:** Send or deliver comments to:

John P. Weld, Agency Clearance Officer,  
U.S. Office of Personnel Management,  
1900 E Street, NW., Washington, D.C.  
20415

and

Frank Reeder, Information Desk Officer,  
Office of Information and Regulatory  
Affairs, Office of Management and

Budget, Room 3235, Washington, D.C.  
20503

**FOR FURTHER INFORMATION CONTACT:**

James L. Bryson on (202) 632-5472.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-8152 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

**Proposed Information Collection for OMB Review**

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice of public information collection/recordkeeping requirements for OMB review and approval.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35, this notice announces a proposal to obtain OMB approval for the information collection/recordkeeping requirements of the Federal Employees Health Benefits Program. These requirements are contained in Title 41, Code of Federal Regulations, Chapter 16, which apply to the procurement policies and procedures for the administration of that program. For copies of this proposal call John Weld, Agency Clearance Officer, on (202) 632-7720.

**ADDRESSES:** Send or deliver comments on or before April 2, 1984.

John P. Weld, Agency Clearance Officer,  
U.S. Office of Personnel Management,  
1900 E Street, N.W., Washington, D.C.  
20415

and

Katie Lewin, Information Desk Officer,  
Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, Room 3235, Washington, D.C.  
20503

**FOR FURTHER INFORMATION CONTACT:**

Kevin Burns, on (202) 632-4670.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-8154 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

**PENSION BENEFIT GUARANTY CORPORATION**

**Exemption From the Bond/Escrow Requirement Relating To Sale of Assets by an Employer That Contributes to a Multiemployer Plan; the Kittinger Company**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of exemption.

**SUMMARY:** The Pension Benefit Guaranty Corporation has granted The Kittinger Company an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from this requirement was published on January 20, 1984 (49 FR 2567). The effect of this notice is to advise the public of the decision on the exemption request.

**ADDRESSES:** The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications & Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

**FOR FURTHER INFORMATION CONTACT:** James M. Graham, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-4860.

**SUPPLEMENTARY INFORMATION:****Background**

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purpose of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner

that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the *Federal Register*, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

#### Decision

On January 20, 1984 (49 FR 2567), the PBGC published a request from The Kittinger Company ("Kittinger") for an exemption from the requirement of ERISA section 4204(a)(1)(B). On December 15, 1983, pursuant to an asset purchase agreement with General Mills, Inc. ("General Mills"), Kittinger purchased substantially all of the assets of the Kittinger division of General Mills.

In connection with this sale, Kittinger has assumed the responsibilities of General Mills under a collective bargaining agreement with the United Furniture Workers of America, AFL-CIO, Local #39, which requires contributions to the United Furniture Workers Pension Funds A ("Fund"). General Mills' potential withdrawal liability to the Fund has been estimated to be \$200,000. The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is \$81,497 (the annual contributions required to be made by General Mills for the plan year preceding the sale).

Kittinger is a new corporation, and thus was unable to submit financial statements in compliance with PBGC regulation (29 CFR 2643.2(d)(7)). All of its common stock is held by a newly formed holding company, The Corporate Holding Company ("Holding Company"). Kittinger did submit *pro forma* unaudited financial statements for its own operations as of December 15, 1983 (net assets of about \$3 million) and for the Holding Company as of March 1, 1984 (net assets of \$40,000).

Kittinger stated that the request for an exemption should be granted on a *de minimis* basis. The average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred was \$5,401,840. Thus, the amount of the bond/escrow is about one and one-half percent of the amount of employer contributions. When the notice of pendency for this request was published, the PBGC indicated that it was considering granting the request for an exemption on a *de minimis* basis. No comments were received in response to the notice. The PBGC believes that

when, as in this request, the amount of the bond/escrow is very small in comparison to the total annual contributions to a plan, an exemption from the bond/escrow requirement would not significantly increase the risk of financial loss to the plan.

*Heinemann's, Inc., et al.* 48 FR 29638, June 27, 1983.

Therefore, based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that this request is *de minimis* in nature and thus an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purpose of Title IV of ERISA and would not significantly increase the risk of financial loss to the Fund. Accordingly, the PBGC hereby grants the request by Kittinger for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is made by the plan sponsor.

Issued at Washington, D.C. on this 16th day of March, 1984.

C. C. Tharp,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 84-8135 Filed 3-28-84; 8:45 am]

BILLING CODE 7708-01-M

#### Pendency of Request for Exemption From Bond Escrow Requirement Relating To Sale of Assets by an Employer That Contributes to a Multiemployer Plan; G. Heileman Brewing Company, Inc. (Lone Star Brewing Company)

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of pendency of request.

**SUMMARY:** This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from G. Heileman Brewing Company, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 as amended. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser

post a bond or deposit money in escrow for five plan years beginning after the sale. The PBGC is authorized to grant exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

**DATES:** Comments must be submitted on or before May 11, 1984.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller

shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Under ERISA section 4204(b)(2), the amount of the bond or escrow is doubled if the plan is in reorganization in the plan year in which the sale of assets occurs.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the contract-provision requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) or (C) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on procedures for variances for sales of assets (29 CFR 2643.3(a)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan. Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

#### The Request

The PBGC has received a request from G. Heileman Brewing Company, Inc. ("Heileman") to waive the bond/escrow requirement of ERISA section 4204(a)(1)(B). In the request, Heileman represents among other things, that:

1. Effective March 19, 1983, Heileman purchased the Lone Star Brewing Company ("Lone Star"), a wholly owned subsidiary of Pabst Brewing Company.

2. In connection with this sale, Heileman has assumed the responsibilities of Lone Star under a collective bargaining agreement with the International Association of Machinists

and Aerospace Workers, Local 36, which requires contributions to the I.A.M. National Pension Fund, Benefit Plan A (the "Fund").

3. The estimated amount of Lone Star's withdrawal liability to the Fund is \$529,562. The estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is \$209,238 (the average annual contributions that Lone Star made to the Fund for the three plan years preceding the plan year in which the sale occurred).

4. In the purchase agreement, Lone Star agreed that, if the purchaser withdraws within the five year period commencing with the first plan year beginning after the date of the sale and fails to pay withdrawal liability, Lone Star would be secondarily liable for any withdrawal liability it would have had to the Fund but for the operation of ERISA section 4204.

5. According to its audited consolidated financial statements, Heileman had total net assets for its fiscal year ended December 31, 1982 of approximately \$194 million. Heileman's average net income after taxes for its three fiscal years preceding the sale was \$40.2 million.

6. Heileman has sent a copy of this request to the Fund and the collective bargaining representative of Lone Star's former employees by certified mail, return receipt requested.

#### Comments

All interested persons are invited to submit written comments on the pending exemption to the above address, by May 11, 1984. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C. on this 16th day of March, 1984.

C. C. Tharp,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 84-8134 Filed 3-26-84; 8:45 am]

BILLING CODE 7708-01-M

#### Pendency of Request for an Exemption From the Bond Escrow Requirement Relating to a Sale of Assets by an Employer That Contributes To a Multiemployer Plan; Rock-Tenn Company

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of pendency of request.

**SUMMARY:** This notice advises interested persons that the Pension Benefit

Guaranty Corporation has received a request from Rock-Tenn Company for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. Section 4204 (a)(1) provides that the sale of assets by an employer that contributes to a multi-employer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for a five plan year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

**DATES:** Comments must be submitted on or before May 11, 1984.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (811), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (811), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number.]

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (ERISA), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period

of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204. The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into the normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on procedures for variances for sales of assets (29 CFR 2643.3(a)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

- (1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and
- (2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the *Federal Register*, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

### The Request

The PBGC has received a request from the Rock-Tenn Company ("Rock-Tenn") to waive the bond/escrow requirement of ERISA section 4204(c)(1)(B). In the request, Rock-Tenn represents, among other things, that:

1. On August 1, 1983, Rock-Tenn purchased the assets of the Partition/Mill Division and Dallas Folding Carton Plant of the Clevepak Corporation ("Clevepak").

2. In connection with the sale, Rock-Tenn has assumed the responsibilities of Clevepak under collective bargaining agreements with the following unions: (a) United Paperworkers International Union, AFL-CIO and Local Union No. 826; (b) United Paperworkers International Union, AFL-CIO and Local Union No. 1106; (c) United Paperworkers International Union, AFL-CIO and Philadelphia Local Union No. 286; (d) United Paperworkers International Union, AFL-CIO and Local Union No. 200; and (e) United Paperworkers International Union, AFL-CIO and Greater Milwaukee Local No. 200. These agreements require contributions to the Paper Industry Union-Management Pension Fund ("Fund"). The Fund has computed Clevepak's potential withdrawal liability to be \$0. Clevepak is continuing to contribute to the Fund for operations other than those subject to this sale of assets. [The PBGC takes no position as to whether there has been or will be complete or partial withdrawal with respect to the Fund as a result of the sale of assets described in this notice.]

3. The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is \$138,200 (the annual contribution required to be made by Clevepak for the three plan years preceding the sale).

4. In the sale contract, Clevepak agreed that, if the purchaser withdraws and fails to pay withdrawal liability within five years of the date of the sale, Clevepak would be secondarily liable for any withdrawal liability it would have had to the Fund but for the operation of ERISA section 4204.

5. In accordance with PBGC regulation (29 CFR 2643.2(d)(7)), copies of Rock-Tenn's unaudited financial statements for its fiscal years 1980, 1981 and 1982 were submitted as part of the application. However, Rock-Tenn has asserted that the financial information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

6. Rock-Tenn stated that the request for an exemption should be granted on a *de minimis* basis. Based on information

provided by the Fund, the average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred were \$23,937,019. Thus, the amount of the bond/escrow is about six-tenths of one percent of the amount of employer contributions. The PBGC is considering granting this request on a *de minimis* basis.

7. A copy of this request has been sent by Rock-Tenn to the Fund and the collective bargaining representatives of Clevepak's former employees, by certified mail return receipt requested.

### Comment

All interested persons are invited to submit written comments on the pending request for exemption to the above address, on or before May 11, 1984. All comments will be made a part of the record. Comments received, as well as the relevant information submitted in support of the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 16th day of March 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-8133 Filed 3-26-84; 8:45 am]

BILLING CODE 7708-01-M

## SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0034]

### Basic Capital Corporation; License Surrender

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies [13 CFR 107.105 (1983)], Basic Capital Corporation, 32 West 39th Street, New York, New York 10018, incorporated under the laws of the State of New York, has surrendered its License No. 02/02-0034, issued by the SBA on December 2, 1960.

Basic Capital Corporation has complied with all conditions set forth by SBA for surrender of its license, therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Basic Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 84-8230 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0179]

**Funds, Inc.; Issuance of a Small Business Investment Company License**

On September 26, 1983, a notice was published in the *Federal Register* (48 FR 43754) stating that an application has been filed by Funds, Inc., 1930 George Street, Melrose Park, Illinois 60160, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business October 11, 1983, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA Issued License No. 05/05-0179 on February 28, 1984, to Funds, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 84-8231 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0145]

**Mountain Ventures, Inc.; Filing of Application for Approval of Conflict of Interest Transaction**

Notice is hereby given that Mountain Ventures, Inc. (MVI), 911 North Main Street, P.O. Box 628, London, Kentucky 40741, a Federal Licensee under the Small Business Investment Act of 1958 (Act), as amended, has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the Rules and Regulations, governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction falling within the scope of

the above Section of the Act and Regulations.

Subject to such approval, MVI proposes to invest \$270,000 in Medical Management Corp. (MMC), Highway 27, Whitley City, Kentucky 42653, to increase its working capital.

The proposed financing is brought within the purview of Section 107.903 of the SBA Regulations since an associated company, Newventures Capital Corporation (NCC), is currently providing short-term financing to MCC. As such, NCC does not qualify as an Associate lending institution.

Notice is hereby given that any interested person may, not later than ten (10) 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, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 84-8229 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0438]

**New Publication Fund; License Surrender**

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies [13 CFR 107.105 (1983)], New Publication Fund, 350 East 81st Street, New York, New York 10028, incorporated under the laws of the State of New York, has surrendered its License No. 02/02-0438, issued by the SBA on October 26, 1982.

New Publication Fund has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of New Publication Fund is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 84-8226 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #615000]

**Texas; Designation of Disaster Loan Area**

Brooks and Matagorda Counties in the State of Texas constitute a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on December 20, 1984, at the address listed below:

U.S. Small Business Administration,  
2525 Murworth, Suite 112, Houston,  
Texas 77054

U.S. Small Business Administration, 222  
E Van Buren, Suite 500, Harlingen,  
Texas 78550

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 1984.

**Marshall Parker,**

*Acting Administrator.*

[FR Doc. 84-8227 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

**DEPARTMENT OF THE TREASURY**

**Public Information Collection Requirements Submitted to OMB for Review**

March 20, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

**Internal Revenue Service**

OMB Number: 1545-0491

Form Number: IRS Forms 6243/6013

**Type of Review:** Revision

**Title:** SBW Information Card/SBW Evaluation Questionnaire

**OMB Number:** 1545-0197

**Form Number:** Forms 5300, Schedule T and 5301

**Type of Review:** Revision

**Title:** Application for Determination for Defined Benefit Plan, Supp. Application for Approval of Employee Benefit Plans Under TEFRA, Application for Determination for Defined Contribution Plan

**OMB Number:** 1545-0028

**Form Number:** Forms 940 and 940PR

**Type of Review:** Revision

**Title:** Employer's Annual Federal Unemployment Tax (FUTA) Return

**OMB Number:** 1545-0035

**Form Number:** Forms 943, 943PR, 943A, 943A-PR

**Type of Review:** Revision

**Title:** Employer's Annual Tax Return for Agricultural Employees

**OMB Reviewer:** Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

**U.S. Customs Service**

**OMB Number:** 1515-0029

**Form Number:** Customs Form 7573

**Type of Review:** Revision

**Title:** Drawback Entry for Exported Articles

**OMB Reviewer:** Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Gary Kowalczyk,

*Departmental Reports, Management Office.*

[FR Doc. 84-8132 Filed 3-26-84; 8:45 am]

**BILLING CODE** 4810-25-M

**Customs Service**

**Application for Recordation of Trade Name: "The Drackett Company"**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE DRACKETT COMPANY" used by the Drackett Company, a corporation organized under the laws of the State of Delaware, located at 5020 Spring Avenue, Cincinnati, Ohio 45232.

The application states that the trade name is used in connection with the following merchandise manufactured in the United States: household care products, including preparations for windows, floors, tile, etc.; furniture and furniture polishes; drain cleaners; air deodorants and disinfectants, etc.; mops and brooms.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

**DATE:** Comments must be received on or before May 29, 1984.

**ADDRESS:** Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (201-566-5765).

Dated: March 19, 1984.

Edward T. Rosse,

*Acting Director, Entry Procedures and Penalties Division.*

[FR Doc. 84-8168 Filed 3-26-84; 8:45 am]

**BILLING CODE** 4820-02-M

**Application for Recordation of Trade Name: "Westwood Pharmaceuticals Inc."**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 4, 1946, as amended (15 U.S.C. 1124), of the trade name "WESTWOOD PHARMACEUTICALS INC.," a corporation organized under the laws of the State of Delaware, located at 488 Dewitt Street, Buffalo, New York 14213.

The application states that the trade name is used in connection with a wide range of dermatological products manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation

of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

**DATE:** Comments must be received on or before May 29, 1984.

**ADDRESS:** Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: March 19, 1984.

Edward T. Rosse,

*Acting Director, Entry Procedures and Penalties Division.*

[FR Doc. 84-8167 Filed 3-26-84; 8:45 am]

**BILLING CODE** 4820-02-M

**Application for Recordation of Trade Name: "Zimmer, Inc."**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ZIMMER, INC." used by Zimmer, Inc., a corporation organized under the laws of the State of Delaware, located in Warsaw, Indiana 46580.

The application states that the trade name is used in connection with the marketing of orthopaedic, surgical, patient-care and hospital products manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

**DATE:** Comments must be received on or before May 29, 1984.

**ADDRESS:** Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:**

Harriet Lane, Entry, Licensing and  
Restricted Merchandise Branch, U.S.  
Customs Service, 1301 Constitution  
Avenue, NW., Washington, D.C. 20229  
(202-566-5765).

Dated: March 19, 1984.

**Edward T. Rosse,**

*Acting Director, Entry Procedures and  
Penalties Division.*

[FR Doc. 84-8169 Filed 3-26-84; 8:45 am]

**BILLING CODE 4820-02-M**

# Sunshine Act Meetings

Federal Register

Vol. 49, No. 60

Tuesday, March 27, 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).

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### 1

#### FEDERAL COMMUNICATIONS COMMISSION

March 22, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, March 29, 1984 following the Open Meeting, which is scheduled to commence at 2:00 P.M. in Room 856, at 1919 M Street, N.W. Washington, D.C.

##### Agenda, Item No., and Subject

- Hearing—1—Applications for Review of rulings dismissing an application and approving settlement agreements in the Yucca Valley, California, comparative FM proceeding (Docket Nos. 82-135 et. al.).
- Hearing—2—Petition for Reconsideration in the Ventura, California FM proceeding (Docket Nos. 80-366, 80-367 and 80-369).

These items are closed to the public because they concern Adjudicatory Matters (See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants  
 Managing Director and members of his staff  
 General Counsel and members of his staff  
 Chief, Office of Public Affairs and members of his staff

Action by the Commission March 21, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider these items in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally

Lawrence, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico,

Federal Communications Commission.

[FR Doc. 84-8326 Filed 3-23-84; 4:10 pm]

BILLING CODE 6712-01-M

### 2

#### FEDERAL COMMUNICATIONS COMMISSION

March 22, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 29, 1984, which is scheduled to commence at 2:00 P.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

##### Agenda, Item No., and Subject

Private Radio—1—Title: Report and Order concerning aeronautical advisory station rules in the Aviation Services. Summary: The FCC will consider whether to amend rule Part 87 (Aviation Services) to remove the one aeronautical advisory station (unicom) per airport limitation at airports with control towers. The FCC will also consider whether to modify the rules concerning the frequencies available for assignment at airports which do not have control towers.

Private Radio—2—Title: Order in the Matter of Petition for Reconsideration of Specialized Mobile Radio System licensee Texas Two-Way, Inc. seeking reconsideration of the Commission's decision in *Texas Two-Way, Inc.*, FCC 83-472 (released October 26, 1983). Summary: The Commission will consider Texas Two-Way's argument that the Commission's *Memorandum Opinion and Order*, PR Docket No. 79-191, et al., 48 FR 51917 (November 15, 1983), requires reconsideration of the denial of Texas Two-Way's Application for Review.

Audio—1—Title: The acceptability for filing of applications by E. Kaye Johnson for new commercial FM translator stations, in view of the requirement of express written retransmission consent pursuant to Section 325(a) of the Communications Act and Section I, Question 4(b) of FCC Form 346. Summary: The Commission will consider whether the applications contain sufficient express written retransmission consent and are technically feasible, and thus are acceptable for filing.

Audio—2—Title: Application for Review filed by Anthony R. Martin-Trigona and New Haven Radio, Inc., jointly and severally, of the application of Daniel Meister, Esq., Trustee in Bankruptcy, for consent to the involuntary assignment of the license of WNHC(AM), New Haven, Connecticut. Summary: The Commission considers an

application for review filed by Anthony R. Martin-Trigona and New Haven Radio, Inc. Audio—3—Title: Petition for Extraordinary Relief by West Coast Media, Inc., KIFM, San Diego, California. Summary: The Commission will consider the petition for Extraordinary Relief by West Coast Media, Inc., to permit "distress sale" of KIFM, San Diego, California, or, alternatively, interim operation.

Policy—1—Title: Application for Review filed by Stone Communications, Inc. seeking review of an FM rule making action. Summary: The Commission will consider an Application for Review of an action assigning Class C FM Channel 293 for Brewer, Maine, and denying the request for modification of Station WGUY-FM to specify the new channel.

Policy—2—Title: Mass Media Docket No. 82-441 relating to subscription television authorization for noncommercial educational television station licensees. Summary: The Commission will consider whether to authorize noncommercial educational television station licensees to transmit programming on a subscription basis.

Policy—3—Title: Amendment of Parts 2 and 73 of the Commission's Rules Concerning use of Subsidiary Communications Authorizations. Summary: The Commission will consider a recommendation by the Mass Media Bureau concerning maximum peak modulation levels for FM broadcast.

Policy—4—Title: Amendment of Part 76, Subpart J, of the Commission's Rules and Regulations Relative to Cable Television System's; and Postponement of Divestiture Requirement of 76.501 Relative to Prohibited Cross-Ownership in Existence on or before July 1, 1970. (Docket 20423). Summary: The Commission will consider whether to require divestiture of all commonly-owned, co-located cable/broadcast combinations which were in existence on or before July 1, 1970.

Policy—5—Title: Reexamination of the Commission's Rules and Policies regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities. (Dockets Nos. M 83-46, 20521, 20548, BC 78-239; RMs 3653, 3695, 4045.) Summary: The Commission considers a variety of modifications to its ownership attribution rules, including the establishment of a new benchmark at which to consider a stock interest as an ownership interest, the continuation of its use of separate benchmarks depending on the size of the licensee or the nature of the investor, the attribution of various kinds of nonvoting interests, the correct attribution to ultimate owners in vertical chains of ownership, the treatment of officers and directors of parent and sister corporations of licensee, and the reporting of the ownership of a licensee to the Commission.

Policy—6—Title: Amendments of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization. Summary: The Commission will consider Petitions for Reconsideration of the *First Report and Order* in BC Docket No. 82-536, FM subchannels.

Policy—7—Title: The use of subcarrier frequencies in the aural baseband of television transmitters. Summary: The Commission will consider whether to allow expanded use of subcarriers in the aural portion of television signals. Uses could include, for example, stereophonic aural programming, a second language channel, paging, or most any other ancillary purpose.

Enforcement—1—Title: Application for Review of a Bureau ruling denying a Fairness Doctrine complaint, filed by Brent Buell, et al. Summary: The Mass Media Bureau found that complainants failed to establish a prima facie fairness complaint. The Commission will consider whether this finding is correct.

Enforcement—2—Title: Application for Review of a Bureau ruling denying a Fairness Doctrine complaint, filed by the Yes to Stop Callaway Committee. Summary: The Mass Media Bureau found that television station KTVI was not unreasonable in concluding that the need for the Callaway nuclear plant was not a current controversial issue of public importance. The Commission will consider whether this finding is correct.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico

Secretary, Federal Communications Commission.

[FR Doc. 84-8327 Filed 3-23-84; 4:10 pm]

BILLING CODE 6712-01-M

### 3

#### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 21, 1984.

**TIME AND DATE:** 2:00 p.m., Monday, March 26, 1984.

**PLACE:** Room 600, 1730 K Street NW., Washington, D.C.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will continue with a previously announced meeting and discuss the following:

1. Secretary of Labor, MSHA v. Carbon County Coal Company, Docket No. WEST 82-106.

It was determined by a unanimous vote of Commissioners that the meeting described above be continued and that no earlier

announcement of the continuation was possible. 5 U.S.C. § 552b(e)(1).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-8245 Filed 3-23-84; 10:48 am]

BILLING CODE 6735-01-M

### 4

#### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 21, 1984.

**TIME AND DATE:** 10:00 a.m., Wednesday, March 28, 1984.

**PLACE:** Room 600, 1730 K Street, NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Bobby Holt v. Southern Stone Co., Docket No. Se 83-49-DM; Petition for Discretionary Review. (Issues include whether the administrative law judge erred in concluding that the operator did not discriminate against the miner and in dismissing the miner's discrimination complaint.)

2. Richard Bjes v. Consolidation Coal Company, Docket No. Penn 82-26-D. (Issues include whether the administrative law judge erred in concluding that the operator discriminated against the miner in violation of Section 105(c) of the Mine Act.)

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-8246 Filed 3-23-84 10:48 am]

BILLING CODE 6735-05-M

### 5

#### THE FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 10:00 a.m., Monday, April 2, 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 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8325 Filed 3-23-84; 4:00 pm]

BILLING CODE 6210-01-M

### 6

#### INTERNATIONAL TRADE COMMISSION

**TIME AND DATE:** 10:00 a.m., Monday, April 2, 1984.

**PLACE:** Room 117, 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 731-TA-134 and -135 (Color Television Receivers from the Republic of Korea and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,  
Secretary.

[FR Doc. 84-8313 Filed 3-23-84; 3:05 pm]

BILLING CODE 7020-02-M

### 7

#### INTERNATIONAL TRADE COMMISSION

**TIME AND DATE:** 2:30 p.m., Thursday, April 5, 1984.

**PLACE:** Room 117, 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Presentation of service awards.
2. Petitions and complaints:
  - a. Optical waveguide fibers (Docket No. 1036).
3. Investigation 731-TA-136 (Cyanuric Acid and Its Chlorinated Derivatives from Japan)—briefing and vote.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth K. Mason,  
Secretary.

[FR Doc. 84-8314 Filed 3-23-84; 3:05 pm]

BILLING CODE 7020-02-M

### 8

#### NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-11]

**TIME AND DATE:** 9 a.m., Tuesday, April 3, 1984.

**PLACE:** NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. *Safety Study* on the General Deterrence Approach to Drunk Driving.

2. *Highway Accident Report*—Valley Supply Company Truck Towing Farm Plows/Anchor Motor Freight, Inc., Car Carrier Truck/N.Y. Association for Retarded Children Bus Collisions and Fire, State Route 8, near Holmesville, New York, April 5, 1983.

3. *Highway Accident Report*—Samuel Coralozzo Company, Inc., Tractor Cargo Tank Semitrailer, Mechanical Failure, Overturn, and Fire, Interstate 76, Philadelphia, Pennsylvania, October 7, 1983.

4. *Recommendations* to the Federal Highway Administration and Mack Trucks, Inc., concerning failure of commercial vehicle suspension components.

5. *Recommendations* to the Boston Gas Company, the American Gas Association, and the American Public Gas Association concerning natural gas overpressure and fire in East Boston, Massachusetts, September 23, 1983.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,  
*Federal Register Liaison Officer.*

March 23, 1984.

[FR Doc. 84-8275 Filed 3-23-84; 12:53 pm]

**BILLING CODE 4910-59-M**

9

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, April 12, 1984.

**PLACE:** Suite 316, 1825 K Street, NW., Washington, D.C.

**STATUS:** Because of the subject matter, it is likely that this meeting will be closed.

**MATTERS TO BE CONSIDERED:** Discussion of specific cases in the Commission adjudicative process.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Earl R. Ohman, Jr. (202) 634-4015.

Dated: March 23, 1984.

Earl R. Ohman, Jr.,  
*Acting General Counsel.*

[FR Doc. 84-8283 Filed 3-23-84; 8:45 am]

**BILLING CODE 7600-01-M**

10

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, April 19, 1984.

**PLACE:** Suite 316, 1825 K Street, NW., Washington, D.C.

**STATUS:** Because of the subject matter, it is likely that this meeting will be closed.

**MATTERS TO BE CONSIDERED:** Discussion of specific cases in the Commission adjudicative process.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Earl R. Ohman, Jr. (202) 634-4015.

Dated: March 23, 1984

Earl R. Ohman, Jr.,  
*Acting General Counsel.*

[FR Doc. 84-8282 Filed 3-23-84; 2:40 pm]

**BILLING CODE 7600-01-M**

11

**PAROLE COMMISSION**

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters.)

**TIME AND DATE:** 2:00 p.m., Thursday, April 5, 1984.

**PLACE:** Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Referrals from Regional Commissioners of approximately 3 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

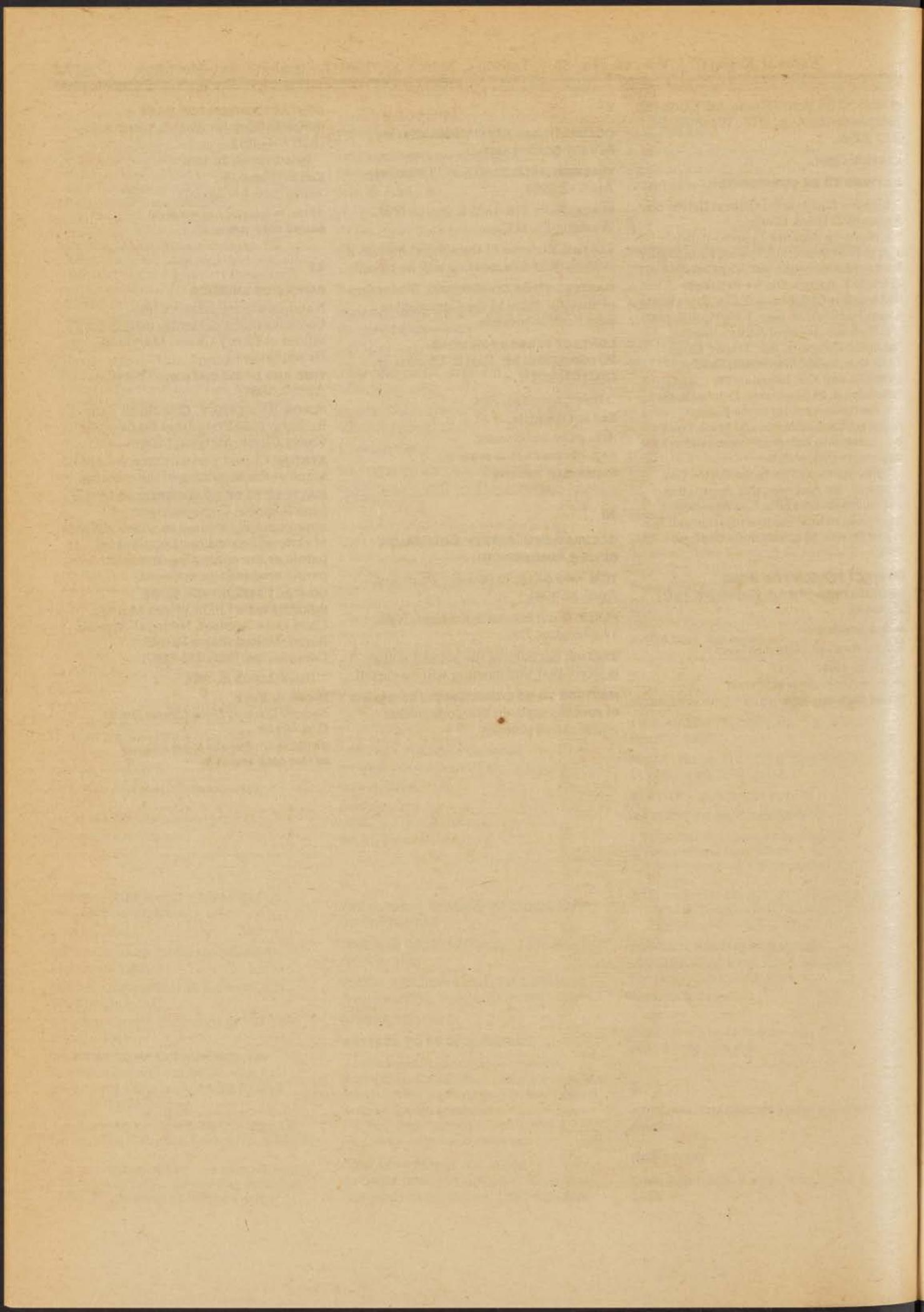
**CONTACT PERSON FOR MORE INFORMATION:** Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5987.

Dated: March 22, 1984.

Joseph A. Barry,  
*General Counsel, United States Parole Commission.*

[FR Doc. 84-8315 Filed 3-23-84; 3:06 p.m.]

**BILLING CODE 4410-01-M**



# **Federal Register**

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Tuesday  
March 27, 1984

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**Part II**

## **Environmental Protection Agency**

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**Review of Standards of Performance for  
New Stationary Sources; Grain Elevators**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-2517-3]

#### Review of Standards of Performance for New Stationary Sources; Grain Elevators

**AGENCY:** Environmental Protection Agency.

**ACTION:** Review of Standards.

**SUMMARY:** The existing standards of performance to control emissions of particulate matter from grain elevators have been reviewed under the Clean Air Act. This review indicates that no revision to the standards is necessary.

**DATES:** *Comments.* Comments must be received on or before May 29, 1984.

**ADDRESSES:** *Comments.* Send comments (in duplicate if possible) to the Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. A-83-14.

*Review Document.* The review document, which summarizes information gathered during the review, may be obtained from the EPA Library (MD-35), Research Triangle Park, North Carolina, 27711, telephone number (919) 541-2777. Please refer to "Review of Standards of Performance for Grain Elevator Industry, EPA-450/3-84-001," January 1984.

*Docket.* Information used in reviewing the standards is contained in Docket No. A-83-14. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

#### FOR FURTHER INFORMATION CONTACT:

For further information on policy questions contact: Mr. Robert Ajax, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Telephone: (919) 541-5624.

For further information on technical questions contact: Mr. James U. Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Telephone: (919) 541-5601

#### SUPPLEMENTARY INFORMATION:

#### Background

In January 1977, (42 FR 2842) standards of performance were proposed, under Section 111 of the Clean Air Act, to control emissions of particulate matter from grain elevators. The standards were promulgated on August 3, 1978 (43 FR 34340).

The Clean Air Act requires that standards of performance be reviewed every 4 years. The principal objectives of the review are to determine, (a) if the new source performance standards (NSPS) are being achieved based upon performance tests, (b) if there are new or improved emission control systems available which are capable of achieving additional emission reduction, (c) if there are unusual operating problems with emission control systems or problems in conducting performance tests, and (d) the capital and annualized costs of operating emission control systems. The review has been completed, draft copies of the findings were distributed to government, environmental, and industry representatives and discussed at the April 26, 1983, meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC).

The NSPS apply only to new, modified, or reconstructed grain elevators with a permanent storage capacity of more than 88,100 cubic meters (m<sup>3</sup>) or 2.5 million bushels. Country elevators with smaller capacities are exempted specifically via Section 111(j) of the Clean Air Act, as amended in 1977. The standards also apply to new, modified, or reconstructed grain storage elevators at wheat mills, flour mills, wet corn mills, dry corn mills (human consumption), rice mills, and soybean extraction plants with a permanent grain storage capacity of more than 35,200 m<sup>3</sup> or 1.0 million bushels.

The standards limit particulate matter emissions from 10 types of affected facilities at grain elevators by limiting the visibility of emissions released to the atmosphere at the affected facilities and the concentration of particulate matter exhausted from the emission control devices. The affected facilities are each truck loading station, truck unloading station, railcar loading station, railcar unloading station, barge or ship loading station, barge or ship unloading station, grain dryer, and all grain handling operations.

The standards can be summarized as follows:

(a) Truck loading station—visible emissions may not exceed 10 percent opacity.

(b) Truck unloading station, railcar loading station, and railcar unloading station—visible emissions may not exceed 5 percent opacity.

(c) Ship or barge loading station—visible emissions may not exceed 20 percent opacity.

(d) Ship or barge unloading station—specified equipment or its equivalent must be used.

(e) Grain dryer—specified equipment must be used, or visible emissions may not exceed 0 percent opacity.

(f) All grain handling operations—visible emissions may not exceed 0 percent opacity.

(g) Emission control devices—visible emissions may not exceed 0 percent opacity; and the concentration of particulate matter in the exhaust gas discharged to the atmosphere may not exceed 0.023 g/dscm (0.01 gr/dscf).

#### Findings

##### *Overview of the Grain Elevator Industry*

The grain elevator industry consists of about 15,000 existing facilities, widely dispersed throughout the United States, with the majority located in the grain belt States. Grain elevator storage capacity can range from a few hundred thousand bushels for small country elevators to several million bushels for large terminals. Grain elevators will handle many times more grain on an annual basis than their storage capacity, and the industry prefers to be known as "grain handling facilities" rather than grain elevators.

Growth of grain production is unclear at this time because of world market uncertainties, surplus supplies, and governmental policies. However, it is anticipated that some new and modified grain elevator facilities will be constructed over the next 5 years and be subject to the NSPS.

##### *Particulate Matter and Emissions Control Technology*

Grain elevators are significant sources of particulate matter if good capture and control devices are not used. Particulate matter (PM) emissions are generated at all points where grain is handled. However, most modern grain handling facilities have installed enclosed grain handling equipment (e.g., elevator legs) and enclosed conveyor systems (at least all transfer points) and use baghouses exclusively as the control devices. All NSPS facilities are in compliance with the current standard and PM emissions are reduced substantially. For example, a typical facility that handles 80 million bushels of grain per year and has 5 million bushels of storage capacity

would emit about 2600 tons of PM per year without NSPS controls. If the plant were to meet the NSPS, emissions of PM would be reduced by about 96 percent or to about 100 tons of PM per year.

The EPA Regional offices, State and local air pollution control agencies, and industry representatives were contacted to determine the number and location of new, modified, or reconstructed facilities subject to the existing NSPS. Available test data and information from State and local air pollution control agencies and industry representatives regarding all facets of the existing standards were solicited. During the review, six grain elevators were located that were subject to the existing standards. Each of these grain elevators was visited and found to be in compliance with the existing standards. Additionally, 12 other well-controlled grain elevators were visited to obtain information on control technology and costs.

Based on the data and information gathered during these visits, no significant problems associated with the existing standards of performance were identified. The emission control technology and its performance remain essentially the same as that analyzed during the original investigations to develop the existing standards. No demonstrated particulate control technology was found which was more effective than fugitive emissions capture and ventilation to baghouses. As expected, the costs of emission control have increased somewhat in response to inflation; however, they remain quite reasonable. The average cost effectiveness of emission control, for example, ranges from a low of about \$90 per ton of PM for the standard limiting emissions from grain dryers to a high of about \$870 per ton for the standard limiting emissions from ship loading. The plant average cost-effectiveness of \$500 per ton of PM removed.

Based on this review, no revisions to the existing standards of performance are considered appropriate. However, in the course of the reviews, various operating practices were observed and various questions raised which deserve comment or clarification of the existing standards. Each of these aspects is discussed below.

#### *Truck Unloading*

The existing standard for truck unloading is based on a shed that has doors that can be closed before unloading the truck. This system was found to still be the best demonstrated system of emission reduction. During visits to some new truck unloading facilities not subject to the standard, the

EPA observed that those facilities that were open on each end did not reduce emissions to the level of the NSPS opacity standard. Only those truck unloading facilities with doors closed on one end of the truck unloading station were able to reduce opacity to the level of the standard.

#### *Barge or Ship Loading*

Compliance with the NSPS opacity standard for barge and ship loading was of some concern to the National Grain and Feed Association. In fact, the Association commented that the barge and ship loading opacity standard should be eased.

During loading, two types of pouring spouts can be used. One type is the standard telescoping spout. The spout can direct the grain into a ship's hold while the hold is covered with canvas. Another approach is to maintain the telescoping spout at a location within a few inches of the grain surface. This involves another telescoping pouring spout which uses a choke or controlled feeder on the end of the spout. Many loading spouts have aspiration at the end of the spout that captures the dust and directs it to a baghouse. These two systems were found to still be the best control techniques for capture and collection of particulate emissions.

All of these systems can comply with the NSPS opacity standard for barge and ship loading; however, they do require very careful and skillful operation of the loading spouts by the operators. The highest emissions during loading come during "topping off" or filling about the last 25 percent of the ship's hold, especially when tarps have to be removed so the operators can be sure the hold is completely filled, the grain is level, and the ship is balanced. Even under these conditions, however, careful operation of the loading spout will ensure compliance with the NSPS opacity limit of 20 percent. Observations during the review did not indicate a need to change the NSPS.

#### *Dryers*

During the review, the EPA found that one dryer manufacturer is using a woven wire screen with rectangular openings of 0.0486 inch by 0.5 inch to control emissions from the dryer rather than the mesh screen and perforated plates with circular openings that were in widespread use when the NSPS was developed. Observations by air pollution control enforcement personnel associated with the State of North Dakota indicate that this system can comply with the NSPS opacity limit for dryers. Consequently, there is no need to change the existing equipment

standard to accommodate this type of woven wire screen.

#### *Fugitive Emission Opacity Observations*

Observing the opacity of fugitive emissions is sometimes difficult. EPA Reference Method 9 should be used by having the observer positioned so that he or she has a clear view of the emission source and the potential fugitive emissions, with the sun or other light source at the observer's back. The observer's position should be at least 15 feet from the source of emissions. The line of sight should be approximately perpendicular to the general flow of the potential fugitive emissions and readings of opacity should be made at the point of highest opacity. The development of the existing NSPS was based on the use of these techniques and, therefore, remains consistent with Method 9.

#### *Modifications*

Some confusion apparently exists concerning how the addition of storage capacity to an existing facility should be considered. Storage capacity determines only whether the NSPS potentially applies to some portion of a grain elevator. It does not determine whether any individual grain handling operation, such as a dryer or a ship loading station, has been modified. To be subject to the NSPS as a modified facility, an existing grain handling operation must be altered or changed in some manner which results in an increase in emissions. However, this alteration or change would exclude production increases, if accomplished without by capital expenditures as defined in the General Provisions of Part 60 of the Code of Federal Regulations which apply to all NSPS. Consequently, the addition of storage capacity to an existing grain elevator in the absence of any other alteration or change is not considered a modification of any of the individual existing grain handling operations at the elevator. However, if a grain storage elevator (mill) with 800,000 bushels of existing storage capacity adds another 800,000 bushels of new storage capacity and also adds associated new grain handling equipment, then the new grain handling equipment associated with the 800,000 bushels of new storage capacity would be subject to the standard. Any existing, unchanged grain handling equipment at the mill would not be covered by the standard.

#### *Applicability Definition*

Some confusion also apparently exists concerning the applicability of the NSPS to grain storage plants. For example, one

company questioned the applicability of the NSPS to a case in which the company constructed a large storage building to hold several million bushels of grain. The grain is unloaded and loaded from this plant and no other handling (screening, drying, etc.) is done to the grain. The individual loading, unloading, and grain handling operations at this plant would be subject to the NSPS, provided the permanent storage capacity is greater than 88,100 m<sup>3</sup> (2.5 million bushels), because the plant would still be considered a grain elevator.

#### *Risks of Explosions*

Many persons who commented on the proposed standards in 1978 were concerned about the safety aspects of enclosing grain handling areas and the possible increased risk of dust explosions at grain elevators resulting from the addition of control devices. Following some large grain elevator explosions in 1977, industry, labor, and government increased their explosion prevention efforts. One of these efforts, initiated by the Occupational Safety and Health Administration (OSHA), the Department of Agriculture, and the National Institute of Occupational Safety and Health (NIOSH), was a request for the National Academy of Sciences National Materials Advisory Board to establish a panel to study the grain-handling industry and to recommend measures to reduce explosion hazards. The panel included

grain elevator and safety experts from the academic community, grain elevator owners and operators, contractors who construct elevators, vendors, insurance underwriters, government personnel, and other safety experts.

In 1982, the panel released their report, "Prevention of Grain Elevator and Mill Explosions." In this report, one of the top priorities for safe operation of grain elevators or mills is to remove the dust being generated during grain handling to keep it from being in a confined area or collecting on surfaces of equipment, floors, or walls. To accomplish this, the panel recommended that all dust generator systems be enclosed or hooded, and aspirated to a control device. This is consistent with the existing NSPS.

#### *Small Elevators*

Some commentators on the standards proposed in 1977 erroneously believed that the NSPS covers small country elevators as well as large grain elevators. Consistent with the 1977 Clean Air Amendments, the NSPS applied only to grain storage elevators (mills) of one million bushels of storage capacity or greater, and grain handling elevators of 2.5 million bushels of storage capacity or greater. Small country elevators are not covered by the NSPS.

#### *Reporting and Record Keeping Requirements*

Two types of reporting are associated with the existing standard. First, there are notification requirements, which enable EPA to keep abreast of facilities that are or would be subject to the standards. Second, there is reporting of the results of performance tests that have been or will be conducted to determine compliance with the standards. These reports are required by the General Provisions of 40 CFR Part 60, which apply to all NSPS. No changes in the existing reporting and record keeping requirements are being proposed.

#### **List of Subjects in 40 CFR Part 60**

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metal, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: March 16, 1984.

William D. Ruckelshaus,  
Administrator.

[FR Doc. 84-7826 Filed 3-26-84; 8:45 am]

BILLING CODE 6560-50-M

# **federal register**

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Tuesday  
March 27, 1984

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**Part III**

## **Department of Energy**

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**Federal Energy Regulatory Commission  
Determinations by Jurisdictional Agencies  
Under the Natural Gas Policy Act of  
1978; Notices**

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1088]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 20, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd., Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease  
 102-2: New well (2.5 Mile rule)  
 102-3: New well (1000 Ft rule)  
 102-4: New onshore reservoir  
 102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper  
 107-GB: Geopressed brine  
 107-CS: Coal Seams  
 107-DV: Devonian Shale  
 107-PE: Production enhancement  
 107-TF: New tight formation  
 107-RT: Recompletion tight formation

Section 108: Stripper well  
 108-SA: Seasonally affected  
 108-ER: Enhanced recovery  
 108-PB: Pressure buildup

Kenneth F. Plumb,  
 Secretary.

NOTICE OF DETERMINATIONS  
 ISSUED MARCH 20, 1984

VOLUME 1088

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-KEystone ENERGY OIL & GAS PRODUCTIO RECEIVED: 02/24/84 JA: NY									
8422525	7139	3100918487	103	107-TF	C	GARDINER #3	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422529	7129	3100918466	103	107-TF	TF	GARDINER #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422506	7155	3100918637	103	107-TF	MOENCH/TANNING	#1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422527	7135	3100918425	103	107-TF	RAYMOND HILL	#1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422528	7133	3100918467	103	107-TF	RONALD PRIEST	#1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422530	7131	3100918485	103	107-TF	WM JARRETT	#1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422526	7137	3100918484	103	107-TF	WM JARRETT	#2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
-LENAPE RESOURCES CORP RECEIVED: 02/24/84 JA: NY									
8422521	5623	3112117613	108	A J DRIES	#1	LRC #136	LEICESTER	9.0	ELIZABETHTOWN GAS
8422522	5624	3112117617	108	A J DRIES	UNIT #1	LRC #135	WILDCAT	15.7	ELIZABETHTOWN GAS
8422517	5697	3112113998	108	B GASTON	#1	LRC #28	LEICESTER	4.4	ELIZABETHTOWN GAS
8422503	5636	3105117300	108	B S DONNAM	#1	LRC #97	CALEDONIA	18.8	ELIZABETHTOWN GAS
8422514	5635	3112117075	108	C A OLSOWSKY	UNIT #1	LRC #108	LEICESTER	10.5	ELIZABETHTOWN GAS
8422512	5633	3112117079	108	D G BUTLER	#1	LRC #111	PERRY	10.9	ELIZABETHTOWN GAS
8422523	5625	3112117295	108	E KINGSLEY	UNIT #1	LRC #128	LEICESTER	13.2	ELIZABETHTOWN GAS
8422511	5632	3112117200	108	EMERLING	FARMS UNIT #1	LRC #112	LEICESTER	15.7	ELIZABETHTOWN GAS
8422509	5631	3112117618	108	H B GOOD	UNIT #1	LRC #113	WILDCAT	17.9	ELIZABETHTOWN GAS
8422515	5639	3112114289	108	HALMA	#2	LRC #30	LEICESTER	11.0	ELIZABETHTOWN GAS
8422510	5630	3112117080	108	L WOLFGANG	#1	LRC #114	LEICESTER	7.5	ELIZABETHTOWN GAS
8422516	5640	3112113996	108	ONEIL	#1	LRC #29	LEICESTER	8.2	ELIZABETHTOWN GAS
8422518	5698	3112113971	108	R L BLANKE	#2	LRC #27	LEICESTER	2.6	ELIZABETHTOWN GAS
8422513	5634	3112117049	108	R L HALMA	#5	LRC #110	LEICESTER	15.7	ELIZABETHTOWN GAS
8422520	5641	3112113999	108	SIEBERT	#1	LRC #20	LEICESTER	16.9	ELIZABETHTOWN GAS
8422524	5626	3112117233	108	TAYLOR FARMS	#1	LRC #121	LEICESTER	11.2	ELIZABETHTOWN GAS
8422508	5629	3112117230	108	TAYLOR FARMS	UNIT #1	LRC #117	LEICESTER	7.4	ELIZABETHTOWN GAS
8422507	5628	3112117231	108	TAYLOR FARMS	UNIT #2	LRC #118	LEICESTER	17.6	ELIZABETHTOWN GAS
8422519	5642	3112113963	108	W GRAHAM	#1	LRC #19	LEICESTER	16.2	ELIZABETHTOWN GAS
-TEMPLETON ENERGY INC RECEIVED: 02/24/84 JA: NY									
8422505	7019	3101318367	103	107-TF	DEWEY	#1 - #736	LAKESHORE	0.0	TENNESSEE GAS PIP
-UNIVERSAL RESOURCES HOLDINGS INC RECEIVED: 02/24/84 JA: NY									
8422504	7141	3101318688	103	107-TF	WALKER	#1	LAKE SHORE	20.0	NATIONAL FUEL GAS
OKLAHOMA CORPORATION COMMISSION									
-AMERICAN QUASAR PETROLEUM CO RECEIVED: 02/24/84 JA: OK									
8422663	27393	3505121140	107-DP	WOODTEN	TRUST #1-30		SEC 30 T4N R5W	0.0	TRANSOK PIPE LINE
-AMOCO PRODUCTION CO RECEIVED: 02/24/84 JA: OK									
8422636	26558	3513900000	108	BURROWS	GAS UNIT "A" #1		GUYMON HUGOTON - CHAS	15.0	PHILLIPS PETROLEU
8422638	26560	3513900000	108	SHARP	GAS UNIT #1 - (3RD FILING)		GUYMON HUGOTON - CHAS	16.2	PHILLIPS PETROLEU
8422639	26561	3505935297	108	STATE OF OKLAHOMA	GAS UNIT "M" #1		MOCANE LAVERNE - MORR	11.3	MICHIGAN WISCONSI
8422637	26559	3513900000	108	TILGHMAN	GAS UNIT #1		GUYMON HUGOTON - CHAS	9.8	PHILLIPS PETROLEU
-ARKOMA PRODUCTION CO RECEIVED: 02/24/84 JA: OK									
8422629	26165	3506120626	103	PATTERSON	#2		KINTA	800.0	ARKANSAS LOUISIAN
-C J CASSELMAN RECEIVED: 02/24/84 JA: OK									
8422661	26241	3511124443	108	PINKSTON	#2		MORRIS	14.5	PHILLIPS PETROLEU

VOLUME 1088

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASFR
-	CITATION ENERGY CORP				RECEIVED: 02/24/84	JA: OK		
8422659	22176	3504723296	103		MORTON #2-31	SOONER TREND	1.0	EXXON CO U S A
-	CITIES SERVICE OIL & GAS CORP				RECEIVED: 02/24/84	JA: OK		
8422635	26553	3513920995	108		STONEBRAKER "LM" #2	WEST STONEBRAKER	2.4	NORTHERN NATURAL
-	ENERGY QUEST INC				RECEIVED: 02/24/84	JA: OK		
8422642	26660	3507121840	108		HINTON 1-A	UNNAMED	406.0	CHASE EXPLORATION
-	FLINT J A				RECEIVED: 02/24/84	JA: OK		
8422650	26260	3506321829	103		JACK #1	HORNS CORNER	550.0	MEGA NATURAL GAS
8422651	26624	3506321872	103		LOWRANCE #1	YEAGER	132.8	MEGA NATURAL GAS
-	FUNK EXPLORATION INC				RECEIVED: 02/24/84	JA: OK		
8422668	22891	3500722403	102-4	103	ROSS #1-10	SIX MILE WEST	350.0	PANHANDLE EASTERN
-	GOOD D MICHAEL				RECEIVED: 02/24/84	JA: OK		
8422646	26684	3509322794	103		KEETON "C" #1	CHEYENNE VALLEY	0.0	DELHI GAS PIPELIN
-	HAWKINS OIL & GAS INC				RECEIVED: 02/24/84	JA: OK		
8422655	24283	3504723293	102-4		ZION #1-16	S E ZION	42.0	UNION TEXAS PETRO
-	KENNEDY & MITCHELL INC				RECEIVED: 02/24/84	JA: OK		
8422640	26605	3513921258	108		NORA #26-387	DOMBEY (SW SW 26-5N-1)	8.7	NORTHERN NATURAL
-	LEAR PETROLEUM EXPLORATION INC				RECEIVED: 02/24/84	JA: OK		
8422664	24568	3501521366	102-4		BLOOD #1-5	WILDCAT	150.0	PRODUCERS GAS CO
-	MARSHALL OIL CORP				RECEIVED: 02/24/84	JA: OK		
8422654	23316	3509500000	102-4		WHITEOAK ROYALTY #1		0.0	NATURAL GAS PIPEL
-	MOBIL OIL CORP				RECEIVED: 02/24/84	JA: OK		
8422647	26687	3501900000	108		COUNTYLINE UNIT #13-20 (JORDON #20)	SHD VEL TUM	1.0	OKLAHOMA NATURAL
-	O I L ENERGY INC				RECEIVED: 02/24/84	JA: OK		
8422649	26238	3508720921	103		MCCLOY #1-27	NE NOBLE	205.0	
-	OKTEX OIL & GAS INC				RECEIVED: 02/24/84	JA: OK		
8422652	26652	3511124731	103		HULEN #1	HECTORFIELD	72.0	PHILLIPS PETROLEU
8422641	26653	3511124732	103		HULEN #2	HECTORFIELD	72.0	PHILLIPS PETROLEU
-	PHILLIPS OIL OPERATING CO				RECEIVED: 02/24/84	JA: OK		
8422644	26676	3500320261	108		TUXHORN #1		38.0	PIONEER GAS PRODU
8422643	26677	3500300000	108		ZIMMERMAN #1		18.3	AMINOIL USA INC
-	PHILLIPS PETROLEUM COMPANY				RECEIVED: 02/24/84	JA: OK		
8422628	26348	3513900000	108		BERRY G #2	GUYNON HUGOTON - COUN	0.0	MICHIGAN WISCONSI
-	PTL RANCH MINISTRIES				RECEIVED: 02/24/84	JA: OK		
8422657	23537	3510500000	102-2		S KUEHN #1	WILDCAT	8.0	R E H INDUSTRIES
-	RAMBLER OIL CO				RECEIVED: 02/24/84	JA: OK		
8422669	22357	3504922038	102-4		WATKINS #1-10		0.0	
-	RICKS EXPLORATION CO				RECEIVED: 02/24/84	JA: OK		
8422665	24527	3504321707	102-2		CATCHING #7-A	S SEILING	7.0	PHILLIPS PETROLEU
-	SEARCH DRILLING CO				RECEIVED: 02/24/84	JA: OK		
8422632	26512	3500722274	103		KAMP #1-33	MOCANE LAVERNE	75.0	PHILLIPS PETROLEU
-	SEIGEL PETROLEUM CO				RECEIVED: 02/24/84	JA: OK		
8422662	26164	3510721727	103		FRANKS #1		120.4	SWAB CORP
-	SIDWELL OIL & GAS INC				RECEIVED: 02/24/84	JA: OK		
8422631	26492	3500900000	108		JOHNSON #1	OKLAHOMA DOLOMITE	0.6	EL PASO NATURAL G
8422634	26552	3500900000	108		KNOX #1	OKLAHOMA DOLOMITE	0.2	EL PASO NATURAL G
8422633	26542	3500900000	108		RAY #1	OKLAHOMA DOLOMITE	0.1	EL PASO NATURAL G
-	SOUTHPORT EXPLORATION INC				RECEIVED: 02/24/84	JA: OK		
8422656	24229	3505121371	102-4		KAHLE #1-14	HINNEKAH	72.0	
-	TEXACO INC				RECEIVED: 02/24/84	JA: OK		
8422648	26632	3501922877	103		M LUCAS "A" #3	SHOVELTUM	871.0	
-	THE GHK COMPANY				RECEIVED: 02/24/84	JA: OK		
8422630	26381	3512920493	108		FOWLER #1-18		21.0	EL PASO NATURAL G
-	THREE SANDS OIL INC				RECEIVED: 02/24/84	JA: OK		
8422666	24472	3510321938	102-2	103	H T SMITH #3-34		36.5	ARCO OIL & GAS CO
-	TOWNER PETROLEUM CO				RECEIVED: 02/24/84	JA: OK		
8422660	21452	3501521292	102-4	103	PARTON HEIRS #18-1		0.0	PIONEER GAS PRODU
-	TRINEHA INC				RECEIVED: 02/24/84	JA: OK		
8422645	26680	3501722521	103		KLEPPER #1-33	S W MUSTANG	90.0	PHILLIPS PETROLEU
-	TXO PRODUCTION CORP				RECEIVED: 02/24/84	JA: OK		
8422667	24210	3513723398	102-4	103	GARRIBSON "B" #1	S E MARLOW	0.0	
-	VACU-MAID INC				RECEIVED: 02/24/84	JA: OK		
8422653	24219	3507100000	108		GILLIG #1A		25.8	COGAS INC
-	VALIDUS, INC				RECEIVED: 02/24/84	JA: OK		
8422658	23079	3510300000	103		MCGUAR #1	S PERRY	1.0	AMINOIL USA INC
*****								
NM DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM								
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-	AMERADA HESS CORPORATION				RECEIVED: 02/27/84	JA: NM K		
8422549	NM-0954-83	3003905892	108		J APACHE "A" #3 (DUAL GAS)	OTERO	12.9	EL PASO NATURAL G
8422599	NM 0893-83	3003905951	108		J APACHE "B" #7 (DUAL GAS)	OTERO	12.8	EL PASO NATURAL G
-	AMOCO PRODUCTION CO				RECEIVED: 02/27/84	JA: NM K		
8422554	NM-941-83	3004525614	103		BELL FEDERAL GAS COM "A"/TRUE #1E	BASIN - DAKOTA	29.7	EL PASO NATURAL G
8422575	NM 900-83	3004506721	108		G ALLEGOS CANYON UNIT #158E	FULCHER KUTZ - PICTUR	10.0	SOUTHERN UNION GA
8422587	NM-943-83	3004525138	103		G ALLEGOS CANYON UNIT #219E	BASIN DAKOTA	34.7	EL PASO NATURAL G
8422588	NM-929-83	3004524601	103		G ALLEGOS CANYON UNIT #228E	BASIN - DAKOTA	18.0	EL PASO NATURAL G
8422555	NM-942-83	3004524613	103		JICARILLA APACHE 102 #22	BASIN DAKOTA	27.8	EL PASO NATURAL G
8422563	NM 902-83	3003921321	108		JICARILLA APACHE 102 #26	TAPACITO - PICTURED C	16.0	GAS CO OF NEW MEX
8422564	NM904-83	3003921322	108		JICARILLA APACHE 102 #30	TAPACITO - PICTURED C	11.0	GAS CO OF NEW MEX
8422595	NM 898-83	3003921582	108		JICARILLA APACHE 35 #4	BLANCO MESAVERDE	18.0	GAS CO OF NEW MEX
8422589	NM-930-83	3003922173	103		JOHN SCHUMACHER/TRUE #1E	OTERO - GALLUP	15.0	NORTHWEST PIPELIN
8422534	NM-940-83	3004525694	103		R P HARGRAVE "D" #1	BASIN - DAKOTA	35.6	EL PASO NATURAL G
8422596	NM-899-83	3004506648	108			FULCHER KUTZ - PICTUR	16.0	SOUTHERN UNION GA
-	BCO INC				RECEIVED: 02/27/84	JA: NM K		
8422568	NM-955-83	3003923244	103		ESCRITO GALLUP UNIT #24 (3-21 #3)	ESCRITO GALLUP	50.0	EL PASO NATURAL G
8422536	NM-935-83	3004525752	103		NANCY #5	DUFERS POINT	50.0	EL PASO NATURAL G
8422605	NM 0869-83	3004525735	103		SMITH #5	ESCRITO GALLUP	50.0	EL PASO NATURAL G
-	CHACE OIL COMPANY INC				RECEIVED: 02/27/84	JA: NM K		
8422584	NM-953-83	3003923205	103		JICARILLA 70-18	S LINDRITH GALLUP DAK	7.0	EL PASO NATURAL G
-	CONOCO INC				RECEIVED: 02/27/84	JA: NM K		
8422553	NM-947-83	3003906050	108		AXI APACHE N #7	AXI APACHE AREA	12.6	GAS CO OF NEW MEX
8422585	NM 0948-83	3003920665	108		AXI APACHE O #3	AXI APACHE AREA	14.3	GAS CO OF NEW MEX
8422586	NM 0947-83	3003920969	108		AXI APACHE O #5	AXI APACHE AREA	17.5	GAS CO OF NEW MEX
-	CURTIS J LITTLE				RECEIVED: 02/27/84	JA: NM K		
8422557	NM-0867-83	3003922988	107-TF		TURNER #2	OTERO CHACRA	25.0	EL PASO NATURAL G
8422604	NM-0873-83	3004525385	103		WIEDEMER #3	FULCHER KUTZ	36.0	EL PASO NATURAL G
8422610	NM-0874-83	3004525386	103		WIEDEMER #4	FULCHER KUTZ	36.0	EL PASO NATURAL G
-	DIUGAN PRODUCTION CORP				RECEIVED: 02/27/84	JA: NM K		
8422538	NM-937-83	3004523953	103		BENGAL B #6 WELL	SOUTH GALLEGOS FR PC	7.5	EL PASO NATURAL G
8422543	NM-907-83	3003922947	103		GRAND GULCH #2	BASIN DAKOTA	16.0	NORTHWEST PIPELIN
8422600	NM-888-83	3004525431	103		TURKS TOAST #2	BASIN DAKOTA	15.0	NORTHWEST PIPELIN
8422601	NM-889-83	3004525431	107-TF		TURKS TOAST #2	BASIN DAKOTA	15.0	NORTHWEST PIPELIN
-	EL PASO EXPLORATION CO				RECEIVED: 02/27/84	JA: NM K		
8422541	NM-912-83	3003922074	108		JICARILLA 120 C #17	SOUTH BLANCO - PICTUR	12.0	NORTHWEST PIPELIN

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-EL PASO	NATURAL GAS COMPANY		RECEIVED:	02/27/84	JA: NM K			
8422579	NM-0896-83	3003920232	108		CANYON LARGO UNIT NP #146	BALLARD PICTURED CLIF	18.0	EL PASO NATURAL G
8422622	NM-2168-83PB	3004520916	108-PB		EL PASO #2	AZTEC	0.0	EL PASO NATURAL G
8422615	NM-2166-83PB	3004520462	108-PB		FLORENCE #8	BLANCO	0.0	EL PASO NATURAL G
8422565	NM 905-83	3004523718	108		HARGRAVE #2R	FULCHER KUTZ - PICTUR	30.0	EL PASO NATURAL G
8422619	NM-2179-83PB	3004511785	108-PB		HEATON #20	AZTEC	0.0	EL PASO NATURAL G
8422613	NM-2170-83PB	3004520792	108-PB		HUBBELL #6	AZTEC	0.0	EL PASO NATURAL G
8422618	NM-2176-83PB	3004505701	108-PB		HUERFANO UNIT #58	BALLARD	0.0	EL PASO NATURAL G
8422614	NM-2110-83PB	3004509232	108-PB		LUDWICK #10 PC	AZTEC	0.0	EL PASO NATURAL G
8422620	NM-2172-83PB	3004521569	108-PB		NYE #14	AZTEC & OTERO	0.0	EL PASO NATURAL G
8422612	NM-2169-83PB	3003906332	108-PB		QUANTIUS #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8422617	NM-2174-83PB	3004521035	108-PB		ROELOFS #6	BLANCO	0.0	EL PASO NATURAL G
8422624	NM-2171-83PB	3004521089	108-PB		ROELOFS #7	BLANCO	0.0	EL PASO NATURAL G
8422616	NM-2175-83PB	3003907012	108-PB		SAN JUAN 27-5 UNIT #10	BLANCO	0.0	EL PASO NATURAL G
8422598	NM-890-83	3003907841	108		SAN JUAN 30-6 UNIT #63	BLANCO - MESA VERDE	16.0	EL PASO NATURAL G
8422623	NM-2109-83PB	3003907992	108-PB		SAN JUAN 32-5 UNIT #7	BLANCO	0.0	EL PASO NATURAL G
8422621	NM-2167-83PB	3004520791	108-PB		SUNRAY #4	BLANCO	0.0	EL PASO NATURAL G
-EPX COMPANY			RECEIVED:	02/27/84	JA: NM K			
8422578	NM-0894-83	3003921458	108		JIC JOINT VENTURE KD #5	CHACON-DAKOTA ASSOC	30.0	EL PASO NATURAL G
-MERRION OIL & GAS CORP			RECEIVED:	02/27/84	JA: NM K			
8422606	NM-0870-83	3003923183	103		CANADA MESA COM #4	BASIN DAKOTA	250.8	NORTHWEST PIPELIN
8422550	NM-950-83	3003923080	103		WARREN G COM #26-2	DEVILS FORK GALLUP	41.2	EL PASO NATURAL G
-MOBIL PRDG TEXAS & NEW MEXICO INC			RECEIVED:	02/27/84	JA: NM K			
8422562	NM-910-83	3003921504	108		FEDERAL 28714 #1	CHACON DAKOTA	20.9	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION			RECEIVED:	02/27/84	JA: NM K			
8422590	NM-927-83	3003923035	103		ROSA UNIT 94	BLANCO MESAVERDE	0.9	NORTHWEST PIPELIN
8422591	NM-928-83	3003923034	103		ROSA UNIT 95	BLANCO MESAVERDE	0.4	NORTHWEST PIPELIN
8422593	NM-926-83	3003923224	102-2		RUCKER LAKE #3	GAVILAN GALLUP	11.0	NORTHWEST PIPELIN
8422573	NM-925-83107	3003922706	103	107-TF	SAN JUAN 30-5 UNIT #80	BASIN DAKOTA	14.0	NORTHWEST PIPELIN
8422572	NM-924-83103	3003923144	103	107-TF	SAN JUAN 30-5 UNIT 93	BASIN DAKOTA	7.9	NORTHWEST PIPELIN
8422560	NM-915-83	3004523686	107-TF		SAN JUAN 32-7 UNIT #56	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422594	NM-923-83	3004523687	107-TF		SAN JUAN 32-7 UNIT #57	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422597	NM-922-83	3004523688	107-TF		SAN JUAN 32-7 UNIT #60	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422539	NM-916-83	3004524390	107-TF		SAN JUAN 32-7 UNIT #62	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422592	NM-921-83	3004524391	107-TF		SAN JUAN 32-7 UNIT #63	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422577	NM-920-83	3004524776	107-TF		SAN JUAN 32-7 UNIT #68	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422576	NM-919-83	3004524777	107-TF		SAN JUAN 32-7 UNIT #69	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422558	NM-918-83	3004525230	107-TF		SAN JUAN 32-8 UNIT #11A	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8422560	NM-917-83	3004524541	107-TF		SAN JUAN 32-8 UNIT #12A	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
-SCHALK DEVELOPMENT COMPANY			RECEIVED:	02/27/84	JA: NM K			
8422559	NM-914-83	3003922194	108		SCHALK 31-4 #1	WILDCAT	0.0	NORTHWEST PIPELIN
8422625	NM-1286-83PB	3003920802	108-PB		SCHALK 49 #3	BLANCO	0.0	NORTHWEST PIPELIN
8422626	NM-1285-83PB	3003920579	108-PB		SCHALK 55 #1	BASIN	0.0	NORTHWEST PIPELIN
8422627	NM-0777-83PB	3003920579	108-PB		SCHALK 55 #1	BASIN	0.0	NORTHWEST PIPELIN
8422542	NM-913-83	3003920592	108		SCHALK 62 WELL #1	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
-SHERMAN F WAGENSELLER			RECEIVED:	02/27/84	JA: NM K			
8422548	NM-0957-83	3003908229	108		MOBIL APACHE #11	SOUTH BLANCO PC	11.7	EL PASO NATURAL G
8422567	NM 0957-83	3003920224	108		MOBIL APACHE #13	SOUTH BLANCO PC	8.9	EL PASO NATURAL G
8422566	NM 0958-83	3003905113	108		MOBIL APACHE #2	SOUTH BLANCO PC	10.3	EL PASO NATURAL G
-SOUTHERN UNION EXPLORATION COMPANY			RECEIVED:	02/27/84	JA: NM K			
8422552	NM-0946-83	3004525692	103		HORSESHOE #1	MEADOWS GALLUP	41.0	INTRASTATE GATHER
-SOUTHLAND ROYALTY CO			RECEIVED:	02/27/84	JA: NM K			
8422535	NM-934-83	3003905716	108		ARIZONA JICARILLA #3	BLANCO	15.0	GAS CO OF NEW MEX
8422537	NM-933-83	3003905699	108		ARIZONA JICARILLA #6	BLANCO	13.0	GAS CO OF NEW MEX
8422574	NM-932-83	3003921817	108		ARIZONA JICARILLA #9	BLANCO	16.0	GAS CO OF NEW MEX
8422533	NM-939-83	3003921240	108		ARIZONA JICARILLA "B" #5-A	BLANCO	20.0	GAS CO OF NEW MEX
8422531	NM 0938-83	3003900000	108		ARIZONA JICARILLA "B" #8-A	BLANCO	20.0	GAS CO OF NEW MEX
8422611	NM-0875-83	3004525740	103		CAIN #16E	BASIN	150.0	SOUTHERN UNION GA
8422545	NM-0961-83	3004520979	108		HAGOOD #30	BASIN	15.0	EL PASO NATURAL G
8422551	NM-0951-83	3004513308	108		THOMPSON #2	BLANCO	20.8	SOUTHERN UNION GA
8422583	NM 0952-83	3004510285	108		THOMPSON #4	BLANCO	14.0	SOUTHERN UNION GA
-TENNECO OIL COMPANY			RECEIVED:	02/27/84	JA: NM K			
8422561	NM-909-83	3004521360	108		ARROYO 1	GALLEGOS GALLUP	9.0	EL PASO NATURAL G
8422532	NM-945-83	3004523989	108		JOHNSTON COM B #2	BASIN DAKOTA	11.0	EL PASO NATURAL G
8422609	NM-0878-83	3004525590	103		PRICE COM 5E	BASIN DAKOTA	120.0	EL PASO NATURAL G
8422608	NM-0877-83	3004525595	103		PRICE 2E	BASIN DAKOTA	58.0	EL PASO NATURAL G
8422607	NM-0876-83	3004525680	103		PRICE 4E	BASIN DAKOTA	145.0	EL PASO NATURAL G
8422602	NM-0879-83	3004525553	103		TAPP 3E	BASIN DAKOTA	91.0	EL PASO NATURAL G
-TEXACO INC			RECEIVED:	02/27/84	JA: NM K			
8422547	NM 0956-83	3004522163	108		H J LDE "B" FEDERAL #2R	BASIN DAKOTA	13.0	SOUTHERN UNION GA
-UNICON PRODUCING CO			RECEIVED:	02/27/84	JA: NM K			
8422544	NM-908-83	3004507571	108		ANGEL PEAK #21		45.0	SOUTHERN UNION GA
8422580	NM-0885-83	3004572050	108		ANGEL PEAK "B" #12		44.0	SOUTHERN UNION GA
8422582	NM 882-83	3004523723	108		ANGEL PEAK "B" #29		45.0	SOUTHERN UNION GA
8422546	NM-960-83	3004525538	103		CONGRESS LACHMAN 4-E	BASIN DAKOTA	117.0	SOUTHERN UNION GA
8422581	NM-886-83	3003923016	103		JICARILLA "F" #7	DAKOTA	689.0	GAS CO OF NEW MEX
8422570	NM-0881-83	3004525006	108		MCCORD #5E		54.0	SOUTHERN UNION GA
8422569	NM-0883-83	3004510255	108		TALIAFERRO #4		56.0	SOUTHERN UNION GA
8422603	NM-0880-83	3004523731	108		ZACHRY #21		59.0	SOUTHERN UNION GA
8422556	NM 0336-83	3004525502	103		ZACHRY 30	ARMENTA GALLUP	133.0	EL PASO NATURAL G
-MEXPRO COMPANY			RECEIVED:	02/27/84	JA: NM K			
8422571	NM 0872-83	3004524992	107-TF		GREG #1	BASIN DAKOTA	31.7	EL PASO NATURAL G
***** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM *****								
-EXCON CORPORATION			RECEIVED:	02/27/84	JA: NM L			
8422675	RNM 0111-83	3001502434	103		YATES FEDERAL C #6	AVALON (DELAWARE)	86.0	PHILLIPS PETROLEU
-MCCLELLAN OIL CORPORATION			RECEIVED:	02/27/84	JA: NM L			
8422674	RNM 0110-83	3000520836	103		VEST FEDERAL #1	WILDCAT	109.5	CABOT PIPELINE CO
-PERRY R BASS			RECEIVED:	02/27/84	JA: NM L			
8422672	RNM 0089-83	3001523968	103		BIG EDDY UNIT #34	GOLDEN LANE	250.0	NATURAL GAS PIPEL
8422676	RNM 0089-83	3001523968	102-4		BIG EDDY UNIT #34	GOLDEN LANE	250.0	NATURAL GAS PIPEL
-SUPERIOR OIL CO			RECEIVED:	02/27/84	JA: NM L			
8422673	RNM 0103-83	3002528157	103		GOVERNMENT "9" #1	SCHARB	115.0	PHILLIPS PETROLEU
***** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, TULSA, OK *****								
-AMOCO PRODUCTION CO			RECEIVED:	02/24/84	JA: LA M			
8422460	G3-3519	1770340066	102-5		OCS-6-2037 WELL #A-9	EAST CAMERON	1200.0	TEXAS EASTERN TRA
8422487	G3-3782	1770740028	102-5		OCS-0788 #B-1	SOUTH MARSH ISLAND	700.0	TRANSCONTINENTAL
-ARCO OIL AND GAS COMPANY			RECEIVED:	02/24/84	JA: LA M			
8422462	G3-3933	1781740195	102-5		OCS-6-2640 MISS CANYON BLK 1488A-14	MISSISSIPPI CANYON	600.0	TENNESSEE GAS PIP
8422496	G3-3658	1772140266	102-5		OCS-1608 SOUTH PASS BLK 60 #E-16ST	SOUTH PASS	50.0	SOUTHERN NATURAL
-CHEVRON U S A INC			RECEIVED:	02/24/84	JA: LA M			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422482	G3-3930	1771540419	102-5			OCS-G-1899 8CA-2	SOUTH TIMBALIER	800.0	TRUNKLINE GAS CO
8422475	G3-4041	1770240633	102-5			OCS-G-2849 82	SOUTH CAMERON	1095.0	NATURAL GAS PIPEL
-EUGENE SHOAL OIL CO									
8422493	G3-3721	1772140196	102-5			RECEIVED: 02/24/84 JA: LA M			
8422494	G3-3722	1772140200	102-5			OCS-G 2176 8A-2	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422466	G3-3723	1772140213	102-5			OCS-G 2176 8A-3	SOUTH PASS	356.0	TENNESSEE GAS PIP
8422473	G3-3724	1772140207	102-5			OCS-G 2176 8A-4	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422474	G3-3725	1772140208	102-5			OCS-G 2176 8A-5	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422481	G3-3726	1772140180	102-5			OCS-G 2176 8A-6	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
-CXON CORPORATION									
8422501	G3-3748	1772240088	102-5			RECEIVED: 02/24/84 JA: LA M			
8422502	G3-3806	1771540560	102-5			OCS-G 1619 8A-8	SOUTH PASS	165.0	COLUMBIA GAS TRAN
8422476	G3-3892	1771540543	102-5			OCS-019 8G-12	SOUTH TIMBALIER	45.0	TENNESSEE GAS PIP
8422471	G3-3931	1771540546	102-5			OCS-019 8G-17	SOUTH TIMBALIER	90.0	TENNESSEE GAS PIP
8422456	G3-3992	1771540549	102-5			OCS-019 8G-20	SOUTH TIMBALIER	90.0	TENNESSEE GAS PIP
8422472	G3-3830	1771540542	102-5			OCS-019 8G-23	SOUTH TIMBALIER	90.0	TENNESSEE GAS PIP
-GETTY OIL COMPANY									
8422486	G3-3902	1770240458	102-5			RECEIVED: 02/24/84 JA: LA M			
-GULF OIL CORPORATION									
8422469	G3-4068	1772140284	102-5			WEST CAMERON 487 A-5DA	WEST CAMERON	400.0	UNITED GAS PIPELI
8422498	G3-3841	1772140269	102-5			RECEIVED: 02/24/84 JA: LA M			
-MARATHON OIL COMPANY									
8422489	G3-3917	1770440436	102-5			OCS-G 2177 WELL A-6 S/P BLK 49 FLD	SOUTH PASS	310.0	TEXAS EASTERN TRA
-MCMORAN OFFSHORE EXPLORATION CO									
8422459	G3-3603	1770840570	102-5			RECEIVED: 02/24/84 JA: LA M			
8422463	G3-3615	1770840571	102-5			OCS-G 2887 8A-12	SOUTH MARSH ISLAND	110.0	
8422497	G3-3629	1770840578	102-5			OCS-G 2887 8A-13	SOUTH MARSH ISLAND	110.0	
8422500	G3-3579	1770840557	102-5			OCS-G 2887 8A-17	SOUTH MARSH ISLAND	113.0	
8422485	G3-3587	1770840557	102-5			OCS-G 2887 8A-4	SOUTH MARSH ISLAND	6.0	
8422499	G3-3578	1770840557	102-5			OCS-G 2887 8A-4A	SOUTH MARSH ISLAND	67.0	
8422470	G3-3580	1770840554	102-5			OCS-G 2887 8A-7	SOUTH MARSH ISLAND	168.0	
8422465	G3-3581	1770840550	102-5			OCS-G 2888 8A-2	SOUTH MARSH ISLAND	72.0	
8422468	G3-3627	1770840576	102-5			OCS-G 2889 8A-1	SOUTH MARSH ISLAND	0.0	
8422495	G3-3628	1770840583	102-5			OCS-G 2889 8A-15A	SOUTH MARSH ISLAND	11.0	
8422461	G3-3588	1770840559	102-5			OCS-G 2889 8A-16	SOUTH MARSH ISLAND	11.0	
8422457	G3-3605	1770840560	102-5			OCS-G 2889 8A-5	SOUTH MARSH ISLAND	1825.0	
-MOBIL OIL EXPLORATION & PROD S E									
8422483	G3-3502	1770540388	102-5			RECEIVED: 02/24/84 JA: LA M			
-ODECO OIL & GAS CO									
8422490	G3-3880	1771340055	102-5			RECEIVED: 02/24/84 JA: LA M			
8422484	G2-3326	1771340087	102-5			OCS - 072 025 (S/+ )B	SOUTH PELTO 20 FIELD	110.0	TRANSCONTINENTAL
-SUPERIOR OIL CO									
8422467	G2-3295	1770040394	102-5			RECEIVED: 02/24/84 JA: LA M			
8422477	G3-3970	1770040487	102-5			OCS 0245 8F-1	WEST CAMERON	2000.0	TEXAS EASTERN TRA
8422491	G3-3986	1770040615	102-5			OCS 0245 8H-3	WEST CAMERON	2000.0	TEXAS EASTERN TRA
8422464	G3-4007	1770940552	102-5			OCS 0254 8F-1	WEST CAMERON	1500.0	
8422488	G3-4008	1770940564	102-5			OCS 0797 8D-6	EUGENE ISLAND	1000.0	TRANSCONTINENTAL
8422479	G2-3298	1770040456	102-5			OCS 0797 8D-7	EUGENE ISLAND	500.0	TRANSCONTINENTAL
8422458	G3-4006	1770940551	102-5			S 0245 8F-3	WEST CAMERON	2000.0	TEXAS EASTERN TRA
-TENNECO OIL COMPANY									
8422478	G3-3980	1770740333	102-5			RECEIVED: 02/24/84 JA: LA M			
-TEXACO INC									
8422480	G3-3805	1771940289	102-5			RECEIVED: 02/24/84 JA: LA M			
-TENNECO OIL COMPANY									
8422492	G3-4070	4270330298	102-1			OCS-G-2937 WEST DELTA 109 8A-11	WEST DELTA	529.0	NATURAL GAS PIPEL
*****									
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, RAWLINS, WY									
*****									
-BELCO PETROLEUM CORPORATION									
8422470	M 154-3	4903505646	108			RECEIVED: 02/24/84 JA: NY S			
8422471	M 155-3	4903505876	108			MCD 33-29	MCDONALD DRAW UNIT	0.0	NORTHWEST PIPELIN
-TENNECO OIL COMPANY									
8422478	M 15-3	4904120554	102-4			RECEIVED: 02/27/84 JA: NY S			
*****									
** DEPT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA									
*****									
-MOBIL OIL EXPLORATION & PROD S E									
8422477	G3-3821	1772540250	102-5			RECEIVED: 02/27/84 JA: LA W			
*****									
-MOBIL OIL EXPLORATION & PROD S E									
8422477	G3-3821	1772540250	102-5			MAIN PASS 72/74 8G-12B	MAIN PASS	75.0	UNITED GAS PIPE L

(FR Doc. 84-0091 Filed 3-20-84; 8:45 am)

BILLING CODE 6717-01-C

[Vol. 1089]

**Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978**

Issued: March 20, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection expect to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd., Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

- Section 102-1: New OCS lease
- 102-2: New well (2.5 Mile rule)
- 102-3: New well (1000 Ft rule)
- 102-4: New onshore reservoir
- 102-5: New reservoir on old OCS lease
- Section 107-DP: 15,000 feet or deeper
- 107-GB: Geopressured brine
- 107-CS: Coal Seams
- 107-DV: Devonian Shale
- 107-PE: Production enhancement
- 107-TF: New tight formation
- 107-RT: Recompletion tight formation

- Section 108: Stripper well
- 108-SA: Seasonally affected
- 108-ER: Enhanced recovery
- 108-PB: Pressure buildup

Kenneth F. Plumb,  
Secretary.

**NOTICE OF DETERMINATIONS  
ISSUED MARCH 20, 1984**

VOLUME 1089

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
***** ALABAMA OIL & GAS BOARD *****									
-	ANDERMAN/SMITH OPERATING CO					RECEIVED: 02/28/84 JA: AL			
8422859	2-23-8412PD	0105720333		102-2		DUDLEY 22-16 #1	BLUFF	146.0	TENNESSEE GAS PIP
8422855	1-19-846PD	0105720323		102-2		RANDOLPH 25-13 #1	BETHEL CHURCH	300.0	TENNESSEE GAS PIP
-	BLACK WARRIOR METHANE CORP					RECEIVED: 02/28/84 JA: AL			
8422857	2-23-847PD	0112520147		107-CS		SHOOK 35-16-7	BROOKWOOD COAL DEGASI	180.0	SOUTHERN NATURAL
-	EXXON CORPORATION					RECEIVED: 02/28/84 JA: AL			
8422858	2-23-8411PD	0105320187		107-DP		T R MILLER MILL CO #33-5	JAY/LEC	919.0	FLORIDA GAS TRANS
-	GRACE PETROLEUM CORPORATION					RECEIVED: 02/28/84 JA: AL			
8422860	2-23-8413PD	0105720236		108		LANINGHAM HEIRS 11-1	STUDHORSE CREEK	21.9	TENNESSEE GAS PIP
-	HOWELL PETROLEUM CORP					RECEIVED: 02/28/84 JA: AL			
8422854	12-2-8311PDA	0105720172		102-2		GRAVLEE 20-9	NEWTONVILLE	54.0	NORTHWEST ALABAMA
-	MAJ PRODUCING CO					RECEIVED: 02/28/84 JA: AL			
8422856	2-23-844PD	0105720330		102-2		THOMAS ATKINSON 5-5 #1	BLUFF	69.6	
***** MONTANA BOARD OF OIL & GAS CONSERVATION *****									
-	SUN EXPLORATION & PRODUCTION CO					RECEIVED: 02/27/84 JA: MT			
8422886	10-82-258	2508521353		102-2		CRUSCH #2-2	TARGET	13.0	DOMO PETROLEUM CO
***** OKLAHOMA CORPORATION COMMISSION *****									
-	ANADARKO PRODUCTION COMPANY					RECEIVED: 02/27/84 JA: OK			
8422895	26602	3513921782		103		N E HARDESTY UNIT #13-3	N E HARDESTY	5.0	PHILLIPS PETROLEU
-	ARCO OIL AND GAS COMPANY					RECEIVED: 02/27/84 JA: OK			
8422898	24451	3500722463		102-4		MAHANAY #2	S W COMO	36.5	PHILLIPS PETROLEU
-	FUNK EXPLORATION INC					RECEIVED: 02/27/84 JA: OK			
8422889	21410	3500722381		102-4		HENLINE #1	S BALKO	0.0	PANHANDLE EASTERN
8422888	21412	3500722046		102-4		STEWART #1	S BALKO	0.0	NORTHERN NATURAL
-	HADSON PETROLEUM CORP					RECEIVED: 02/27/84 JA: OK			
8422894	26656	3508720928		103		WESTCOTT #1-25	BLANCHARD	73.0	SUN OIL CO
-	HARPER OIL COMPANY					RECEIVED: 02/27/84 JA: OK			
8422897	24650	3512920957		102-2		JULIA #1	S E ROLL	146.0	
8422904	24580	3512920936		102-2		RAYMOND #1	S E ROLL	146.0	
-	KAISER-FRANCIS OIL COMPANY					RECEIVED: 02/27/84 JA: OK			
8422902	24507	3504321600		102-4 103		LEROY DENNIS #1-33	PUTNAM	657.0	OKLAHOMA GAS & EL
-	MOBIL OIL CORP					RECEIVED: 02/27/84 JA: OK			
8422891	26685	3509500000		108		WARD-RAINES UNIT #3-VIOLA	AYLESWORTH	2.1	PIONEER GAS PRODU
-	NEW RESERVES GROUP INC					RECEIVED: 02/27/84 JA: OK			
8422890	26705	3508720959		103		NEW RESERVES GROUP INC - NO 1 GRAY	FRENCH	15.3	SUN EXPLORATION &
-	NEW TREND RESOURCES INC					RECEIVED: 02/27/84 JA: OK			
8422896	26530	3510721673		103		MIRACLE #4	SOUTH MORSE	25.0	SWAB CORP
-	PROSPECTIVE INVESTMENT & TRADING CO					RECEIVED: 02/27/84 JA: OK			
8422887	24448	3504521127		102-2		CARL 1-35	WEST VICI	36.0	PHILLIPS PETROLEU
-	RED EAGLE OIL CO					RECEIVED: 02/27/84 JA: OK			
8422893	26664	3509322690		103		HART #1	N W OKEENE	365.0	PIONEER GAS PRODU
-	SANTA FE-ANDOVER OIL CO					RECEIVED: 02/27/84 JA: OK			

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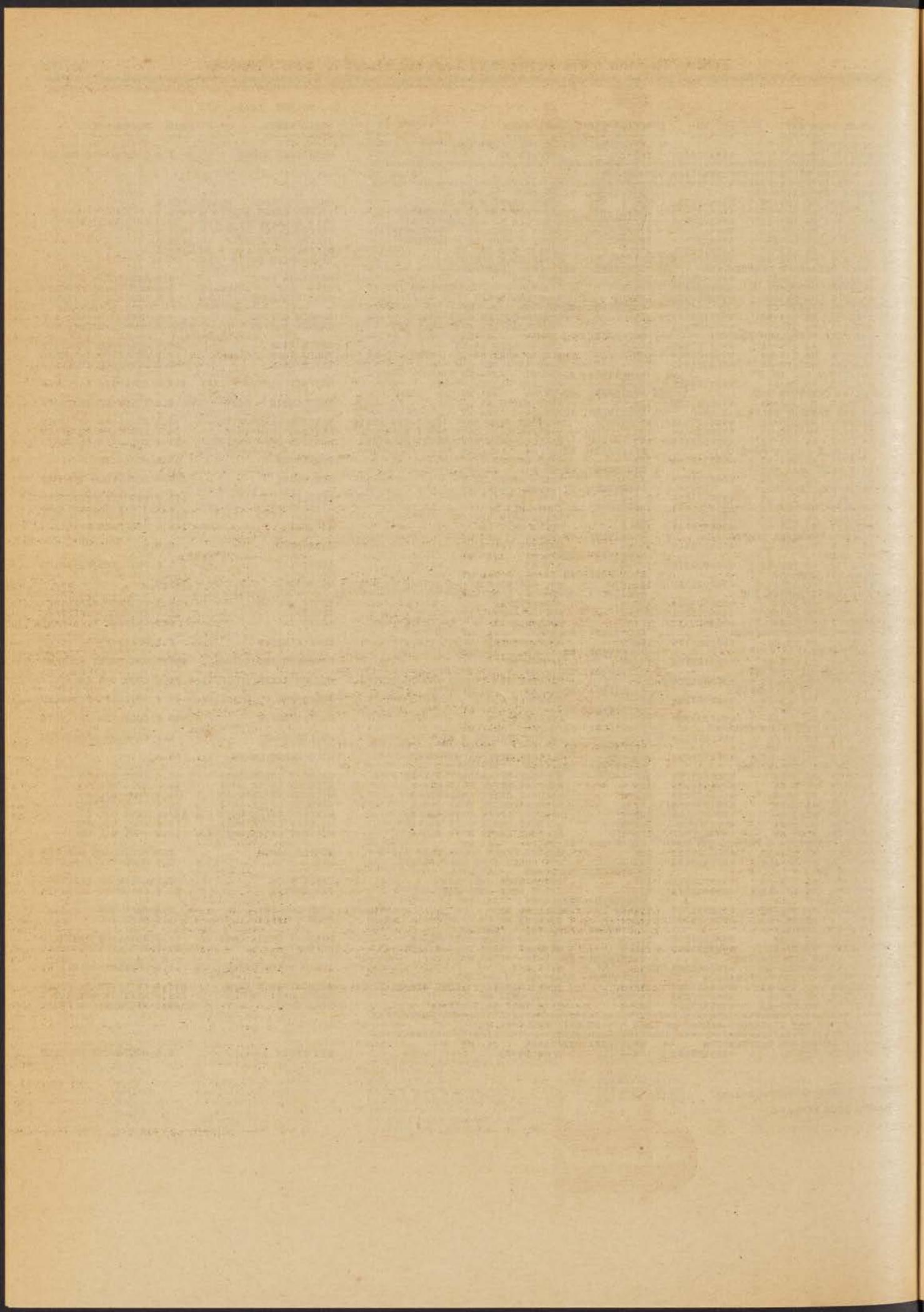
JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422903	24516	3501121861	102-4		SCHOOL LANDS #36-3		126.0	OKLAHOMA GAS PIPE
-TEKACO INC			RECEIVED:	02/27/84	JA: OK			
8422892	26681	3507300000	108		SV WATTS #1	SOONER TREND	2.5	EASON OIL CO
-WOODS PETROLEUM CORPORATION			RECEIVED:	02/27/84	JA: OK			
8422901	24471	3504300000	102-4	103	HOLCOMB #24-1	SW WEBB	511.0	
8422899	24466	3503920694	102-4	103	HUNNICUTT #20-1	COMET CREEK	639.0	PRODUCER'S GAS CO
8422900	24467	3504321494	102-4	103	WALKER #19-1	SW WEBB	913.0	
*****								
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES								
*****								
-ADDOE OIL & GAS CORPORATION			RECEIVED:	02/27/84	JA: PA			
8422712	22128	3702120195	103		ALLAN VARNER #2	HASTINGS	26.0	CONSOLIDATED GAS
8422703	22112	3706327465	103		C MORRELL DEABENDERFER #1	CLYMER "G"	25.0	SCM CORP
8422704	22113	3706327466	103		C MORRELL DEABENDERFER #2	CLYMER "G"	25.0	SCM CORP
8422702	22111	3706327464	103		C MORRELL DEABENDERFER "A" #1	CLYMER "G"	25.0	SCM CORP
8422705	22115	3706522744	103		LOUIS EMANUEL #4	REYNOLDSVILLE "E"	25.0	T W PHILLIPS GAS
-ADDOE OIL & GAS CORPORATION			RECEIVED:	02/27/84	JA: PA			
8422761	22237	3712922215	103		NELLIE FOSTER "B" #1	BLAIRSVILLE "D"	25.0	PEOPLES NATURAL G
-ADDOE OIL & GAS CORPORATION			RECEIVED:	02/27/84	JA: PA			
8422689	21983	3712922282	103		JAMES TRIMBLE #1	BLAIRSVILLE	25.0	T W PHILLIPS GAS
-ANGERMAN ASSOCIATES INC			RECEIVED:	02/27/84	JA: PA			
8422694	22099	3706327635	103		JOHN K CRIBBS #5 - IND-27635	W PA UPPER DEVONIAN S	0.0	PEOPLES NATURAL G
-ASHTOLA PRODUCTION CO			RECEIVED:	02/27/84	JA: PA			
8422728	22196	3705324957	103		TRUSSELL - WARRANT 3193X-2	HOWE	6.0	UGI CORP
-BOYD & SHRIVER			RECEIVED:	02/27/84	JA: PA			
8422713	22129	3706572612	103		COSIE MILLIRON #527	TIMBLIN	0.0	T W PHILLIPS GAS
-CASTLE GAS CO INC			RECEIVED:	02/27/84	JA: PA			
8422726	22184	3712921851	108		A J HIRKO #2 (C-716) WES-21851	DERRY TOWNSHIP	15.0	PEOPLES NATURAL G
8422727	22185	3706324038	108		T STICHELL #1 (PNG-#5243) IND-24038	YOUNG TOWNSHIP	58.0	PEOPLES NATURAL G
-CNG DEVELOPMENT CO			RECEIVED:	02/27/84	JA: PA			
8422721	22141	3706327498	102-2		GARMAN G BUTERBAUGH #1 CNGD #87	GREEN TWP	16.0	
-CNG DEVELOPMENT CO			RECEIVED:	02/27/84	JA: PA			
8422695	22100	3703321679	103		THEODORE GARMAN #1 CNGD # 83	BURNSIDE TWP	34.0	
8422696	22101	3703321680	103		THEODORE GARMAN #2 CNGD # 395	BURNSIDE TWP	37.0	
8422697	22102	3703321667	103		WILLIAM SOMERVILLE #1 CNGD # 84	BURNSIDE TWP	4.0	
-CONSOLIDATED GAS SUPPLY CORPORATION			RECEIVED:	02/27/84	JA: PA			
8422681	20035	3712921715	108		SARA E EISMAN #1 WN-1797	HEMPFIELD	8.0	GENERAL SYSTEM PU
-DOC-NCC SERVICE CO			RECEIVED:	02/27/84	JA: PA			
8422679	19798	3712921844	108		J W GAUT 800-3	EAST HUNTINGDON	20.0	TEXAS EASTERN TRA
8422680	19793	3712922042	108		SOUTHMORELAND SCHOOL DISTRICT 748-4	EAST HUNTINGDON	21.3	TEXAS EASTERN TRA
-ENERGY QUEST INC			RECEIVED:	02/27/84	JA: PA			
8422764	22261	3706325370	108		ANNIE HELMAN #1	CLYMER	10.5	COLUMBIA GAS TRAN
8422763	22260	3706325371	108		ANNIE HELMAN #2	CLYMER	10.5	COLUMBIA GAS TRAN
8422766	22263	3706325372	108		BIBLE BAPTIST #1	CLYMER	12.2	COLUMBIA GAS TRAN
8422775	22260	3706325997	108		C L RUFFNER & SONS #3	CLYMER	12.0	COLUMBIA GAS TRAN
8422767	22264	3706300000	108		MILDRED R SIMPSON #1	BRUSH VALLEY	14.0	COLUMBIA GAS TRAN
8422768	22265	3706325756	108		MILDRED R SIMPSON #2	BRUSH VALLEY	14.0	COLUMBIA GAS TRAN
8422765	22262	3706325457	108		MILDRED R SIMPSON #3	BRUSH VALLEY	14.0	COLUMBIA GAS TRAN
8422769	22253	3706325794	108		WILLIAM C HOUSER JR 118-A #1	CLYMER	6.9	COLUMBIA GAS TRAN
8422770	22254	3706325783	108		WILLIAM C HOUSER JR 118-A #2	CLYMER	6.9	COLUMBIA GAS TRAN
8422771	22255	3706300000	108		WILLIAM C HOUSER JR 118-A #3	CLYMER	2.2	COLUMBIA GAS TRAN
8422772	22256	3706325086	108		WILLIAM C HOUSER JR 159 A #1	CLYMER	9.4	COLUMBIA GAS TRAN
8422773	22257	3706300000	108		WILLIAM C HOUSER JR 159 A #2	CLYMER	9.4	COLUMBIA GAS TRAN
8422774	22258	3706325888	108		WILLIAM C HOUSER JR 159 A #3	CLYMER	9.4	COLUMBIA GAS TRAN
-FAIRMAN DRILLING CO			RECEIVED:	02/27/84	JA: PA			
8422690	21989	3703321688	102-3		MASETO #1 S/N F-3796	CUSH CUSHION	30.0	EASTERN SHORE NAT
-FELMONT OIL CORPORATION			RECEIVED:	02/27/84	JA: PA			
8422762	22239	3702120210	102-2		MARTIN L BEARER #4 F-367	DRISCOLL HOLLOW	90.0	COLUMBIA GAS TRAN
-FOX OIL & GAS INC			RECEIVED:	02/27/84	JA: PA			
8422688	21970	3702120193	102-3		JAMES GRIFFITHS #1 280	SUSQUEHANNA	25.5	COLUMBIA GAS TRAN
-HANLEY & BIRD			RECEIVED:	02/27/84	JA: PA			
8422720	22140	3700522804	103		EDWARD M WILSON SHB18 SM1730	DAYTON	24.0	PEOPLES NATURAL G
-JAMES F SCOTT			RECEIVED:	02/27/84	JA: PA			
8422707	22123	3706522782	103		EUGENE NORTH #1 PS-463	BIG RUN BOROUGH	72.0	
8422706	22122	3703321641	103		HOYT #3	FERGUSON	58.0	CONSOLIDATED GAS
-KRIEBEL GAS CO INC			RECEIVED:	02/27/84	JA: PA			
8422725	22158	3706327642	103		MCCULLY #6	BLAIRSVILLE	30.0	
8422724	22157	3706327641	103		WIENSKI #7	ROCHESTER MILLS	30.0	
-MARK RESOURCES CORP			RECEIVED:	02/27/84	JA: PA			
8422708	22124	3712135077	102-3		HINES UNIT #1	JACKSON	30.0	NATIONAL FUEL GAS
8422709	22125	3712135077	107-TF		HINES UNIT #1	JACKSON	30.0	NATIONAL FUEL GAS
8422714	22133	3708520546	102-3		POLONSKY #2	SOUTH PYMATUNING	30.0	
8422715	22134	3708520546	107-TF		POLONSKY #2	SOUTH PYMATUNING	30.0	
8422710	22126	3712135561	102-3		R MOORHEAD #1	JACKSON	30.0	NATIONAL FUEL GAS
8422711	22127	3712135561	107-TF		R MOORHEAD #1	JACKSON	30.0	NATIONAL FUEL GAS
-MARK RESOURCES CORP			RECEIVED:	02/27/84	JA: PA			
8422722	22146	3712135079	102-3		DEETER #2	JACKSON	30.0	NATIONAL FUEL GAS
-MARK RESOURCES CORP			RECEIVED:	02/27/84	JA: PA			
8422723	22147	3712135079	107-TF		DEETER #2	JACKSON	30.0	NATIONAL FUEL GAS
-MID-PENN ENERGY CORP			RECEIVED:	02/27/84	JA: PA			
8422685	20393	3703321186	108		CHARLES MCCracken #1	GRAMPIAN	15.0	CONSOLIDATED GAS
8422684	20392	3703321324	108		CHARLES MCCracken #2	GRAMPIAN	10.0	CONSOLIDATED GAS
8422683	20391	3703321213	108		CLARENCE A KEISER #2	GRAMPIAN	10.0	CONSOLIDATED GAS
8422682	20390	3703321144	108		HUGH APPLETON #1	GRAMPIAN	10.0	CONSOLIDATED GAS
-MITCHELL ENERGY CORPORATION			RECEIVED:	02/27/84	JA: PA			
8422794	22223	3703922030	107-TF		A YURCAK UNIT #1 CRA-22030	MOSTERTOWN (MEDINA)/WH	6.8	COLUMBIA GAS TRAN
8422755	22224	3703922030	103		A YURCAK UNIT #1 CRA-22030	MOSTERTOWN (MEDINA)/WH	6.8	COLUMBIA GAS TRAN
8422756	22225	3703922028	103		LUCAS UNIT #1 CRA-22028	JAMESTOWN (MEDINA)/WHI	27.4	COLUMBIA GAS TRAN
8422757	22226	3703922028	107-TF		LUCAS UNIT #1 CRA-22028	JAMESTOWN (MEDINA)/WHI	27.4	COLUMBIA GAS TRAN
8422752	22221	3703922031	107-TF		MODEL LAND COMPANY UNIT #1	MOSTERTOWN (MEDINA)/WH	13.7	COLUMBIA GAS TRAN
8422753	22222	3703922031	103		MODEL LAND COMPANY UNIT #1	MOSTERTOWN (MEDINA)/WH	13.7	COLUMBIA GAS TRAN
-NEA CROSS CO			RECEIVED:	02/27/84	JA: PA			
8422729	22197	3704923158	102-2		CLARENCE BOYD #5	LEBOEUF	10.0	NATIONAL FUEL GAS
8422730	22198	3704923158	107-TF		CLARENCE BOYD #5	LEBOEUF	10.0	NATIONAL FUEL GAS
8422733	22201	3704923204	102-2		DAVID LAUGHLIN/ELMER FAILS #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422734	22202	3704923204	107-TF		DAVID LAUGHLIN/ELMER FAILS #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422737	22205	3704923152	102-2		KENNETH WISE #6	LEBOEUF	10.0	NATIONAL FUEL GAS
8422738	22206	3704923152	107-TF		KENNETH WISE #6	LEBOEUF	10.0	NATIONAL FUEL GAS
8422731	22199	3704923063	102-2		SAMUEL FAULHABER #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422732	22200	3704923063	107-TF		SAMUEL FAULHABER #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422735	22203	3704923202	102-2		TIMOTHY MCCORMICK #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8422736	22204	3704923202	107-TF		TIMOTHY MCCORMICK #3	LEBOEUF	10.0	NATIONAL FUEL GAS
-NEA CROSS CO			RECEIVED:	02/27/84	JA: PA			
8422748	22217	3704923287	107-TF		CROSS & COMPANY CONTRACTORS #1	UNION	10.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422749	22218	3704923287	102-2		CROSS & COMPANY CONTRACTORS #1	UNION	10.0	NATIONAL FUEL GAS
8422742	22211	3704922655	107-TF		JAMES MCMURRAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422743	22212	3704922655	102-2		JAMES MCMURRAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422744	22213	3704923279	102-2		JOSEPH MAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422745	22214	3704923279	107-TF		JOSEPH MAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422750	22219	3704923114	107-TF		SIMION CRISTEA/EDWARD LACNY #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422751	22220	3704923114	102-2		SIMION CRISTEA/EDWARD LACNY #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422746	22215	3704922686	107-TF		VICTOR MALINOWSKI #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422747	22216	3704922686	102-2		VICTOR MALINOWSKI #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422740	22209	3704923277	107-TF		WILLIAM WURST #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8422741	22210	3704923277	102-2		WILLIAM WURST #3	LEBOEUF	10.0	NATIONAL FUEL GAS
-PEOPLES NATURAL GAS CO			RECEIVED:	02/27/84	JA: PA			
8422718	22137	3706327491	103		FLOSSIE WHITACRE #4 - IND-27491	W PENNA - UPPER DEVON	15.0	PEOPLES NATURAL G
8422719	22138	3706327582	103		WILLIAM D DRYLIE #2-IND-27852	W PENNA - UPPER DEVON	16.0	PEOPLES NATURAL G
-PEOPLES NATURAL GAS CO			RECEIVED:	02/27/84	JA: PA			
8422692	21991	3712922223	103		AUGUST MAYER #3 - WES-22223	W PENNA - UPPER DEVON	33.0	PEOPLES NATURAL G
8422691	21990	3712922290	103		LENA MOGLIA #3 - WES-22290	W PENNA - UPPER DEVON	51.0	PEOPLES NATURAL G
8422686	21891	3712922216	103		ROBERT H WHITTAKER #1 - WES-22216	W PENNA - UPPER DEVON	22.0	PEOPLES NATURAL G
8422693	21992	3712922280	103		WILLIAM S RUFFNER #2 - WES-22280	W PENNA - UPPER DEVON	15.0	PEOPLES NATURAL G
-PIONEER WESTERN ENERGY CORP			RECEIVED:	02/27/84	JA: PA			
8422758	22232	3712922278	103		LOUIS A BOMPIANI #2	SOUTH HUNTINGDON	25.0	
-PIONEER WESTERN #3-1			RECEIVED:	02/27/84	JA: PA			
8422759	22233	3712922242	103		NORMAN STOUT #1	NEW STANTON BOROUGH	25.0	
-QUESTA JOINT VENTURE #3			RECEIVED:	02/27/84	JA: PA			
8422760	22234	3712922284	103		EDWARD KELLNER #1	HEMPFIELD	25.0	
-R D WERNER CO INC			RECEIVED:	02/27/84	JA: PA			
8422700	22106	3708520381	107-TF		O ANDERSON #1	SUGAR GROVE	25.0	NATIONAL FUEL GAS
-RELGATE RESOURCES (CANADA) LTD			RECEIVED:	02/27/84	JA: PA			
8422716	22135	3704923324	107-TF		HOTCHKISS #1	CROSSINGVILLE	20.0	COLUMBIA GAS TRAN
8422717	22136	3704923324	103		HOTCHKISS #1	CROSSINGVILLE	20.0	COLUMBIA GAS TRAN
-REX-HIDE REALTY INC			RECEIVED:	02/27/84	JA: PA			
8422699	22105	3705321599	103		ARNOLD T PRICE #1	BELL	65.0	
8422701	22110	3706327538	103		ROBERT L HANLEY #1	CANOE	35.0	
-REX-HIDE REALTY INC			RECEIVED:	02/27/84	JA: PA			
8422698	22104	3712922235	103		WILBUR W HAWKEY #1	LOYALHANNA	45.0	
-UNION DRILLING INC			RECEIVED:	02/27/84	JA: PA			
8422687	21944	3706327539	103		CHARLES RUSSELL #1 0704	CHERRYHILL TOWNSHIP	0.0	COLUMBIA GAS TRAN
-VICTORY ENERGY CO			RECEIVED:	02/27/84	JA: PA			
8422757	22207	3705321570	102-2		M PIERCE #3 CLE 21570	BURNSIDE	36.0	COLUMBIA GAS TRAN
*****								
TENNESSEE OIL & GAS BOARD								
*****								
-ACE PETROLEUM CO INC			RECEIVED:	02/27/84	JA: TN			
8422849	A-2639	4112921360	102-2		VIRGIL SMITH #1A		2.0	
8422850	A-2639	4112921384	102-2		VIRGIL SMITH #2A		3.5	
-AMTEX RESOURCES INC			RECEIVED:	02/27/84	JA: TN			
8422853	A-2638	4104921173	102-2		BRUNO GERNT ESTATE #3(D-3)		2.0	FENTRESS GAS TRAN
8422848	A-2625	4104921189	102-2		CHARLES GERNT ET AL E-3		50.0	FENTRESS GAS TRAN
8422847	A-2610	4104921174	102-2		CHARLES GERNT ET AL 3(D-1)		5.0	FENTRESS GAS TRAN
8422846	A-2626	4104921167	102-2		GERNT - GERNT UNIT 2-C		50.0	FENTRESS GAS TRAN
8422852	A-2637	4104921176	102-2		GERNT-GERNT #3 (D-2)		2.5	FENTRESS GAS TRAN
8422851	A-2654	4104921199	102-2		GERNT-PLATEAU PROPERTIES 1 E-2		30.0	FENTRESS GAS TRAN
-B & W OIL CO			RECEIVED:	02/27/84	JA: TN			
8422845	A-2634	4112921325	102-2		JOE PHILLIPS ET AL #2	GLADES EAST	24.0	EAST TENNESSEE NA
-BRADY ENERGY CORP			RECEIVED:	02/27/84	JA: TN			
8422842	A-2615	4112921354	102-4		B M BROOKS HEIRS ETAL #2	UNKNOWN	60.5	INTRASTATE ENERGY
8422841	A-2617	4112920062	102-2		LOUIS HOWARD #1	DOUGLAS BRANCH FIELD	21.9	INTRASTATE ENERGY
8422844	A-2620	4112920456	102-4		THOMAS L DAVIDSON #1	BURRVILLE	21.9	INTRASTATE ENERGY
8422843	A-2616	4112920901	102-4		THOMAS L DAVIDSON #2	BURRVILLE	21.9	INTRASTATE ENERGY
-C & M ENERGY INC			RECEIVED:	02/27/84	JA: TN			
8422835	A-2633	4115170043	108		CONWAY WALKER #1	ONEIDA WEST	19.0	INTRASTATE ENERGY
8422836	A-2632	4115170039	103		CONWAY WALKER #2	ONEIDA WEST	0.0	INTRASTATE ENERGY
8422837	A-2631	4115171028	108		ELCANEY & MAUDE TERRY #1	ONEIDA WEST	4.1	INTRASTATE ENERGY
-COLLINS C G			RECEIVED:	02/27/84	JA: TN			
8422840	A-2643	4104921130	102-4		BASE-GERNT UNIT #1	STOCKTON	21.9	FENTRESS GAS TRAN
8422839	A-2642	4104921160	102-2		BOYD WHEATON/GERNT UNIT #1	STOCKTON	21.9	FENTRESS GAS TRAN
8422838	A-2641	4104921156	102-2		CLYDE FREELS/PLATEAU PROPERTIES INC	STOCKTON	21.9	FENTRESS GAS TRAN
-CRYSTAL EXPLORATION CO			RECEIVED:	02/27/84	JA: TN			
8422834	A-2567	4115121117	102-4		RUTH VELANDER #3		5.0	
-DELOY MILLER			RECEIVED:	02/28/84	JA: TN			
8422869	A-2627	4115120440	102-2		KOPPERS #5	HURRICANE RIDGE	125.0	INTRASTATE ENERGY
8422861	A-2628	4115120462	102-2		KOPPERS #6	HURRICANE RIDGE	1.0	INTRASTATE ENERGY
8422867	A-2613	4115120993	102-2		WOODRUM #3	STANLEY JUNCTION	125.0	INTRASTATE ENERGY
8422868	A-2614	4115121072	102-2		WOODRUM #4	STANLEY JUNCTION	600.0	INTRASTATE ENERGY
-DIXIE OIL COMPANY			RECEIVED:	02/28/84	JA: TN			
8422883	A-2630	4104921022	102-4		CHARLES GERNT #8	STOCKTON SW	1.0	TENNESSEE GAS PIP
8422884	A-2629	4112921346	102-4		OTTO B HURST #1	WILDCAT	18.0	TENNESSEE GAS PIP
-EAST TENNESSEE CONSULTANTS INC			RECEIVED:	02/28/84	JA: TN			
8422880	A-2609	4112921378	102-2		G C PEMBERTON #A-7		90.0	
8422879	A-2622	4112921391	102-2		G C PEMBERTON #A-8		20.0	
-ENERPRD OF KENTUCKY INC			RECEIVED:	02/28/84	JA: TN			
8422881	A-2646	4112920714	102-2		THOMAS & WANDA BURNETT #2		2.0	
8422882	A-2645	4112920718	102-2		THOMAS & WANDA BURNETT #5		2.0	
-HUDSON RESOURCES			RECEIVED:	02/28/84	JA: TN			
8422878	A-2271	4112920889	102-4		J T MCKEETHAN	WILDCAT	0.1	INTERSTATE ENERGY
-JOHNSON ENERGY INC			RECEIVED:	02/28/84	JA: TN			
8422865	A-2644	4103520162	102-2		EDWARD BROOKHART #1-A	NORTH CREEK	45.0	GENESIS GAS SYSTE
8422864	A-2527	4103520153	102-2		ODELL SHIRELL UNIT #1		3.0	
-JON E JONES			RECEIVED:	02/28/84	JA: TN			
8422863	A-2611	4112921090	102-2		OLMSTEAD-OVERTON #4 P N 5026	WILDCAT	1.0	B & W OIL CO
-NATIONS RESOURCE OF ENERGY INC			RECEIVED:	02/28/84	JA: TN			
8422866	A-2571	4112921333	102-2		LESTER POTTER #2		2.0	
-ROGERS RICHARD R			RECEIVED:	02/28/84	JA: TN			
8422873	A-2606	4112921269	103		Y T JOHNSON UNIT #1		17.7	INTRASTATE ENERGY
-SAINT JOSEPH PETROLEUM INC			RECEIVED:	02/28/84	JA: TN			
8422870	A-2619	4104921163	102-2		C & S GERNT-BRUNO GERNT #2	STOCKTON	18.3	FENTRESS GAS TRAN
8422872	A-2618	4104921166	102-4		RODGER WALLACE-GERALD GERNT #1	STOCKTON	18.3	B & W OIL CO
-SRT DRILLING CO			RECEIVED:	02/28/84	JA: TN			
8422871	A-2621	4112921191	102-4		EARL MANIS 1	PLEASANT RIDGE	100.0	EAST TENNESSEE NA
8422876	A-1035	4115120503	102-4		GROVER C PEMBERTON #1	PLEASANT RIDGE	14.0	EAST TENNESSEE NA
8422877	A-2281-A	4115120503	108		GROVER C PEMBERTON #1	PLEASANT RIDGE	14.0	EAST TENNESSEE NA
-T & V DRILLING CO			RECEIVED:	02/28/84	JA: TN			
8422874	A-2636	4104921191	102-2		DALBERT ATKINSON UNIT #2		18.2	FENTRESS GAS TRAN
8422875	A-2635	4104921185	102-2		DALBERT ATKINSON #1		10.9	FENTRESS GAS TRAN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
RECEIVED: 02/28/84 JA: TN								
-TENEXCO CO						HURRICANE RIDGE		2.2 INTRASTATE ENERGY
8422862	A-2623	4115120321	102-2		KOPPERS #2			
***** WYOMING OIL & GAS CONSERVATION COMMISSION *****								
RECEIVED: 02/24/84 JA: WY								
-AMOCO PRODUCTION CO						CHICKEN CREEK - HUGGE	1829.0	
8422820	NG 193-83	4904120582	102-2		AMOCO CHEVRON #2-36	YELLOW CREEK DEEP - W	5518.8	
8422824	NG 164-83	4904120421	102-2		BRADBURY "B" #1 - (WEBER)	WILD HARE GULCH - FRD	35.0	NORTHWEST CENTRAL
8422800	NG 165-83	4903721632	107-TF		CHAMPLIN 326 AMOCO "E" #1	YELLOW CREEK DEEP - P	1825.0	
8422819	NG 162-83	4904120414	102-2		HARRY A MOON #1 - (PHOSPHORIA)	YELLOW CREEK DEEP	1825.0	
8422823	NG 166-83	4904120414	102-2		HARRY A MOON #1 - (WEBER)	GLASSCOCK HOLLOW - TW	305.5	
8422790	NG 163-83	4904120576	102-2		MILLIS WLU "B" #2	SEVEN MILE GULCH - FR	29.0	
8422810	NG 192-83	4902320369	107-TF		SEVEN MILE GULCH #12			
RECEIVED: 02/24/84 JA: WY								
-BELCO PETROLEUM CORPORATION						MOUNTAIN HOME	0.0	NORTHWEST PIPELIN
8422780	NG 95-83	4903520557	108		BUDD 4-4	C-47	0.0	NORTHWEST PIPELIN
8422779	NG 33-83	4903520696	102-4		C79-23	MOUNTAIN HOME	0.0	NORTHWEST PIPELIN
8422778	NG 96-83	4900320511	108		THOMPSON 3-8			
RECEIVED: 02/24/84 JA: WY								
-CELSIUS ENERGY CO						CHURCH BUTTES	0.0	MOUNTAIN FUEL SUP
8422792	NG 199-83	4903722227	103		CHURCH BUTTES UNIT #38	CHURCH BUTTES	257.3	MOUNTAIN FUEL SUP
8422805	NG 11-84	4904120601	103		CHURCH BUTTES UNIT WELL #39			
RECEIVED: 02/24/84 JA: WY								
-CHAMPLIN PETROLEUM COMPANY						TABLE ROCK	10.0	COLORADO INTERSTA
8422787	NG 174-83	4903721942	103		CPC #1 UPRR 44-13	TABLE ROCK	10.0	COLORADO INTERSTA
8422788	NG 173-83	4903722004	103		CPC #1 UPRR 44-23	TABLE ROCK	10.0	COLORADO INTERSTA
8422789	NG 172-83	4903721993	103		UPRR 44-9 #2			
RECEIVED: 02/24/84 JA: WY								
-CHEVRON U S A INC						WHITNEY CANYON - CART	919.8	COLUMBIA GAS TRAN
8422795	NG 16-84	4904120480	102-2		CHEVRON FEDERAL 2-6E			
RECEIVED: 02/24/84 JA: WY								
-CIG EXPLORATION INC						LONG BUTTE - CODY	0.0	COLORADO INTERSTA
8422811	NG 187-83	4901321127	107-C5		LONG BUTTE #5			
RECEIVED: 02/24/84 JA: WY								
-CITIES SERVICE OIL & GAS CORP						HARTZOG DRAW UNIT	17.0	PHILLIPS PETROLEU
8422821	NG 189-83	4900527115	103		HARTZOG DRAW UNIT TRACT 114 #5206	HARTZOG DRAW UNIT	34.0	PHILLIPS PETROLEU
8422822	NG 190-83	4900527114	103		HARTZOG DRAW UNIT TRACT 63 #5206	HARTZOG DRAW UNIT	15.0	PHILLIPS PETROLEU
8422817	NG 191-83	4900527113	103		HARTZOG DRAW UNIT TRACT 85 #5285			
RECEIVED: 02/24/84 JA: WY								
-CRYSTAL EXPLOR & PROD CO						DEDEKOVEN	69.4	MGPC INC
8422791	NG 181-83	4900526746	103		REED #31-20			
RECEIVED: 02/24/84 JA: WY								
-CZAR RESOURCES INC						PORCUPINE	200.0	MCCULLOCH GAS PRO
8422798	NG 183-83	4900526959	102-4		CZAR-HACKEY 32-1			
RECEIVED: 02/24/84 JA: WY								
-DAVIS OIL COMPANY						WILDCAT	100.0	BIG HORN FRACTION
8422815	NG 170-83	4900527056	102-2		ANDY UNIT #13	WILDCAT	24.0	BIG HORN FRACTION
8422814	NG 167-83	4900526970	102-2		ANDY UNIT #5	WILDCAT	200.0	BIG HORN FRACTION
8422807	NG 168-83	4900527072	102-2		FELIX UNIT #16-A	WILDCAT	140.0	BIG HORN FRACTION
8422813	NG 169-83	4900526700	102-2		FELIX UNIT #8			
RECEIVED: 02/24/84 JA: WY								
-DIAMOND SHAMROCK CORPORATION						BUCK DRAW	0.0	
8422818	NG 188-83	4905270400	102-4		EVERETT FEE 33-13			
RECEIVED: 02/24/84 JA: WY								
-HPC INC						SCOTT	0.0	PHILLIPS PETROLEU
8422797	NG 182-83	4900922236	102-2		M E #3			
RECEIVED: 02/24/84 JA: WY								
-HUNT OIL COMPANY						WILDCAT	365.0	
8422794	NG 13-84	4902921185	102-2		HOC FEE #1-6			
RECEIVED: 02/24/84 JA: WY								
-INTEGRATED ENERGY INC						SCOTT	10.0	CHINOOK PIPELINE
8422831	NG 9-84	4900921614	102-4		MORTON 1-19	SCOTT	12.0	CHINOOK PIPELINE
8422832	NG 10-84	4900921551	102-4		MORTON 1-20	SCOTT	0.0	CHINOOK PIPELINE
8422777	NG 8-84	4900922311	102-4		MORTON 2-20			
RECEIVED: 02/24/84 JA: WY								
-KERR-MCGEE CORPORATION						POWELL FIELD	0.0	PHILLIPS PETROLEU
8422801	NG 15-84	4900527125	102-2		MOORE-MINERAL TRUST #24-2			
RECEIVED: 02/24/84 JA: WY								
-LEONARD HAY						PINEDALE ANTICLINE	400.0	NORTHWEST PIPELIN
8422784	NG 178-83	4903500000	102-2		JENSEN #2			
RECEIVED: 02/24/84 JA: WY								
-MARATHON OIL COMPANY						OREGON BASIN	26.6	CODY GAS CO
8422783	NG 179-83	4902921208	103		PAULINE #13 (EMBAR AND TENSLEEP)			
RECEIVED: 02/24/84 JA: WY								
-MILESTONE PETROLEUM INC						PORCUPINE	40.0	PHILLIPS PETROLEU
8422833	NG 185-83	4900527104	103		BIRDSALL 410-8			
RECEIVED: 02/24/84 JA: WY								
-MONSANTO COMPANY						BATTLE BUTTE	400.0	COLORADO INTERSTA
8422804	NG 12-84	4901320743	102-4		LELAND #1-25			
RECEIVED: 02/24/84 JA: WY								
-PHILLIPS PETROLEUM COMPANY						HOLLER DRAW	6.6	PAHHANDLE EASTERN
8422803	NG 14-84	4901920735	103		JEPSON DRAW ST-A #3			
RECEIVED: 02/24/84 JA: WY								
-PUMA PETROLEUM CO						WILD HORSE CREEK	40.0	
8422812	NG 186-83	4900527021	103		ELLIOTT FEDERAL #1-27			
RECEIVED: 02/24/84 JA: WY								
-SMOKEY OIL COMPANY INC						WILDCAT CREEK UNIT	52.0	TRUE OIL CO
8422827	NG 5-84	4904522105	102-4		WILDCAT CREEK UNIT #11-18	WILDCAT CREEK UNIT	41.6	TRUE OIL CO
8422825	NG 3-84	4904522193	102-4		WILDCAT CREEK UNIT #14-8	WILDCAT CREEK UNIT	33.0	TRUE OIL CO
8422782	NG 26-83	4904522039	102-4		WILDCAT CREEK UNIT #21-9	WILDCAT CREEK UNIT	10.4	TRUE OIL CO
8422793	NG 2-84	4904521909	102-4		WILDCAT CREEK UNIT #23-4	WILDCAT CREEK UNIT	200.0	TRUE OIL CO
8422829	NG 7-84	4904522194	102-4		WILDCAT CREEK UNIT #24-8	WILDCAT CREEK UNIT	12.0	TRUE OIL CO
8422828	NG 6-84	4904522194	102-4		WILDCAT CREEK UNIT #43-12	WILDCAT CREEK UNIT #4	16.0	TRUE OIL CO
8422826	NG 4-84	4904521907	102-4		WILDCAT CREEK UNIT #43-4			
RECEIVED: 02/24/84 JA: WY								
-SUN EXPLORATION & PRODUCTION CO						HUNTER RANCH	0.4	MCCULLOCH GAS PRO
8422799	NG 184-83	4900526355	103		HUNTER RANCH MUDDY UNIT #10-5	UTE	0.0	MCDOR OIL & GAS CO
8422776	NG 32-83	4900525634	108		UTE MUDDY SAND UNIT #3-17			
RECEIVED: 02/24/84 JA: WY								
-TEXACO INC						TABLE ROCK	0.1	COLORADO INTERSTA
8422786	NG 175-83	4903722205	103		TABLE ROCK UNIT #68	TABLE ROCK	55.0	COLORADO INTERSTA
8422785	NG 176-83	4903722213	103		TABLE ROCK UNIT #69			
RECEIVED: 02/24/84 JA: WY								
-TOCO CORP						FINN-SHURLEY	1.5	MGPC INC
8422808	NG 198-83	4904521753	102-4		COLLINS #12	FINN SHURLEY	1.5	MGPC INC
8422816	NG 197-83	4904521751	102-4		COLLINS #8			
RECEIVED: 02/24/84 JA: WY								
-TRUE OIL COMPANY						WILDCAT CREEK UNIT #2	47.0	PHILLIPS PETROLEU
8422830	NG 1-84	4904521878	102-4		WILDCAT CREEK UNIT #23-8	WILDCAT	32.0	PHILLIPS PETROLEU
8422781	NG 27-83	4904500000	102-4		WILDCAT CREEK UNIT #31-18			
RECEIVED: 02/24/84 JA: WY								
-WIND RIVER EXPLORATIONS						SOUTH BYRON FIELD	13.0	MONTANA-DAKOTA UT
8422809	NG 345-82	4900306245	108		WEST 1-X			
RECEIVED: 02/24/84 JA: WY								
-WOODS PETROLEUM CORPORATION						WILDCAT/BUCK DRAW	543.0	PHILLIPS PETROLEU
8422806	NG 157-83	4900525987	102-2		MOORE MINERALS TRUST #14-1	MOORE UNIT	245.0	WESTERN GAS PROCE
8422802	NG 17-84	4900922273	102-2		MOORE UNIT #1	PINE TREE	22.0	WESTERN GAS PROCE
8422796	NG 177-83	4900527127	102-4		PINE TREE UNIT #28-66			
***** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, RAWLINS, WY *****								
RECEIVED: 02/28/84 JA: WY 5								
-BELCO PETROLEUM CORPORATION						BIG PINEY	0.0	NORTHWEST PIPELIN
8422885	W29-3	4903520602	D 102-4		8PMV 14-75			

[FR Doc: 84-6092 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-C



# **Federal Register**

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Tuesday  
March 27, 1984

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## **Part IV**

### **Department of Energy**

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Office of Conservation and Renewable  
Energy

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10 CFR Part 430

Energy Conservation Program for  
Consumer Products; Final Rules  
Regarding State Petitions for Exemption  
From Federal Standards for Clothes  
Dryers and Kitchen Ranges and Ovens

## DEPARTMENT OF ENERGY

## Office of Conservation and Renewable Energy

## 10 CFR Part 430

[Docket Nos. CE-SPRM NY001, WI002, CA003, MN004, OR005]

## Energy Conservation Program for Consumer Products; Final Rules Regarding State Petitions for Exemption From Federal Standards for Clothes Dryers and Kitchen Ranges and Ovens

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rules.

**SUMMARY:** The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, as a general matter requires that the Department of Energy prescribe an energy efficiency standard for each of certain major household appliances unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

On December 22, 1982, DOE issued a final rule with respect to clothes dryers and kitchen ranges and ovens in which DOE determined that an energy efficiency standard for either of these products would not result in a significant conservation of energy and would not be economically justified. In addition, the final rule set forth the procedures by which States may obtain exemption for State or local efficiency standards that are statutorily preempted as a result of a final rule with respect to energy efficiency standards.

DOE received petitions from the States of California, New York, Wisconsin, Minnesota and Oregon requesting, in each case, that the State energy efficiency standard requiring intermittent ignition devices (IIDs) for clothes dryers and/or kitchen ranges and ovens be exempted from Federal preemption.

On August 1, 1983, the Department of Energy published proposed rules to grant each State's petition. Today's final rules reflect DOE's final determination with respect to each of the five petitions. DOE is adopting final rules granting each State's petition seeking exemption from Federal preemption for each State's applicable standard requiring IIDs for clothes dryers and/or for kitchen ranges and ovens.

**DATES:** The effective date of these rules is April 26, 1984.

## FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113.1, Room GF-217, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Room 6B-128, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9513

## SUPPLEMENTARY INFORMATION:

## I. Introduction

## a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619,<sup>1</sup> created the Energy Conservation Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (referred to hereafter as "covered products") are: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. See Section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts; testing, labeling, and energy efficiency standards.

For each of the covered products, DOE is required to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(a) (1) and (c). The Act provides, however, that no standard for a product is to be established if there is no test procedure for the product, or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State

or local laws or regulations concerning such matters. Generally, all such State or local laws or regulations (State laws) are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy would be a rule that supersedes any State standard. Section 325(b). A State whose energy efficiency standard would be superseded, however, may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is more stringent. However, DOE cannot issue the requested rule if it finds that the State standard would unduly burden interstate commerce. Section 327(b)(3).

Because Section 327(b)(3) requires DOE to consider each State petition individually before DOE can issue a rule exempting the State or local standard from preemption, DOE could not issue a rule that makes a blanket determination for all the five States that petitioned.

## b. Background

On December 22, 1982, DOE published a final rule with respect to two covered products, clothes dryers and kitchen ranges and ovens. (47 FR 57198.) (Hereafter referred to as the December 1982 rule.) With respect to both products, DOE determined that a standard would not result in significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards as well as by manufacturers to obtain exemption from State or local energy efficiency standards.<sup>2</sup>

State standards subject to preemption include: energy efficiency requirements applicable to any particular type (or class) of covered products established by mandatory State or local building codes, including codes that incorporate consensus standards, such as those developed and issued by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE); prohibitions on standing pilot lights; and prohibitions on the

<sup>2</sup> Persons subject to a State efficiency standard that has not been superseded by a Federal rule, may petition DOE to have the standard preempted based upon a finding by the Secretary of no significant State or local interest sufficient to justify the standard and a finding by the Secretary that the standard unduly burdens interstate commerce. Section 327(b)(1).

<sup>1</sup> Part B of Title III of EPCA, as amended by NECPA, 42 U.S.C. §§ 6291-6309, is referred to in this notice as the "Act."

manufacture, sale and/or hook-up of appliances with less than a certain efficiency.

In the December 1982 rule, DOE also established the effective dates upon which supersession of State and local standards would take place. DOE determined that State and local laws for a particular product would be superseded 180 days after Federal Register publication of a final rule governing that particular product unless within 60 days of publication, a State had filed with the Department a notice of intent to petition DOE for an exemption for that product. The full petition itself had to be filed within 120 days of publication of the rule. When such a submission is made, the State or local rule will remain in effect until DOE reaches a final determination on the State petition.

In its petition, a State is required to present information which would appear on its face to show that the State's regulation is more stringent than the Federal standard and that there is a significant State or local interest in the State's regulation. The State is not required to provide information concerning the State regulation's impact on interstate commerce. A person opposing the State's petition should present information which would show that the State's proposed rule would place an undue burden on interstate commerce. Such a person may also present information to rebut the State's initial submission.

Five States, New York, California, Wisconsin, Minnesota, and Oregon, each submitted a notice of intent to petition and each petitioned the Department for a rule to allow each State to maintain its applicable energy efficiency standard for clothes dryers and/or kitchen ranges and ovens.

Each of the five States met the filing requirements set forth in the December 1982 rule. Each notice of intent to petition and each petition was received within the proper time period. The petitions also presented information which indicated that each State's regulation is more stringent than the Federal standard and that there is a significant State interest to justify the State regulation. DOE made a preliminary determination that there did not appear to be any undue burden on interstate commerce resulting from the State regulations and statutes.

Therefore, on August 1, 1983, DOE proposed to amend § 430.33 to issue rules permitting each of the five States to maintain applicable appliance energy efficiency standards for clothes dryers and/or kitchen ranges and ovens. (48 FR

34858.) (Hereafter referred to as the August 1983 proposal.)

DOE requested comments on the petitions and encouraged interested parties to speak at public hearings to be held in each of the five States and in Washington, D.C. Although the Department did not receive sufficient interest to hold all the public hearings, hearings were held in Madison, Wisconsin on September 13, 1983 and in Washington, D.C. on September 30, 1983.<sup>3</sup>

## II. Discussion

### a. General

DOE is adopting final rules granting each of the five State petitions for exemption for each State's applicable standard requiring IIDs for clothes dryers and/or kitchen ranges and ovens.

The comments submitted in favor of DOE's proposed rules to grant each petition are State specific. These comments were submitted by States, public interest groups and some utilities. The comments received recommending denials generally address generic issues pertaining to most or all of the five petitions. These comments were submitted by appliance manufacturers and appliance manufacturer trade associations.

A very general criticism of the validity of the entire rulemaking process was submitted by the Gas Appliance Manufacturers Association (GAMA) (GAMA, No. 7, at 1).<sup>4</sup> GAMA criticized DOE for a statement in the December 1982 final rule which said that "... in general, these laws (those State laws and regulations currently in force) would qualify for an exemption from supersession."<sup>5</sup> GAMA contends that the Department prejudged the results of the petition process without having seen the required documentation.

GAMA's contention is without merit. DOE has held a full and open rulemaking process in its review of the five State petitions. Each State met the filing requirements set forth in the December 1982 rule within the proper time period. Moreover, each State was required to present information demonstrating that its regulation is more

<sup>3</sup> DOE received only one request to speak at each of the hearings scheduled to be held in Minnesota, New York, California and Oregon. These persons were invited to participate in the other hearings. The representative from Minnesota spoke at the Wisconsin hearing and the representative from New York spoke at the Washington, D.C. The individuals from California and Oregon did not present testimony at either of the hearings.

<sup>4</sup> Comments on the rulemaking were given docket numbers. Citations to comments provide those docket numbers.

<sup>5</sup> 47 FR 57214.

stringent than the Federal standard and that there is a significant State interest to justify the State regulation. DOE's preliminary determination with regard to these petitions and the proposal to grant each petition were based on DOE's initial review of the State regulations and assessment of each petition.

In these rulemakings, as in any rulemaking proceeding, the data received during the comment period is crucial to the Department's final determination. The statement GAMA quotes in the December 1982 preamble merely indicated DOE's belief concerning State and local standards prior to the actual implementation of a full rulemaking proceeding. Clearly, the final determinations contained in today's action were based on all of the materials contained in the record.

### b. Stringency of State Standards, State Interest, and Effect on Interstate Commerce

Several manufacturers and industry associations argue that the States overstated the energy savings derived from their respective standards and failed to show significant State interest. Most of these commenters focused on issues pertaining to gas clothes dryers.

General Electric Company (GE) (GE, No. 6, at 4) and GAMA (GAMA, No. 7, at 3) first maintain that the State bans on pilot lights fail the EPCA requirement that a State standard be more stringent than the Federal standard. GAMA's position is that a ban on pilot lights in clothes dryers is equivalent to a de facto national standard since they assert that all gas clothes dryers produced are now equipped with IIDs. GE argues that a State standard must be greater than any standard DOE analyzed. GE maintains that the State bans are less stringent than the highest levels analyzed by DOE in the December 1982 final rule.

DOE rejects both of these arguments since the Act requires that a State standard, to be eligible for exemption from Federal preemption, must be more stringent than a Federal standard established by regulation. Clearly, the State standards requiring IIDs are more stringent than the Federal standard, since the Federal "no standard" standard allows the manufacture and sale of clothes dryers and ranges and ovens with pilot lights. Furthermore, the Act prescribes no criteria that States must meet in the exemption process concerning meeting or exceeding the efficiency levels analyzed by DOE to determine cost effectiveness of standards. Therefore, DOE rejects the argument that a State standard must be

more stringent than the levels studied by DOE.

The Association of Home Appliance Manufacturers (AHAM) (AHAM, No. 9, at 4), Whirlpool Corporation (Whirlpool, No. 12, at 1), GAMA (GAMA, No. 7, at 3) and General Electric (GE, No. 6, at 3) point out that each of the three petitions seeking exemption for standards for gas clothes dryers rest on the assumption that the existing standards will save the energy claimed by each State. These commenters dispute the claims that State regulations have been responsible for the extensive use of IIDs in gas dryers, since IIDs were already widely used prior to any State's requirement for them. In fact, these commenters argue, there are no energy savings attributable to State laws banning pilot lights in gas dryers since no dryers containing pilot lights have been produced since 1976. The elimination of the standing pilot light in gas clothes dryers, according to these commenters, was the result of market forces (the rising cost of gas and maintenance problems with the pilot light design) and the cost of returning to a pilot light model would be much less cost effective than the current IID models.

With respect to gas clothes dryers, GE (GE, No. 6, at 2) also asserts that since preemption does not become effective until DOE issues a final determination, the savings data that result from earlier State actions are irrelevant. GE maintains that only future savings that the States expect to achieve as a result of the exemption are pertinent to the justification of the State's regulations. AHAM (AHAM, No. 9, at 7) maintains that the States have failed to meet the criteria of demonstrating significant State or local interest since if there are no energy savings, no benefits can accrue to the regulation and there can be no significant interest in retaining the existing standards. GE (GE, No. 6, at 2), GAMA (GAMA, No. 7, at 4) and Whirlpool (Whirlpool, No. 7, at 14) concur on this point and state that DOE has not required, nor have the States shown, that some distinctive benefit will result if the State regulations are exempted from preemption.

DOE has reviewed the data submitted by these commenters and agrees that under current conditions there is little specific data which sets forth energy savings derived from the laws banning pilot lights in clothes dryers. However, DOE believes that there is a significant State interest in States maintaining their ban on pilot lights. Without such a ban on pilot lights, manufacturers in the future could redesign their clothes

dryers and sell clothes dryers with pilot lights.

DOE agrees that market forces and cost considerations were contributing factors for discontinuing production of clothes dryers with pilot lights, and since such models do not appear to be available in the marketplace, the Department acknowledges that these requirements do not result in measurable energy savings currently. However, several commenters supporting the ban on clothes dryers with pilot lights emphasized that while there appear to be no such clothes dryers in production now, it is of significant interest to the State to maintain such a ban since there is no guarantee of what the market will be like in the future. See testimony of September 13, 1983, by P. Herriges, West Central Wisconsin Community Action Agency, at 15; R. Christenson, Wisconsin Department of Administration, at 22; Sen. J. Strohl, Chairman, Wisconsin Senate Committee on Energy and Environment, at 38; D. Shott, Office of the Governor of Wisconsin, at 48; and Rep. C. Gerlach, Chairman, Wisconsin House Committee on Energy and Utilities, at 65.

DOE agrees with the commenters from Wisconsin. Although data suggests that manufacturers will not return to the manufacture of clothes dryers with pilot lights, DOE has received no assurances that pilot light manufacture will never be resumed for clothes dryers. In fact, the manufacturers and AHAM could not assure DOE that only clothes dryers with IIDs will be manufactured and sold in the future.

White Consolidated Industries, Inc. (WCI) (WCI, No. 3, at 2) and GAMA (GAMA, No. 7, at 3) comment that the States are providing old data, that the rising cost of gas eliminated pilot lights from clothes dryers and seems likely to do the same for ranges and ovens. WCI asserts that since 1980 the percentage of ranges shipped with pilot lights has dropped from 58 percent to 43 percent nationwide and that some manufacturers, such as Frigidaire, no longer offer any pilot light models for ranges and ovens.

WCI, GAMA, and Whirlpool submitted data on the energy savings and/or the number of pilot lights presumably kept out of the States as a result of State requirements for IIDs on ranges and ovens. (See WCI, No. 3, at 1; GAMA, No. 7, at 2, and Whirlpool, No. 12, at 4.) For example, using GAMA data, WCI calculates that in the States of Wisconsin and Minnesota 19,155 and 14,925 pilot lights, respectively, would be banned each year in those States.

These figures contrast to Wisconsin's revised estimate of 86,000 pilot lights banned each year, and Minnesota's 64,495. Furthermore, GAMA (GAMA, No. 7 at 1) maintains that all of the petitions overstate the yearly energy savings resulting from a ban on pilot lights in ranges and ovens. Moreover, Whirlpool (Whirlpool, No. 12 at 4, 7) argues that the savings claims by Wisconsin, California and Minnesota, do not account for the sales of ranges and ovens which would have been sold with IIDs in the absence of standards.

The Department recognizes that the increasing cost of gas and other market forces contributed to the apparently uniform production of clothes dryers with IIDs. DOE also agrees that these factors may contribute to the increase in IID's kitchen ranges and ovens. In addition, DOE is aware that some of the data provided in the petitions may be outdated or incomplete. However, no data were submitted to demonstrate that the existing regulations pertaining to kitchen ranges and ovens do not save energy. These commenters do not dispute the fact that energy is being saved, only the amount of energy saved. The States have demonstrated that their standards are more stringent than the Federal "no standard" standard with respect to kitchen ranges and ovens. DOE believes, moreover, that because energy is being saved, the States have shown a significant State interest in these cases in maintaining their applicable laws.

Whirlpool and GE also assert that DOE should provide more meaningful criteria for determining whether there is a significant State or local interest to justify a regulation. (See Whirlpool, No. 2, at 14; and GE, No. 6, at 2.) These commenters suggest that a State should demonstrate that some distinctive benefit will result from a standard or that no standard will result in adverse consequences. Whether GE and Whirlpool intend "more meaningful criteria" to mean more stringent criteria or additional criteria is unclear to DOE. The Department already requires a State petition to demonstrate a benefit of the existing standard and provide evidence that the State standard is more stringent than the Federal standard. DOE believes that if either a past or future energy savings can be attributed to a State or local standard, then that clearly demonstrates a benefit and therefore a significant State interest in maintaining the regulation.

Three commenters, GAMA, AHAM, and the National LP Gas Association (NLPGA), argue that the granting of the petitions poses a burden on interstate

commerce. (See GAMA, No. 7, at 2; AHAM, No. 9, at 2; and NLPGA, No. 11, at 2.) GAMA argues that granting these petitions will weaken the economies of a nationwide distribution system that results from the opportunities for national advertising and centralized warehousing and distribution. AHAM maintains that the mere existence of any State regulation is a burden on commerce and that if DOE accepts the States' claims, the door may be open to future outrageous or exaggerated claims about the benefits of standards. AHAM maintains that this could be the ruin of the national appliance marketplace. NLPGA states that the burden on interstate commerce will result from a "hodge-podge" of regulations where pilot lights are permitted in some States but not in others. Economic pressures will force some manufacturers to discontinue the production of appliances with pilot lights, leaving consumers with only one option, that of purchasing the more expensive IID-equipped appliances. GAMA also states that the petitions show that the potential gas savings associated with the State laws is so small, there appears to be no benefit from these laws which exceeds the burden on interstate commerce and the ensuing costs to the consumer.

The Department rejects these arguments. First, with regard to clothes dryers, the matter of any burden on interstate commerce is non-existent since few, if any, products are being produced or sold that would be affected if the Department were to grant the petitions. Second, the commenters have not provided any evidence to demonstrate how the existing State regulations banning pilot lights in kitchen ranges and ovens have caused an undue burden on interstate commerce. The New York State Energy Office stated that the New York law allows for manufacturers to petition for a waiver of the State regulation, and that no manufacturers have petitioned for a waiver from the State ban on pilot lights. Further, the New York State Energy Office concluded that since no manufacturer has petitioned for relief from the ban on pilot lights, the law did not impose an undue burden on manufacturers. DOE agrees with the New York State Energy Office that the manufacturers' failure to petition the State for relief from the ban on pilot lights indicates that the law has not placed an undue burden on interstate commerce. The other States provided no specific information on this matter. However, DOE did not receive any evidence that these regulations caused undue burden on manufacturers. No

evidence has been provided that the mere existence of these State regulations is a burden on interstate commerce, especially in light of the fact that some of these same commenters emphasize that it was market forces only, not regulations, that led to industry-wide use of IIDs in clothes dryers and that the same market forces are responsible for the increase of IIDs in kitchen ranges and ovens.

GAMA did not submit data to support its claim that the savings associated with the State laws is so insignificant that there is no benefit which exceeds the burden on interstate commerce and consumer costs. A State petition to maintain an energy efficiency standard for a particular covered product must only show that the State standard is more stringent than the Federal standard and that there is a significant State interest in maintaining that standard. Nothing in the Act or in DOE's regulations requires a State to meet or exceed an energy savings threshold.

### III. Conclusions and Determinations on State Petitions

#### a. General Conclusion

The Department has determined that each State petition seeking to maintain applicable appliance energy efficiency standards for gas clothes dryers and/or kitchen ranges and ovens has demonstrated that the State standard is more stringent than the Federal standard and that there is a significant State interest to justify each State's regulation. Even if the energy saved for ranges and ovens was less than the amount of energy set forth in the petitions, there is agreement, even from those opposing the granting of these petitions, that the State regulations do save energy. While clothes dryer standards presently would not appear to save much energy, the possibility exists that without standards, manufacturers could reintroduce pilot lights which use more energy than IIDs. Furthermore, the Department received no data showing that any of the State regulations impose an undue burden on interstate commerce.

#### b. Determinations on State Petitions

1. New York (NY001). The petition submitted by the New York State Energy Office seeks a rule exempting from Federal preemption Section 16-116 of New York State's Energy Law as it pertains to gas kitchen ranges and ovens. Section 16-116 of New York's law prohibits the sale, delivery or installation of any stove or range using a gaseous fuel (other than propane) that is not equipped with an IID. Exempted

from this requirement are gas stoves or ranges containing a separate component specifically designed to provide space heating.

DOE has reviewed New York's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that New York has demonstrated that Section 16-116 is more stringent than DOE's rule for gas kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Section 16-116 of the New York Energy Law from the preemptive provisions of Section 327(a)(2)(A) of the Act.

2. Wisconsin (WI002). The petition submitted by the Wisconsin Department of Administration seeks a rule exempting from Federal preemption Wisconsin Statute 101.655 (1981) as it pertains to gas clothes dryers and gas kitchen ranges and ovens. The Wisconsin law prohibits the sale, distribution or installation of a new gas appliance that is not equipped with a State-certified IID.

DOE has reviewed Wisconsin's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on this analysis, DOE has determined that Wisconsin has demonstrated that Wisconsin Statute 101.655 (1981) is more stringent than DOE's rule for gas clothes dryers and kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Wisconsin Statute 101.655 (1981) as it pertains to gas clothes dryers and kitchen ranges and ovens from the preemptive provisions of section 327(a)(2) of the Act.

3. California (CA003). The petition submitted by the California Energy Commission (CEC) seeks a rule exempting from Federal preemption Sections 25960 and 25964 of California's Public Resources Code and Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code Sections 2-5352(1) and 2-5365 as they pertain to gas kitchen ranges and ovens. The California laws prohibit the sale or installation of gas appliances using a gaseous fuel (other than propane) that are not equipped with a State-certified IID.

DOE has reviewed California's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on this analysis, DOE has determined that California has demonstrated that Sections 25960 and 25964 of the California Public Resources Code, Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code, Sections 2-5352(1) and 2-5365 are more stringent than DOE's rule for gas kitchen ranges and ovens, are justified by a significant State interest and do not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Section 25960 and 25964 of the California Public Resources Code, and Title 20 California Administrative Code, Section 1605 and Title 24, California Administrative Code, Section 2-5352(1) and 2-5365 from the preemptive provisions of Section 327(a)(2) of the Act.

4. Minnesota (MN004). The petition submitted by the Minnesota Department of Energy seeks a rule exempting from Federal preemption Minnesota Statute Section 116J.18, Subd. 14, as it pertains to gas clothes dryers and gas kitchen ranges and ovens. Minnesota's law prohibits the sale or installation of gas clothes dryers and gas kitchen ranges and ovens that are equipped with a continuously burning gas pilot light.

DOE has reviewed Minnesota's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that Minnesota has demonstrated that Minnesota Stat. § 116J.18, Subd. 14 is more stringent than DOE's rule for gas clothes dryers and kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Minnesota Stat. § 116J.9 Subd. 14 as it pertains to gas clothes dryers and kitchen ranges and ovens from the preemptive provisions of Section 327(a)(2) of the Act.

5. Oregon (OR005). The petition submitted by the Oregon Department of Energy seeks a rule exempting from Federal preemption Section 1 of the Oregon Revised Statutes (ORS) 479.770 as it pertains to gas clothes dryers and gas kitchen ranges and ovens. The Oregon law prohibits the sale of gas clothes dryers and gas kitchen ranges and ovens unless they are equipped with IIDs.

DOE has reviewed Oregon's petition and the comments on the proposed rule

in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulations. Based on its analysis, DOE has determined that Oregon has demonstrated that Section 1 ORS 479.770 is more stringent than DOE's rule for gas clothes dryers and kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Section 1 ORS 479.770 as it pertains to gas clothes dryers and kitchen ranges and ovens from the preemptive provisions of Section 327(a)(2) of the Act.

#### IV. Environmental, Regulatory Impact, and Small Entity Impact Reviews

##### a. Environmental Review

In each case where DOE is requested to approve State standards, DOE conducts a National Environmental Policy Act (NEPA) review on a case-by-case basis. Currently, the five States have regulations requiring IIDs on gas clothes dryers and/or gas kitchen ranges and ovens. Granting the petitions received from these States will mean that these regulations will remain in effect. The Department's final rule granting the petitions with respect to clothes dryers and/or ranges and ovens, will result in no change in the environmental status quo of the five States, and therefore, will clearly have no significant environmental impact. No environmental assessment or environmental impact statement is required.

It should also be noted that the Department has prepared and issued an Environmental Assessment (EA), DOE/EA-0113, on the impact of setting and implementing energy efficiency standards for all 13 types of consumer products identified in section 322(a) (1)-(13) of the Act. A Finding of No Significant Impact and Notice of Availability of that EA were published with the June 30, 1980 proposed rule for minimum energy efficiency standards for eight of the products. 45 FR 44088. Copies of the EA may be obtained from the address indicated at the beginning of this notice.

##### b. Regulatory Impact Review

In light of the foregoing analysis of the effect of today's actions, DOE has concluded that the rules are not "major rules" for the purposes of Executive Order 12291 because they 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 enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the rules were submitted to OMB for review without a regulatory impact analysis.

##### c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the final rules will not have a "significant economic impact on a substantial number of small entities." Granting the State petitions will not affect the status quo. Based on evidence provided in these rulemakings, the existing State regulations have not had a significant impact on manufacturers, including small businesses.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

#### List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., March 15, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

#### PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. Section 430.33 is revised to read as follows:

##### § 430.33 Preemption of State regulations.

Any State regulation providing for any energy efficiency standard or other requirement with respect to the energy efficiencies or energy use of a covered product that is not identical to a Federal standard (including a determination of no standard) in effect under this subpart is preempted by that standard, except that with respect to:

(a) Kitchen ranges and ovens:

(1) All gas kitchen ranges and ovens in New York subject to the New York State Energy Law, Section 16-116, are exempt from preemption;

(2) All gas kitchen ranges and ovens in Wisconsin subject to Wisconsin Statute 101.655 (1981) are exempt from preemption;

(3) All gas kitchen ranges and ovens in California subject to Sections 25960 and 25964 of the California Public Resources Code, Title 20, California Administrative Code Section 1605, and Title 24, California Administrative Code, Sections 2-5352(1) and 2-5365, are exempt from preemption;

(4) All gas kitchen ranges and ovens in Minnesota subject to Minnesota

Statute § 116J.19, Subd. 14, are exempt from preemption; and

(5) All gas kitchen ranges and ovens in Oregon subject to Section 1 of the Oregon Revised Statutes 479.770 are exempt from preemption.

(b) Clothes dryers:

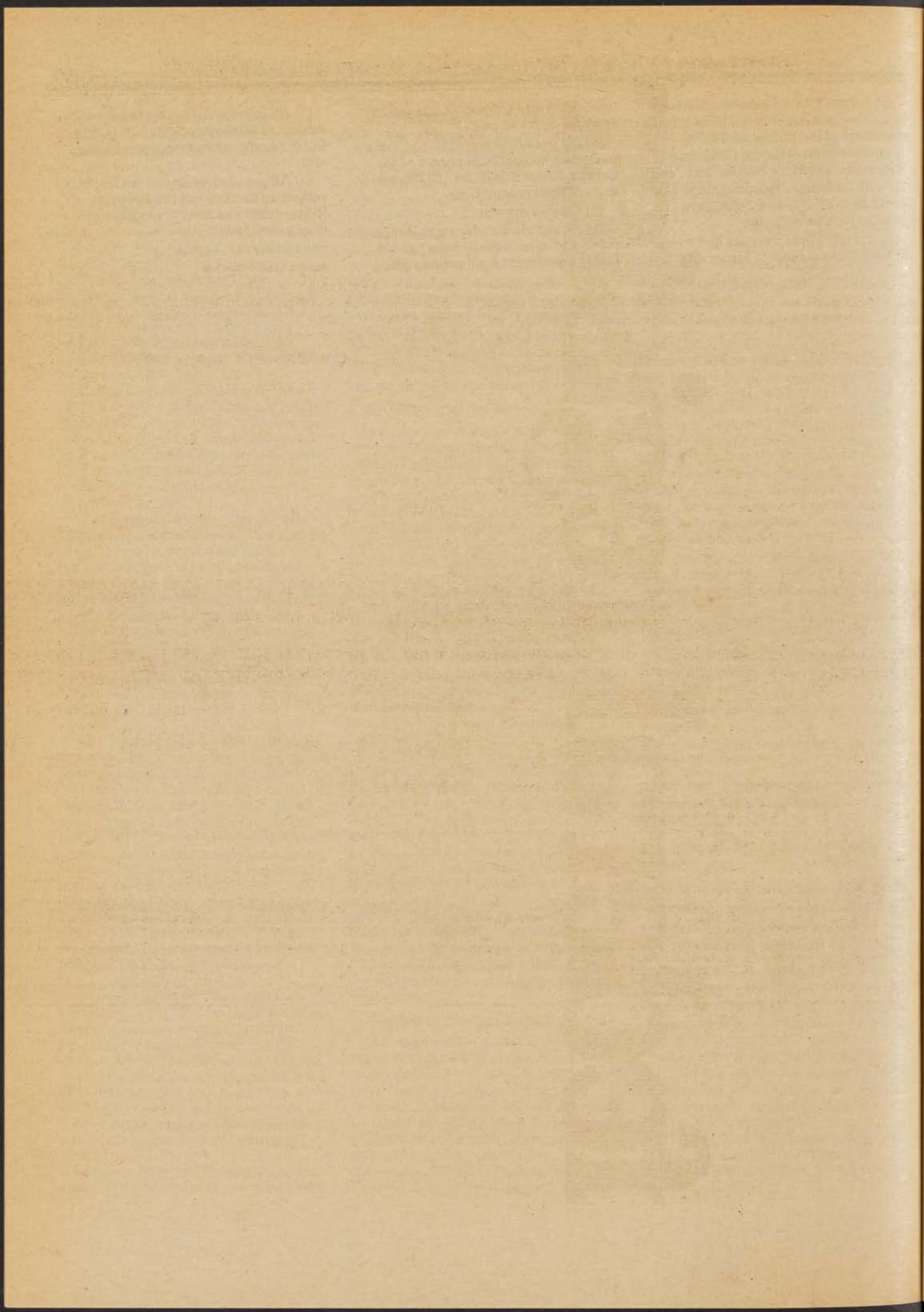
(1) All gas clothes dryers in Wisconsin subject to Wisconsin Statute 101.655 (1981) are exempt from preemption;

(2) All gas clothes dryers in Minnesota subject to Minnesota Statute § 116J.19, Subd. 14, are exempt from preemption; and

(3) All gas clothes dryers in Oregon subject to Section 1 of the Oregon Revised Statutes 479.770 are exempt from preemption.

[FR Doc. 84-8085 Filed 3-26-84 8:45 am]

BILLING CODE 6450-01-M



# **Federal Register**

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**Tuesday  
March 27, 1984**

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**Part V**

**Department of  
Health and Human  
Services**

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**Office of Human Development Services**

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**45 CFR Parts 1385, 1386, and 1387  
Developmental Disabilities Program; Final  
Rule**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Human Development Services

#### 45 CFR Parts 1385, 1386, and 1387

#### Developmental Disabilities Program

**AGENCY:** Department of Health and Human Services (HHS), Office of Human Development Services (HDS), Administration on Developmental Disabilities (ADD).

**ACTION:** Final rule.

**SUMMARY:** The Department is issuing final rules for the Developmental Disabilities programs. This final regulation implements the Developmental Disabilities Assistance and Bill of Rights Act of 1978, as amended, and contains management and administrative procedures which will reduce reporting and paper work requirements. These rules do not include requirements for the University Affiliated Facilities (UAF) except for the requirement that a UAF must provide an assurance regarding the rights of persons with developmental disabilities. Regulations for the UAF program are found at 45 CFR Part 1388.

**EFFECTIVE DATE:** April 26, 1984.

**FOR FURTHER INFORMATION CONTACT:**

Jean K. Elder, Ph.D., Commissioner, Administration on Developmental Disabilities, Room 336-E Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201. Telephone: (202) 245-2890.

**SUPPLEMENTARY INFORMATION:**

#### Background

Amendments to the Developmental Disabilities Assistance and Bill of Rights Act of 1978, and 1981 require some major modifications in the regulations to reflect statutory changes. In addition, Departmental policy and regulatory principles governing Executive Order 12291 and the Paper Work Reduction Act of 1981 are reflected in these final rules.

#### Description of Program

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.), "the Act," has traditionally served a target population who, by virtue of their severe handicapping conditions, have been underserved or not served at all through existing programs.

Legislation originally enacted in 1963 as the Mental Retardation Facilities and Construction Act (Pub. L. 88-164) authorized planning activities and

construction of facilities in which services were to be provided to the mentally retarded. Public Law 88-164 was subsequently amended by the Developmental Disabilities and Facilities Construction Act of 1970 (Pub. L. 91-517) which further expanded the target population to include individuals with cerebral palsy, epilepsy and other neurological disorders. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for the developmentally disabled.

Public Law 91-517 and successive amendments to the Act emphasized that the purpose of the Developmental Disabilities Program was to strengthen, rather than supplant existing services, and to fill gaps in the human service delivery system. Section 101(a)(5) of the Findings and Purpose Section in the Act (42 U.S.C. 6000(a)(5)) explicitly states that "it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care \* \* \*"

Public Law 94-103, the 1975 Amendments, deleted the construction authority, emphasized advocacy, and added a new requirement for States to establish a Protection and Advocacy system (42 U.S.C. 6012). It also introduced Section 111, "Rights of the Developmentally Disabled," (42 U.S.C. 6010) which stated findings with respect to the rights of persons with developmental disabilities.

The 1978 amendments (Pub. L. 95-602) introduced the provision of priority services to assist States in focusing their energies on specific areas needing remediation (42 U.S.C. 6001(8)).

In addition, these amendments added a new definition of developmental disabilities (42 U.S.C. 6001(7)). The term "developmental disability" in the 1978 amendments was defined as " \* \* \* a severe chronic disability of a person which:

(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) Is manifested before the person attains age twenty-two;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living; and (vii) economic self-sufficiency; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

This definitional change was arrived at following an extensive study and emphasizes functional deficits rather than clinical conditions. It is estimated that 3.9 million people in the United States now meet the functional definition of developmental disability.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) extends the Developmental Disabilities Program through September 30, 1984. It authorizes appropriations for the programs in the Act which include: (1) The basic State grant program (42 U.S.C. 6061-6068); (2) a system for protection and advocacy of individual rights (42 U.S.C. 6012); (3) the university affiliated facilities programs for administration and operation of interdisciplinary training, research and service programs (42 U.S.C. 6031-6033); and (4) special project grants for projects of national significance (42 U.S.C. 6081).

In addition, Section 912 of Pub. L. 97-35 repeals the requirement formerly contained in Section 110 of the Act (42 U.S.C. 6009) for a specific evaluation system for services furnished to persons assisted under the Developmental Disabilities Program.

The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on February 23, 1983 (45 FR 7700-7712). Interested persons were given sixty days in which to send written comments, suggestions or objections regarding the proposed regulations. During the sixty day comment period seventy letters containing approximately two hundred and twenty-five comments were received. In addition informal discussions on the NPRM were held in three major cities.

All written comments were analyzed and form the basis for changes which the Department has made in these final rules.

Part 1385 contains provisions which apply to all of the Developmental Disabilities programs. Part 1386 regulates the two formula grant programs: the Basic State Grant program authorized by Part C of the Act; and the Protection and Advocacy (P&A) program authorized by Section 113 of the Act. Part 1387 applies to Special Projects of National Significance authorized by Section 145 of the Act. Although rules for the University Affiliated Facilities program (UAF) are in 45 CFR Part 1388, these rules require an assurance by the UAFs of compliance with Section 111 of the Act regarding the rights of persons with developmental disabilities.

## Summary of Major Comments, Departmental Response and Changes

The sections which follow include a summary of major comments, our response to those comments, and discussion of all significant changes that we have made in the NPRM to produce these final regulations.

### PART 1386

#### Subpart A—Basic Requirements

##### Section 1386.2 *Obligation of Funds.*

##### Section 1386.2(c)(1) *Obligation Based on Estimate.*

Section 1386.2(c)(1) of the NPRM proposed that Protection and Advocacy Offices be permitted to obligate funds prior to the end of the fiscal year based on an estimate of potential costs to be incurred when an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities (litigation costs) is contemplated.

*Comment:* One commenter recommended that at least twelve months be allowed to reobligate funds which have been obligated for litigation purposes prior to the end of the fiscal year in which the funds become available.

*Response:* The Department cannot legally allow for obligation or reobligation of funds after the fiscal year in which those funds are appropriated and cannot change Section 1386.2(a) which provides for obligation of all funds within the same fiscal year they are appropriated. We believe that we are providing additional flexibility in this area by allowing an estimate of litigation costs to appear on an obligation document. We suggested that if litigation activity on behalf of an individual is tentative, the Protection and Advocacy System may obligate funds for that purpose in sufficient time during the fiscal year which will allow for reobligation in that same year in the event that litigative activity becomes unnecessary.

##### Section 1386.2(c)(2) *Definition of litigation.*

This section defines litigation as it relates to Section 1386.2(c)(1).

*Comment:* Five commenters indicated that the definition of litigation in § 1386.2(c)(2) was too restrictive and suggested that the definition be expanded to include monitoring activities associated with court orders or consent decrees.

*Response:* We concur with this opinion and have expanded the definition of litigation costs to include the expenditure of funds for monitoring,

review and oversight of the outcome of litigation. This cannot include salaries of P&A employees, as suggested by several individuals, since salaries are daily expenditures and cannot be part of an obligation to an outside agent or agency.

In addition, we want to clarify that funds used for salaries and expenses incurred in the day-to-day operation of the Protection and Advocacy Systems are part of the operating budget of the grantee. These funds cannot be utilized beyond the end of the fiscal year and cannot be treated in the same way as funds which are obligated to an outside agent or agency to achieve a specific objective, such as litigation and associated activities.

##### Section 1386.3 *Liquidation of Obligations.*

The NPRM stipulated that all obligations must be liquidated within one year of the close of the Federal fiscal year in which the funds were made available, or else they revert back to the Federal government.

*Comment:* There were more than twenty comments on this section proposing a longer liquidation period to address contingencies such as (1) start-up lag by subgrantees, (2) coordination of grant cycles with other State agencies, (3) reappropriation of funds by State Legislatures, and (4) previous time lag between the beginning of a fiscal year and States' receipt of allotment. In addition, commenters recommended that we consider a liquidation period which would coincide with the three year State plan cycle. Many individuals felt that there was a need for a thirty-six month period in which to liquidate obligations. An equal number recommended a twenty-four month period.

*Response:* The Department believes it has the latitude to establish a reasonable liquidation period which will not impose undue hardships on the States. As there was virtual unanimity that twelve months following the close of the fiscal year in which funds were allotted was too restrictive for liquidation of obligations, we have determined that a two year liquidation period will ease problems articulated by commenters. Section 1386.3 has been revised to reflect this decision and calls for all obligations to be liquidated within two years (twenty-four months) of the close of the Federal fiscal year in which the funds were made available or else they revert back to the Federal government.

##### Section 1386.4 *Eligibility for Services.*

##### Section 1386.4(b) *Clients Previously Served.*

This section addresses the "Grandfather Clause" in Pub. L. 95-602 which allows continued receipt of services by individuals who met the definition of developmental disability in Pub. L. 94-103, and who actually received one or more services under the Act between October 1, 1968 and October 1, 1978 and whose Individual Habilitation Plan (IHP) indicated a continuing need for those same services.

*Comment:* Eight of the commenters recommended that language in this section be changed to permit the continued eligibility for services under the Act of persons who were eligible under the former categorical definition of developmental disability, but who do not meet the criteria of the functional definition, provided their IHP specifies that they still need the same services as they did at the time of their entry into the DD service delivery system.

Two other respondents advocated that this "Grandfather Clause" be deleted from the regulation.

Other commenters indicated a need to delete the words "those same" from this section because client needs for services change as they mature and as a result of remediation.

*Response:* The Report of the Conference Committee accompanying HR 12467 noted that the functional "definition is intended to cover everyone currently covered under the [categorical] definition and it is also intended to add other individuals with similar characteristics \* \* \*. It is not the intent to exclude anyone who legitimately should have been included under the definition in current law." HR Report No. 95-1789, 95th Congress, Second Session 104 (1978).

We believe that the NPRM addressed continued eligibility for individuals who were previously served under the categorical definition, but agree that services, in order to meet current needs of individuals, will change over a period of years and should be reflected in Individual Habilitation Plans. We have, therefore, deleted the words "those same" from this section.

We believe that this section should not be deleted as commenters suggested because it conveys the intent of Congress not to exclude anyone who was previously served and continues to be eligible under the functional definition.

### Subpart B—State System for Protection and Advocacy of Individual Rights

#### Section 1386.20 Designated State Protection and Advocacy Office.

##### Section 1386.20(a) Accountable State Official.

Paragraph (a) of this section of the NPRM proposed that the Governor designate the State official or public or private agency accountable for the proper use of funds and conduct of the State Protection and Advocacy System.

*Comment:* One respondent pointed out that requiring Governors to designate State protection and advocacy agencies imposed restrictions on the States not intended by the Congress. In some States, for example, the legislature may wish to assume responsibility for designating the Protection and Advocacy agency, or may wish to place that responsibility on an officer of the legislature or on the Chief Justice of the State Supreme Court.

Five commenters apparently misinterpreted § 1386.20(a) as introducing another element of control over a State Protection and Advocacy System. This section relates only to designation of the agency to be responsible for the Protection and Advocacy System.

*Response:* The Department concurs that States should be given the maximum flexibility for designation of the State Protection and Advocacy System and have added the phrase "or other State official or entity" following the word "Governor."

##### Section 1386.20(b) Non-designation of Guardianship Agency.

This paragraph of the NPRM proposed to preclude an agency of the State which provides guardianship services from being designated as the Protection and Advocacy agency.

*Comment:* Seventeen commenters supported the prohibition against designation of agencies providing guardianship services. They agreed with the Department that guardianship should be considered a service and that allowing providers of guardianship services to receive the protection and advocacy designation would inherently promote conflict of interest for those agencies.

Five commenters felt that clarification was needed to determine if this section precluded the Protection and Advocacy agencies from representing clients in guardianship proceedings.

*Response:* The Department wishes to make clear the intent of this section. It prohibits designation as the Protection and Advocacy agency of any agency

which provides direct services, including those which provide guardianship services, in order to avoid conflicts of interest. This section is not intended to dictate the kinds of cases which Protection and Advocacy agencies can handle. We have clarified § 1386.20(b) by inserting the following phrase after the word *State*: "or private agency providing direct services, including." States affected by this section will be given one year from the date of issuance of this regulation to redesignate their Protection and Advocacy agencies in the event that redesignation is necessary to comply with § 1386.20(b).

##### Section 1386.20(c) Responsible State Official.

This paragraph calls for the appointment of a responsible State official to receive notices of compliance actions and disallowances when an entity outside of State government is designated as the protection and advocacy agency.

*Comment:* Three commenters supported, without reservation, this section, four opposed it, and five indicated that it should be modified. Those in opposition or seeking modification felt that the independence of the Protection and Advocacy agency would be compromised.

*Response:* In response to those commenters who expressed concern that this section would adversely affect the independence of the Protection and Advocacy agencies, the Department wishes to make clear that this was not the intention of § 1386.20(c). The State official referred to in this section is to act in a liaison capacity in cooperation with the Protection and Advocacy agency in the event that there are instances of disallowance of funds or compliance actions. We have modified this section, for purposes of clarity, by making necessary technical changes which address this concern.

##### Section 1386.21 Requirements of the Protection and Advocacy System.

##### Section 1386.21(b)(1) Federal Access to Records.

This section of the NPRM provided for access to client records by authorized Federal officials.

*Comment:* Two respondents indicated that the opportunity for access afforded representatives of the Federal government in this section was too broad and violated confidentiality of records.

*Response:* The Department has addressed this issue by amending this section to tie Federal access to clients' records to official audit or other reviews

conducted by the Federal government. The Department will fulfill its obligations to maintain confidentiality of personal records.

*Comments:* Three commenters indicated that granting unlimited access by parents or guardians to the records of minor clients would, in some cases, violate the Protection and Advocacy System's responsibilities to these clients. (e.g. where minors are represented in instances of alleged child abuse).

*Response:* The Department has amended this Section to protect client confidentiality and to recognize the primacy in these instances, not only of State law but also of court order and attorney-client privilege by adding the terms "court order" and "attorney-client privilege."

##### Section 1386.22 Triennial report on the State Protection and Advocacy System.

We have made technical changes to this section for clarity and, in one instance, have indicated an OMB clearance number.

##### Section 1386.23 Periodic Reports.

This section identifies required reports in addition to the triennial report.

*Comment:* One respondent indicated that it was not clear whether the responsibility for submitting the annual report resides with the Protection and Advocacy agency or with the State. Another commenter questioned whether it was appropriate to require that quarterly and final financial status reports be submitted by the Governor or appropriate State financial official.

*Response:* We agree and in each case have changed the requirement so that these reports must be submitted directly to the Department by the State Protection and Advocacy agency. In addition, we have revised the language for clarity.

##### Section 1386.24 Federal financial Participation: Allowable and non-allowable costs for Protection and Advocacy Systems.

##### Section 1386.24(b)(1) Costs incurred for activities not included in the triennial report are disallowed.

This section of the NPRM precluded Federal financial participation for activities not included in the triennial report.

*Comment:* One commenter noted that as new activities will occur after the triennial report has been submitted and as the annual report will be a summary of activities which have already taken place, problems for the State would

arise if this section remained as written in the NPRM.

*Response:* We concur that the rigidity of this provision would cause unnecessary problems for Protection and Advocacy Systems and have deleted section 1386.24(b)(1).

*Section 1386.24(b)(2) Non-allowable Costs.*

The NPRM proposed, in this section, that costs incurred for activities to solve problems not directly related to an individual's disability and which are faced by the general populace (e.g. drawing up of wills or divorce actions) would not be eligible for Federal financial participation.

*Comment:* Four commenters indicated that the examples cited in this section are sometimes part of an activity directly related to a person's disability and would inhibit the Protection and Advocacy Systems from carrying out their mandate.

*Response:* The Department concurs that if activities listed in the examples are part of the overall tasks of the Protection and Advocacy System in resolving a client's problem, then they should be allowable. We have decided to delete the example but retain the paragraph to convey that if a client seeks assistance solely to resolve a problem faced by the general populace, the client should be referred to other counsel or sources of assistance.

*Access To Institutional Records*

A section on "access to records" was not included in the regulation part of the NPRM but was discussed in the preamble section which described an earlier NPRM dated May 9, 1980. Numerous responses were received to the request for comment on this issue.

These comments stressed the importance of insuring that State Protection and Advocacy Systems are able to serve developmentally disabled persons residing in institutions as well as persons in the community. They felt that the intent of Congress was quite clear regarding the mandate of Protection and Advocacy Systems to employ all appropriate methods for ensuring the rights of all developmentally disabled persons, including those residing in institutions.

*Response:* As developmentally disabled persons residing in institutions are less likely to have access to a Protection and Advocacy System and less likely to understand the services afforded them by that system than are their counterparts residing in the community, special communication efforts may have to be made to insure that the services offered by Protection

and Advocacy Systems are understood by and available to institutionalized developmentally disabled persons.

Where problems of access to records and facilities exist, it is important that States take action to address these systemic issues, e.g. through negotiation with individual institutions and agencies.

The Department does not wish to issue regulations granting blanket access to records because of potential conflict with the rights of persons who are competent and do not wish their records reviewed, especially if they receive no Federal or State assistance. However, we will endeavor to identify "best practices" and issue an information memorandum containing model agreements, practices and procedures.

**Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities**

*Section 1386.30 (a) and (c)(2) Priority Areas.*

These sections of the NPRM proposed to require that the States prepare and submit plans which meet the requirements of Section 133(b) and Section 137(b) of the Act, and that States select the priority area(s) in which sixty-five percent of the Federal allotment will be spent.

*Comment:* Two respondents commented that these provisions do not reflect the role of the Councils in conducting needs assessment, selecting the priorities, and developing the plans. One suggested that the language in the May 9, 1980 NPRM (1386.32) be included in this section. The May, 1980 NPRM described the specific responsibilities of the Council in the planning and priority selection process.

*Response:* It was not our intent to exclude the Councils from the planning and decisionmaking process. Consequently, the final rules have been modified to specify that States and Councils will jointly prepare and submit the State Plan which will include jointly selected priority areas.

*Section 1386.30(c) State Plan Format.*

This section of the NPRM supports Executive Order 12372 which allows States to submit their plans in any format they choose, as long as the plans contain all the required information and assurances.

*Comment:* Twelve commenters wanted the regulation changed to require States to use the State Plan Format which was jointly developed by the Administration on Developmental Disabilities (ADD) and the National

Association of Developmental Disabilities Councils (NADDC).

The rationale for this suggestion was that the State plan is the most important document to assure the intent of the Act is being carried out, to provide consistent, comparable data, and to assist States in helping each other. There are twelve commenters who expressed concern that, without a standardized format, these important roles of the plans would be diluted.

One commenter supported the absence of a mandatory format in favor of "simplicity, flexibility, and substitution."

*Response:* The Department is maintaining its previous position in support of Executive Order 12372. This section in the regulation will allow for a State plan format of the States' choice (including use of the voluntary format developed by NADDC and ADD) as long as States submit plans which meet the requirements of Sections 133 and 137(b) of the Act and provide assurances regarding the development of individual habilitation plans.

*Section 1386.30(c)(3) Identification of Council Members.*

This section of the NPRM called for the identification in the State Plan of the members of the officially appointed State Planning Council.

*Comment:* One organization believed that identification of Council members in the State plan was too prescriptive and unnecessarily intrusive.

*Response:* We concur with this comment and have deleted Sections 1386.30(c)(3) and 1386.30(c)(4).

*Section 1386.30(c)(4) Council Staffing.*

This section of the NPRM set forth the requirement that the State assign a Director and such support staff as deemed necessary.

*Comment:* Twenty respondents commented on this position. Seven suggested that the language be amended to specify that the director and support staff should be solely responsible to the State Planning Council and eight respondents suggested that the Council should determine what support staff are necessary.

One commenter suggested that it is the State's prerogative to determine adequate support staff, and one suggested that such decisions should be made jointly by that State and the Council.

One respondent supported the deletion of the May 1980 NPRM requirement that the director be full time, and two advocated that a full time director be mandatory.

*Response:* ADD recognizes that there have been instances when Councils feel that States have not allocated sufficient staff to permit them to carry out their mandated responsibilities. A requirement that the need for support staff be determined by the Council and that the director and support staff be solely responsible to the Council might eliminate that problem.

However, it is the general policy of the Department to permit States to organize their governments as they see fit. While there may be occasions when Federal requirements necessitate a departure from this policy, we do not believe this is the case in this instance. In order to be responsive to comments and recognizing that a Council's views on what constitutes adequate staff are important in assisting a State in arriving at a proper decision, we have changed the regulation to require State agency consultation with the Council in determining staffing requirements.

The regulation clearly requires the State to identify and assign staff to the Council. This identification and assignment assures that Councils will have specific staff who will carry out the executive and administrative functions under council auspices. We decided that a full time director should not be required because in many States the assignment of a full time director precludes the assignment of part time support staff, a circumstance that restricts the flexibility of Councils to retain staff with a variety of skills. The proposed language has been modified to reflect that the authority for the determination of necessary staff, while still vested with the State, should be made with advice from the Council. These requirements are to be included in the State plan through an assurance rather than a description in section 1386.30(e)(4).

#### *Section 1386.33 Protection of Employees Interests.*

This section of the NPRM proposed to provide for fair and equitable arrangements to protect the interests of employees affected by actions under a State plan to provide alternative community living arrangement services.

*Comment:* There were twenty-two comments on this section, each addressing one of the following five points of view.

(1) Three commenters requested that the regulation contain language from the preamble which explicitly calls for "the protection of the interests of employees who work in institutions when the State has selected the priority area of alternative community living arrangements causing the return of

clients from institutions to the community."

(2) Three commenters concluded that the protection of employee interests should be the responsibility of State civil service systems.

(3) Six commenters took issue with that portion of the preamble which referred to the protection of employee interests when the State plan identified alternative community living arrangements as a priority. They maintained that the law requires this protection when alternative community living arrangement services are provided irrespective of their selection as a priority.

(4) Three commenters felt that the regulation should take into account the types of alternative living arrangement services which would adversely affect institutional employment. They felt that the provision of respite care and aid to families of individuals (services under alternative community living arrangements) who had never been institutionalized was not a basis for providing employee protection and would be inappropriate and destructive to the objective of providing individuals with the least restrictive environment.

(5) Seven commenters maintained that Councils lack the authority to develop and implement a plan to protect the interests of employees.

*Response:* The Department agrees with the first comment that an employee protection plan must relate to institutional employees affected by alternative living arrangement services. In addition, we recognize that there was an error in the preamble of the NPRM, as pointed out in the third comment, stating that a plan for the protection of employees' interests is necessary when a State selects the priority area of alternative community living arrangements as a priority service. The Act requires an employee protection plan when any alternative community living arrangement services are provided, and not only when the priority area is selected (as erroneously stated in the preamble of the NPRM).

With regard to the second comment, the Act (Section 133(b)(7)(B)) requires development of an employee protection plan as discussed in the previous paragraph. Therefore, the Department has rejected the suggestion that the employee protection plan be left to State merit systems.

We also agree with the point of view expressed in paragraph four (4) above. However, since the provision of respite care for, and other aid to, families of individuals who have never been institutionalized can have no adverse effect on employees of institutions, no

employee protection plan can logically be required or developed when these services are provided. Consequently, no change in regulation is called for.

The fifth issue regarding Councils' lack of authority to plan and implement a plan to protect the interests of employees fails to take into account that the State plan must be jointly developed by the Council and State administering agency. The plan is implemented by the State agency which is empowered to carry out an employee protection plan. The extent of Council authority is prescribed by the statute and the regulation is consistent with the statute. Since the Department cannot change the law by regulation, it has rejected this comment.

#### *Section 1386.34 Provision of Priority Services.*

This section addresses requirements that the State plan identify one or two priority areas in which sixty-five percent of the allotment is to be expended.

*Comment:* Four commenters requested that preamble language of the NPRM describing the Department's interpretation regarding priority services be included in the regulation.

*Response:* We concur and have added appropriate language to Section 1386.34.

#### *Section 1386.35(b)(3) Nonallowable Cost.*

In the NPRM, this paragraph listed non-allowable costs for basic State grants, including issuances of the Office of Management and Budget.

*Comment:* Two commenters expressed confusion on what specific issuances were referred to in this section, and suggested that the final rules list those applicable issuances.

*Response:* We concur that all responsible parties should be informed of the policies to which they must adhere. However, most of these policy issuances emanate from separate agencies, such as the Office of Management and Budget, and are subject to change. Any addition or deletion of a particular requirement would necessitate amendment of these regulations should these policies be delineated in the final rules. Consequently, ADD will disseminate information on these issuances to all affected parties through an information memorandum which can be updated as needed.

#### **Miscellaneous Comments**

##### *Minimum Allotments*

Establishment of a minimum allotment level for State Developmental Disabilities Programs.

*Comment:* Two respondents suggested that language in current regulations establishing the amount of formula grant funds for minimum allotment States be inserted in the final rules.

*Response:* The statute is very explicit about the minimum amounts to which States are entitled, leaving little room for elaboration or clarification. Thus, including the suggested language in the regulations would constitute a restatement of the law. We consider such redundancy unnecessary.

#### Subpart D—Hearings

##### Section 1386.80 General.

This subpart in the NPRM set forth the requirements regarding the practice and procedure for hearings for States when issues of compliance arise. It also made these provisions applicable to the Protection and Advocacy System.

*Comment:* Eight respondents commented on the length and detail of those requirements. Their concerns centered around their imposing an undue administrative burden on ADD.

One respondent specifically supported provisions which addressed the recognition of individuals and groups to participate as *amici curiae* in the proceedings.

*Response:* The Department appreciates the concern expressed about potential administrative burdens. However, experience has shown that most compliance issues are resolved through negotiations during the process of developing and approving State plans. It is rarely necessary to engage in formal hearings. When such cases arise, however, it is important that the practice and procedures for such hearings be clearly delineated, including all essential protections for affected parties. As a result this subpart, except for some minor technical corrections, has been retained in the final rules and is essentially unchanged.

#### PART 1387

##### Special Projects—Projects of National Significance

##### Section 1387.1 General.

This section of the NPRM proposed that all projects supported with funds under Section 145 of the Act be of national significance. Since the 1981 amendments to the Act are quite explicit, we chose not to repeat that language in the regulation and have indicated that pertinent information concerning format, content of application, submittal procedures and priority areas would be included in the consolidated HDS discretionary grant

announcement published in the **Federal Register**.

*Comment:* Four commenters expressed concerns that the developmentally disabled might not be served if projects of national significance were announced in the consolidated HDS Federal Register announcement of availability of funds.

They recommended that regulatory language require that funds available under Section 145 must be used for projects related specifically to the developmentally disabled. These commenters also expressed concern that some "cross-cutting" projects awarded with section 145 funds might be too broad to be of value to the developmentally disabled target group.

*Response:* The Department feels that all projects supported with Section 145 funds in the joint HDS discretionary grant process have directly benefitted or will directly benefit the developmentally disabled and does not concur with the recommendations. However, we have amended this section to include language which reflects the intent of Section 145 of the Act.

#### Impact Analysis

These proposed regulations have little economic impact since they closely follow the statute. Further, the regulations primarily affect State agencies, which are not considered small entities under the Regulatory Flexibility Act. Therefore, the Secretary certifies, pursuant to 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act, that this regulation will not have a significant impact on a substantial number of small entities.

For the same reasons, this proposed rule does not meet the threshold requirements contained in Executive Order 12291 and, therefore, does not constitute a major rule.

#### Recordkeeping and Reporting Requirements

Sections 1386.22 (Triennial Report), 1386.23(a) (Annual Report) and 1386.30-1386.31 and 1386.33-1386.34 (State Plan) of this rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of these information collection requirements.

There will be no specified format for the submittal of the State plan requirements established in §§ 1386.30-1386.31 and 1386.33-1386.34. States may select any format they wish as long as they comply with the requirements in the Act and in these regulations. These

regulations reflect the aims of Executive Order 12372 to allow for State Plan simplification, consolidation or substitution.

#### List of Subjects

##### 45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

##### 45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

##### 45 CFR Part 1387

Colleges and Universities, Grant programs/education, Grant programs/social programs, Handicapped, Research.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities Basic Support; and 13.631 Developmental Disabilities—Special Projects)  
Dated: October 26, 1983.

**Dorcas R. Hardy,**

*Assistant Secretary for Human Development Services.*

Approved: February 23, 1984.

**Margaret Heckler,**  
*Secretary.*

For the reasons set forth in the Preamble, Chapter XIII of Title 45 of the Code of Federal Regulations is amended as follows:

1. In Title 45, Chapter XIII, the Subchapter heading for Subchapter I is revised to read as follows:

#### SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

2. Parts 1385, 1386, and 1387 of Chapter XIII of the Code of Federal Regulations are revised as follows:

#### PART 1385—REQUIREMENTS APPLICABLE TO PARTS 1386, 1387 and 1388

Sec.

- 1385.1 General.
- 1385.2 Purpose of the regulations.
- 1385.3 Definitions.
- 1385.4 Rights of persons with developmental disabilities.
- 1385.5 Employment of handicapped individuals.
- 1385.6 Waivers.
- 1385.7 Formula for determining allotments.
- 1385.8 Grants administration requirements.

**Authority:** Pub. L. 96-164, 77 Stat. 282, as amended by Pub. L. 90-170, 81 Stat. 527; Pub. L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89

Stat. 486; Pub. L. 95-602, 92 Stat. 2955; Pub. L. 97-35, 95 Stat. 563 (42 U.S.C. 6001 et seq.)

#### § 1385.1 General.

Except as specified in § 1385.4, the requirements in this Part are applicable to programs and projects carried out under Parts 1386, 1387, and 1388:

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;

(b) State Basic Program for Planning, Administration and Services on Behalf of Persons with Developmental Disabilities;

(c) Special Projects—Projects of National Significance; and

(d) University Affiliated Programs.

#### § 1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

#### § 1385.3 Definitions.

In addition to the definitions in Section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

*Act* means the statutory authority for the developmental disabilities programs as enacted in Pub. L. 88-164 and amended by Pub. L. 90-170, Pub. L. 91-517, Pub. L. 94-103, Pub. L. 95-602 and Pub. L. 97-35. It may be cited as the Developmental Disabilities Assistance and Bill of Rights Act.

*Commissioner* means the Commissioner of the Administration on Development Disabilities, Office of Human Development Services, Department of Health and Human Services or his or her designee.

*Department* means the U.S. Department of Health and Human Services (HHS).

*Fiscal year* means the Federal fiscal year unless otherwise specified.

*Governor* means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

*Secretary* means the Secretary of the Department of Health and Human Services.

#### § 1385.4 Rights of persons with developmental disabilities.

(a) Section 111 of the Act, *Rights of Persons with Developmental Disabilities* (42 U.S.C. 6010), is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with Section 133(b)(5)(C) of the Act (42 U.S.C. 6063(b)(5)(C)), regarding the rights of

developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated facilities or for special project grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with Section 111.

#### § 1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under this Act must meet the requirements of Section 106 of the Act (42 U.S.C. 6005) regarding affirmative action. Failure to comply with Section 106 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of Part 1386.

#### § 1385.7 Waivers.

Applications for a waiver of the provisions of Section 107 of the Act (42 U.S.C. 6006) with respect to alternative use of facilities constructed with funds under the Act may be granted by the Commissioner if the following criteria are met:

(a) The waiver request provides a basis for alternative use or sale of a facility constructed with funds appropriated under the Act.

(b) The clients served in the facility are or will be served in a facility of equal or higher quality.

(c) If the waiver request is for an alternate use, that use must serve some other public purpose.

#### § 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the purpose of the basic State program (see Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities) and the protection and advocacy system (see Subpart B—State System for Protection and Advocacy of Individual Rights) on the following basis:

(a) Two-thirds of the amount appropriated are allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated is allotted to each State on the basis of the relative need for services of persons with developmental

disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (Section 202(d)(1)(B)(ii) of the Social Security Act), (42 U.S.C. 402(d)(1)(B)(ii)).

#### § 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386, 1387, and 1388 of this chapter.

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR Part 46—Protection of Human Subjects.

45 CFR Part 74—Administration of Grants.

45 CFR Part 75—Informal Grant Appeals Procedures.

45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and Procedure for Hearings Act under Part 80 of this title.

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(b) The Departmental Grant Appeals Board also has jurisdiction over appeals by grantees who have received grants under the University Affiliated program or for a Special Project.

The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR Part 16.

(c) The Departmental Grant Appeals also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs—the Basic State Grant program and the State Protection and Advocacy system. Appeals filed by States shall be decided in accordance with 45 CFR Part 16.

(d) In making audits, examinations, excerpts and transcripts of records of grantees and subgrantees, including the protection and advocacy system, as provided for in 45 CFR Part 74, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

**PART 1386—FORMULA GRANT PROGRAMS****Subpart A—Basic requirements**

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Authority: Pub. L. 88-164, 77 Stat. 282, as amended by Pub. L. 90-170, 81 Stat. 527; Pub.

L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89 Stat. 486; Pub. L. 95-602, 92 Stat. 2955; Pub. L. 97-35, 95 Stat. 563 (42 U.S.C. 6000 et seq.).

**Subpart A—Basic Requirements****§ 1386.1 General.**

All rules under this subpart are applicable to both the Protection and Advocacy System and State Basic Support Program.

**§ 1386.2 Obligation of funds.**

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States only within the same Federal fiscal year.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) Protection and Advocacy offices may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented a developmentally disabled person (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy system. All funds made available to the State Basic Support Program and to the P&A System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within the same fiscal year in which the funds were originally obligated.

**§ 1386.3 Liquidation of obligations.**

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this

section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

**§ 1386.4 Eligibility for services.**

(a) All persons who meet all of the criteria of the definition of developmental disability set forth in Section 102 of the Act (42 U.S.C. 6001) are eligible for available and appropriate services.

(b) In addition, a person who met the definition of developmental disability as provided in Pub. L. 94-103 and who was actually receiving one or more services under the Act during the period October 1, 1968 through November 30, 1978, is eligible to continue to receive same services, provided that person's Individual Habilitation Plan (IHP) indicates a continuing need for same services.

**Subpart B—State System for Protection and Advocacy of Individual Rights****§ 1386.20 Designated State Protection and Advocacy Office.**

(a) The Governor or other State official or entity so empowered must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy system.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

**§ 1386.21 Requirements of the Protection and Advocacy System.**

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of Section 113(a) of the Act (42 U.S.C. 6012(a)) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy system

which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy system must:

(1) Keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection and advocacy system for purposes of carrying out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege.

(2) Have written policies governing access to duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

**§ 1386.22 Triennial report on the State protection and advocacy system:**

In order to receive Federal financial assistance for a State's Protection and Advocacy system:

(a) At least once every three years the Protection and Advocacy office must submit through the designating official or entity to the appropriate Regional Office of the Department, a report describing the system. The report may be in the format of the State's choice. Unless State law provides differently, the report must be signed by the designating official or entity.

(b) The triennial report on the State Protection and Advocacy system must state how requirements of Section 113(a)(1) and (2) of the Act are being met and address those items contained in the request for information outline to be issued by the Department.

(c) The Department will not terminate or deny funding of the Protection and Advocacy system until it has given the State reasonable notice and opportunity for a hearing in accordance with Subpart D of this Part.

(Approved by the Office of Management and Budget under control number 0980-0053 expiration date 6/30/85)

**§ 1386.23 Periodic reports.**

In addition to the triennial report, the State Protection and Advocacy Agency must submit:

(a) An annual report describing the activities carried out under the system and any changes made in the system during the previous year and addresses such other items as prescribed by the Secretary and approved under the

Paperwork Reduction Act. Those items contained in the request for information submitted for approval to OMB. The report may be in the format of the State's choice.

(Approved by the Office of Management and Budget under control number 0980-0160 expiration date 12/31/86)

(b) Quarterly financial status reports from the Protection and Advocacy Agency which are due 30 days after the close of each quarter of the Federal fiscal year, except for the final report which is due 90 days following the close of the fiscal year.

(Approved by the Office of Management and Budget under control number 0980-0054)

**§ 1386.24 Federal financial participation: Allowable and nonallowable costs for Protection and Advocacy System.**

(a) Federal financial participation is allowable for costs incurred, in accordance with the Act and regulations:

(1) For carrying out activities described in the State's triennial report on the State Protection and Advocacy system (see § 1386.22); and

(2) For providing information and referral services to persons who contact the system for aid whether or not those persons are developmentally disabled.

(b) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace, e.g., drawing wills and initiating or defending divorce actions; and

(2) Costs not allowed under other applicable statutes, Departmental regulations and issuances of the Office of Management and Budget.

**Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities**

**§ 1386.30 State plan requirements.**

(a) In order to receive Federal financial assistance under this Subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements of Section 133(b) and Section 137(b) of the Act (42 U.S.C. 6063(b) and 6067(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in Section 135 of the Act (42 U.S.C. 6065).

(c) The State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) responsible for administration of the plan within the designated State agency or agencies;

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(Approved by the Office of Management and Budget under control number 0980-0162 expiration date 3/31/87)

(d) The State plan must be reviewed at least once every three years.

(e) The State plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding;

(2) The State meets the requirements regarding individual habilitation plans as set forth in Section 112 of the Act (42 U.S.C. 6011); and

(3) The human rights of developmentally disabled persons will be protected consistent with Section 111.

(4) The State planning council has a staff assignment to assist it in carrying out its function and responsibilities identified in the Act and the staff consist of at least a director and such support staff as the State in consultation with the Council has deemed necessary.

**§ 1386.31 Plan submittal and approval.**

(a) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(b) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(c) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(d) Amendments to the State plan are required when substantive changes are contemplated in plan content.

**§ 1386.32 Financial reports.**

The State must submit quarterly financial status reports on the programs funded under this part and must be

submitted by either the Governor or the appropriate State financial official. These reports are due 30 days following the close of each quarter except for the final report which is due 90 days following the close of the Federal fiscal year.

(Approved by the Office of Management and Budget under control number 0980-0055)

**§ 1386.33 Protection of employee's interests.**

(a) Based on Section 133(b)(7) of the Act (42 U.S.C. 6063(b)(7)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

- (1) The preservation of rights and benefits;
- (2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and
- (3) Employee training and retraining programs.

**§ 1386.34 Provision of priority services.**

(a) As part of the State plan requirements in Section 133(b)(4)(A) of the Act (42 U.S.C. 6063(b)(4)(A)), a State must identify its selection of at least one, but not more than two priority areas defined in Section 102(8)(B) of the Act (42 U.S.C. 6001(8)(B)), although the second selection may be in an area not identified in the Act but which is of special significance to the individual State.

(b) In order to select more than two priority areas when the appropriation level does not exceed \$90,000,000 (See Section 133(b)(4)(B)(ii)(II) of the Act (42 U.S.C. 6063(b)(4)(ii)(II)), the Commissioner, upon written application from the State, may approve a waiver of the priority service limitations described in paragraph (a) of this section and allow for an additional priority area to

be designated. (See Section 133(b)(4)(C) of the Act (42 U.S.C. 6063(b)(4)(C)).

(c) The use of 65% of the State allotment in selected priority areas (as required by Section 133(b)(4)(B) of the Act) is a mechanism to assist the State developmental disabilities program in concentrating on planning, coordinating, and providing technical assistance.

**§ 1386.35 Allowable and non-allowable costs for basic State grants.**

(a) Under this Subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the developmentally disabled in Section 111 of the Act (42 U.S.C. 6010);

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

**§ 1386.36 Final disapproval of the State plan amendments or plan amendments.**

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its

right to appeal in accordance with 45 CFR Part 1386, Subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

**Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities Plans, Reports, and Federal Requirements**

**General**

**§ 1386.80 Definitions.**

For purposes of this Subpart: "Assistant Secretary" means the Assistant Secretary for Human Development Services (HDS) or a presiding officer.

ADD means Administration on Developmental Disabilities, Office of Human Development Services.

Presiding officer means anyone by the Assistant Secretary to conduct any hearing held under this Subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

**§ 1386.81 Scope of rules.**

(a) The rules of procedure in this Subpart govern the practice for hearings afforded by the Department to States pursuant to Sections 113, 133, and 135 of the Act. (42 U.S.C. 6012, 6063 and 6065.)

(b) Nothing in this Part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this Subpart, except as otherwise provided in this Subpart.

**§ 1386.82 Records to be public.**

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

**§ 1386.83 Use of gender and number.**

As used in this Subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

**§ 1386.84 Suspension of rules.**

Upon notice to all parties, the Assistant Secretary may modify or waive any rule in this Subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

**§ 1386.85 Filing and service of papers.**

(a) All papers in the proceedings must be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

**Preliminary Matters—Notice and Parties****§ 1386.90 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the *Federal Register*.

**§ 1386.91 Time of hearing.**

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

**§ 1386.92 Place.**

The hearing must be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

**§ 1386.93 Issues at hearing.**

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the *Federal Register*. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20

days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary must terminate the hearing.

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (c)(2) of this Subsection must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this Section, and new or modified issues described in paragraph (b) of this Section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this Section.

**§ 1386.94 Request to participate in hearing.**

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing

without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the HDS Hearing Clerk within 15 days after notice of the hearing has been published in the *Federal Register*, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues petitioner wishes to address and (iv) whether petitioner intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer must promptly determine whether each petitioner had the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of the petitioners to represent all of them. The presiding officer must give each petitioner written notice of the decision on its petition. If any petition is denied, the presiding officer must briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the HDS Hearing Clerk before the commencement of the hearing. The petition must concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

**Hearing Procedures****§ 1386.100 Who presides.**

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

**§ 1386.101 Authority of presiding officer.**

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person designated by the Assistant Secretary, examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the Subpart or 5 U.S.C. 551-559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person designated by the Assistant Secretary, examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In

case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

**§ 1386.102 Rights of parties.**

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

**§ 1386.103 Discovery.**

The Department and any party named in the Notice issued pursuant to § 1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

**§ 1386.104 Evidentiary purpose.**

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

**§ 1386.105 Evidence.**

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

**§ 1386.106 Exclusion from hearing for misconduct.**

Disrespectful, disorderly, or contemptuous language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

**§ 1386.107 Un-sponsored written material.**

Letters expressing views or urging action and other un-sponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

**§ 1386.108 Official transcript.**

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon

notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by steno-type machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

**§ 1386.109 Record for decision.**

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

**Posthearing Procedures, Decisions**

**§ 1386.110 Posthearing briefs.**

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed findings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

**§ 1386.111 Decisions following hearing.**

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and,

within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under Sections 113, 133 and 135 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to Section 135 of the Act that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she must also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion, Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this Section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of Section 138 of the Act. The Assistant Secretary's decision must be promptly served on all parties and amici.

**§ 1386.112 Effective date of decision by the Assistant Secretary.**

(a) If, in the case of a hearing pursuant to Section 135 of the Act, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the

report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision must specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to Section 113, 133 if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, must specify the effective date for the withholding of Federal funds.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1386.84.

**PART 1387—SPECIAL PROJECT—PROJECTS OF NATIONAL SIGNIFICANCE**

Sec.

1387.1 General requirements.

Authority: Pub. L. 88-164, 77 Stat. 282, as amended by Pub. L. 91-517, 84 Stat. 1316, Pub. L. 94-103, 89 Stat. 486, Pub. L. 95-802, 92 Stat. 9555, Pub. L. 97-35, 95 Stat. 583 (42 U.S.C. 8000 et seq.).

**§ 1387.1 General requirements.**

(a) All projects funded under this Part must be of national significance and serve or relate to the developmentally disabled to comply with Section 145 of the Act.

(b) The requirements concerning format and content of the application, submittal procedures, eligible applicants and priority areas of services will be published in program announcements in the **Federal Register**.

(c) Projects of national significance must be exemplary models and hold potential for replication.

[FR Doc. 84-8070 Filed 3-26-84; 6:55 am]

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# **Federal Register**

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Tuesday  
March 27, 1984

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## **Part VI**

## **Department of Labor**

Wage and Hour Division, Employment  
Standards Administration

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29 CFR Part 530

Employment of Homeworkers in Certain  
Industries; Proposal To Repromulgate  
Permanent Rule Rescinding Restriction  
on Homework in the Knitted Outerwear  
Industry

## DEPARTMENT OF LABOR

## Wage and Hour Division, Employment Standards Administration

## 29 CFR Part 530

## Employment of Homeworkers in Certain Industries

**AGENCY:** Wage and Hour Division, ESA, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On October 9, 1981, the Department of Labor published a final rule rescinding the restriction on the employment of homeworkers in the knitted outerwear industry. The Department's action was taken after consideration of oral testimony received at hearings held pursuant to the Federal Register Notice of December 5, 1980 and one of more than 10,000 written comments received as the result of the Notice of Proposed Rulemaking of May 5, 1981.

A suit filed challenging the rescission of the homework restriction, and the United States District Court for the District of Columbia upheld the Department's rule. On November 29, 1983, the U.S. Court of Appeals for the D.C. Circuit reversed the district court and vacated the rule on the ground that the explanation provided by the Department in support of rescission of the restriction was inadequate. The court directed that the matter be returned to the Department for such further proceedings as might be appropriate.

After further consideration, and on the basis of its enforcement experience since November, 1981, the Department proposes to repromulgate a permanent rule rescinding the restriction on homework in the knitted outerwear industry.

Interested persons are invited to submit written comments relevant to this proposal. Comments submitted in connection with the 1981 hearings or the May 1981 Federal Register Notice will be made part of the record in this rulemaking. Persons who submitted comments at that time need comment now only if they have new or additional information.

**DATE:** Comments should be received on or before April 26, 1984.

**ADDRESS:** Send written comments to William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:**

Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210. 202-523-8305. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:****Background**

Section 11(d) of the Fair Labor Standards Act (FLSA) provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homeworkers in seven industries: knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework has been permitted in all other industries.

The restrictions essentially provide that the production of goods in these industries cannot be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certified homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workshop without obtaining a certificate under Part 530.

These restrictions were promulgated following a series of public hearings on the seven industries, held from 1941 through 1943. In 1980, in light of the fact that the homeworker restrictions had been in effect for almost 40 years, the Department decided to review the status of industrial homework. Accordingly, in the Federal Register of December 5, 1980 (45 FR 80555), the Department published a notice of hearings to obtain information concerning the employment of homeworkers. The hearings were held on January 13 and 14, 1981 in Burlington, Vermont and on February 17 and 18, 1981 in Washington, D.C. The purpose of the hearings was to obtain information

with respect to the situation in industrial homework and the extent to which the regulations were still necessary to safeguard the minimum wage. In addition to the oral testimony, written comments were submitted through March 23, 1981.

The testimony heard and comments received reflected, among other things, concern regarding the feasibility of enforcement of the minimum wage and overtime requirements in the homework setting, the extent to which wages among homeworkers equal or exceed the minimum wage, the effect of the restrictions on employment opportunities, and the competitive effect of homework on firms not employing homeworkers.

Based on the testimony and comments, the Department published a proposal in the Federal Register on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. Interested persons were invited to submit written comments relevant to the proposal on or before June 4, 1981. The period for comment was subsequently extended to July 4, 1981 (46 FR 29485). Comments were received from more than 10,000 individuals, organizations, and agencies.

On October 9, 1981, after reviewing the entire record, the Department rescinded the restriction on the employment of homeworkers in the knitted outerwear industry (46 FR 50348). The restrictions in the six other industries were retained. Along with this action, the Department announced that it would undertake a concerted compliance effort among employers of homeworkers.

In reaching this decision, the Department determined that it would be feasible to enforce the minimum wage requirements of the Act in the knitted outerwear industry without a ban on homework and that retention of the ban would curtail employment opportunities in the industry.

After issuance of the new rule, a number of organizations filed a suit seeking an injunction against rescission of the homework ban. The district court upheld the Department's rule, but the court of appeals reversed, vacating the rescission of the restriction.

*International Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795 (D.C. Cir. 1983). The court of appeals held that the Department had failed to articulate adequately the reasons for its action, and that the rulemaking process had therefore not conformed to the requirements of the Administrative Procedure Act. The case was remanded to the district court with instructions to

return the matter to the Department for such further proceedings as might be appropriate, and to reinstate the restriction against homework unless properly modified consistent with the opinion of the court. The court of appeals issued its mandate on February 29, 1984, reimposing the ban after a period of two years during which homework in the knitted outerwear industry was lawful.

The Department has concluded that it is appropriate to institute a new rulemaking proceeding at this time. The Department's tentative view at this time, as explained below, is that a rescission or modification of the homework ban in the knitted outerwear industry would be consistent with the purposes of the Fair Labor Standards Act. The Act authorizes restrictions on homework only to the extent "necessary or appropriate" to protect the minimum wage. Section 11(d). The Department tentatively believes it can effectively enforce the minimum wage provisions of the Act in the knitted outerwear industry without totally banning homework there. Accordingly, the Department is proposing to repromulgate a permanent final rule rescinding the homework ban in that industry.

The Department has also published today, separately, an emergency temporary rule suspending the ban on homework for a period of 120 days for those individuals who were employed as homeworkers in the knitted outerwear industry during the period when the Department's final rule lifting the homework ban was in effect (from November 8, 1981 through February 29, 1984). See Part VII of this issue. The emergency temporary rule is intended to avoid the hardship and disruption which would result from reimposition of the ban on homework for those individuals currently employed as homeworkers in the knitted outerwear industry during the period while the Department proceeds with the permanent rulemaking process.

The Department will carefully consider all comments and other relevant evidence it receives pursuant to the proposal it publishes today, before issuing a permanent final rule. The present rulemaking is limited to the knitted outerwear industry. The Department will consider instituting at a later date a separate rulemaking proceeding regarding homework in the six other industries where restrictions have been imposed.

The Department's present view is that it can effectively enforce the Act in the homework sector of the knitted outerwear industry, and that it has done

so over the past two years. Federal law does not prohibit homework in the great majority of industries in this country; only in seven industries has it ever been restricted pursuant to Section 11(d) of the FLSA. Moreover, knitted outerwear is a very small industry, with only about 63,000 total employees in 1981. This compares with a universe of more than 50 million employees subject to the FLSA. The relatively small scale of the industry increases the Department's ability to conduct an effective enforcement program in the knitted outerwear industry.

A restriction on homework is permissible under the FLSA only when necessary to safeguard the minimum wage. Section 11(d) 29 U.S.C. 211(d). A restriction is simply one tool among many the Department has available to enforce the Act. It is a harsh tool because it deprives persons of the right they would otherwise have to work in their own homes if they so choose. Many Americans prefer to work at home because it is more convenient. Others would be unable to work at all if not permitted to work at home. For these reasons, the Department at present believes that homework should not be restricted in an industry, unless there is clear evidence that the Act cannot effectively be enforced by other means.

Particularly in view of the Department's enforcement experience, described below, in the many industries in which homework has been lawfully practiced for decades, the Department believes that it should not continue to employ the extraordinary enforcement mechanism of a total ban on homework in an industry in which there appear to be no enforcement problems that are unique or insurmountable. In light of the fact that homework may be freely engaged in by the vast majority of workers, and that enforcement is possible in the knitted outerwear industry, a total prohibition against homework appears to unfairly and arbitrarily deprive the individuals involved of a basic prerogative—the opportunity to work at home.

Since 1981, the Department has pursued a vigorous concerted enforcement program to detect violations of the Act among homeworkers as an alternative to the imposition of restrictions against homework. In the period from October 1, 1981 to December 31, 1983, a total of 591 investigations of employers utilizing homeworkers were conducted as compared with approximately 75 to 80 such investigations during the previous six-year period. This is an increase of approximately 1900% in the number of homework investigations conducted

annually. The Department has investigated all complaints received involving homework, and it has actively sought, through a variety of information sources, to make sure that homework activity, wherever it occurs, is in compliance with the FLSA. Information is obtained from unions, manufacturers' associations, local newspapers, crafts newsletters, and lists of firms that have requested subminimum wage certificates for homework under FLSA Regulations 29 CFR Part 524 or 525 or homework handbooks, as well as from homeworkers themselves.

The Department has also taken steps to update and improve procedures and techniques for homework investigations. As part of this effort, a task force of experienced compliance officers from offices located in areas of the country that are major garment centers was assembled to develop specialized policies and operating procedures for conducting investigations in the garment industry. These procedures, which were issued to the entire Wage-Hour enforcement staff, included definitions of industry terminology and job classifications, identification of common industry practices and potential violations, and detailed guidance on effective investigation techniques. Timestudy training material was also made available to compliance officers. Selected field enforcement staff received detailed training in timestudy techniques, in order to enhance the Department's ability, in the absence of accurate time records, to reconstruct the hours worked by homeworkers, to determine whether they are properly paid under the FLSA. The Department has made the scheduling and conduct of special "directed" (i.e. noncomplaint) investigations of homework firms a top priority.

Since institution of the Department's concerted enforcement program in 1981, there has been a steady increase in the percentage of homework employers investigated found to be in compliance with the monetary provisions of the FLSA. The overall compliance rate for homework employers investigated by the Department was 52% in fiscal year 1982, 56% in 1983, and 68% during the first quarter of 1984.

Furthermore, a significant percentage of homework investigations have been initiated as a result of complaints. Such complaints, whether from employees or competitors, have provided a productive basis for investigation of employers operating in violation of the FLSA. Of the 591 investigations of employers utilizing homeworkers which the Department has conducted since the

beginning of its concerted compliance effort, 39 percent were based on complaints.

The investigative results also suggest that the prohibition against homework in the restricted industries has not been especially effective. The Department's enforcement activities since 1981 have disclosed many firms operating in the restricted industries that are using homeworkers. Of the 591 investigations referenced above, 195 were of firms in the six restricted industries. Moreover, a prohibition probably makes it more difficult to identify firms in the industry that use homeworkers, since such firms would be inclined to conceal their existence. Because the homework practices of such firms would be unlawful *per se*, such firms would have a reduced incentive to comply with the Act's monetary provisions. Indeed, the results of the Department's concerted enforcement program to date indicate that the compliance rate for homework employers in the restricted industries is slightly lower (51%) than for homework employers in unrestricted industries (58%).

Additional considerations support the Department's present view that enforcement of the Act does not require outright prohibition of homework in the knitted outerwear industry. As noted above, the knitted outerwear industry employs a very small share of the American workforce. Even if the number of workers performing homework in this industry were to increase substantially as a result of deregulation, effective investigation and enforcement would be feasible.

The Department's concerted homework enforcement program suggests that the rate of compliance among homework employers is not at present exceptionally low, as some have contended. Rather, it appears to be roughly comparable to that found in all covered industries. Of the 591 homework firms investigated, 56% were found to be in compliance with the FLSA. The compliance rate was 40% for investigations arising from complaints, and 66% for noncomplaint investigations. Of the 396 homework firms investigated in the unrestricted industries, 58% were found to be in compliance (41% in complaint investigations and 69% in non-complaint investigations).

Wage-Hour investigations in all industries during fiscal years 1981 through 1983 revealed a 34% to 36% compliance rate (25% and 27% for complaint investigations and 52% to 56% for noncomplaint investigations).

The compliance rate found among homework employers in the knitted

outerwear industry (39% overall: 11% for complaint investigations and 53% for non-complaint investigations), although somewhat lower than in other homework industries, is comparable to the 34% to 36% compliance rate found for all covered employers investigated. Persons who have contended that minimum wage violations are pervasive in homework industries have relied on factors which are inherent in the nature of homework itself. They have advanced no reasons for concluding that enforcement problems relating to homework would be different in the knitted outerwear industry than in other industries where homework is permitted. The Department therefore believes that the compliance rate found among all homework firms investigated is probably more indicative of enforcement feasibility than the rate found in knitted outerwear investigations alone. In any event, as noted above, the compliance rate found in knitted outerwear investigations is comparable to that found in Wage-Hour investigations overall. This equivalence itself supports the Department's belief that enforcement of the Act in the homework sector of the knitted outerwear industry is feasible.

Comparison of the compliance rate in investigations of homework employers with that of industry as a whole is inexact because, industrywide, the available figures include a small percentage of investigations under government contract labor standards statutes as well as the FLSA. Moreover, industrywide, only a small proportion of employers were selected for investigation, while, as a result of the concerted homework enforcement program, it is likely that a higher share of homework employers were investigated. Nonetheless, the evidence indicates that the compliance rate among homework employers, including those in the knitted outerwear industry, is not exceptionally low, but rather appears to be roughly comparable with industry as a whole.

In his 1942 findings, the Administrator noted three particular difficulties associated with industrial homework which, in his view, rendered minimum wage enforcement infeasible: (1) the difficulty of identifying and locating homeworkers; (2) the difficulty of accurately ascertaining hours worked by homeworkers; and (3) the length of time required to conduct investigations of homework. Initially, we noted that the premise underlying the 1942 findings was that violations were ubiquitous among homework employers. The Department's recent experience indicates that there is no current basis

in fact for this premise; the compliance rate among employers of homeworkers, as noted above, appears to be roughly proportional to that among other employers.

Based on the results of its enforcement program since 1981, the Department currently believes, for a number of reasons, that the difficulties noted in 1942 can be dealt with short of the drastic remedy of banning all homework in the knitted outerwear industry. First, the Department can locate homeworkers and had done so. As noted above, some 591 investigations involving homeworkers have been conducted since 1981, using a variety of information sources. Twenty-eight firms, employing approximately 474 homeworkers, have been identified in the knitted outerwear industry.

Second, the Department has not found accurate record-keeping to be an insurmountable problem in homework investigations. The Department has had considerable experience with investigations in industries where time clocks are not maintained and employees are not closely supervised; the problem is no different in kind in homework. In such cases the Department's compliance officers rely on personal interviews with employees as well as personal observations concerning the time required to produce an article and other investigative techniques referred to above. In homework, these procedures are supplemented by a Departmental regulation requiring all homeworkers to maintain special handbooks recording their hours worked and units produced. See 29 CFR 516.31(c).

Third, while it is apparent that thorough investigation of homework is time-consuming, the Department has committed substantial resources for this purpose and intends to continue vigorous enforcement. As a result of the concerted enforcement program, enforcement of the Act in the homework setting is far more effective now than was the case in the years preceding the 1981 rescission of the homework ban in the knitted outerwear industry. Moreover, as noted above, knitted outerwear is a relatively small industry, and the number of homeworkers engaged in knitted outerwear manufacture is not likely to exceed the Department's enforcement capabilities.

Finally, the suggestion has been made that rescission of homework restrictions in the knitted outerwear industry would result in the hiring and exploitation of illegal aliens and other immigrants. The enforcement implications of the presence of illegal aliens as employees

is a matter with which the Department has had considerable experience; the enforcement problems in homework are not significantly different in kind from those found in other types of employment. Since 1978 the Department has earmarked resources for targeting investigations of employers in specific industries and geographic areas who are believed likely to be employing illegal aliens under terms violative of Federal labor laws. The Department relies heavily upon information provided by the Immigration and Naturalization Service in scheduling these investigations; in turn, it provides appropriate information to the INS. In addition, in recognition of language barriers that are frequently present when dealing with legal as well as illegal aliens, the Department employs bilingual enforcement personnel who are proficient in Spanish, Chinese, Haitian Creole, Vietnamese and other foreign languages.

Although the Department is presently proposing a rescission of restrictions on homework in the knitted outerwear industry, the Department will give careful consideration to alternatives, including retaining the restrictions or adopting a proposal of lesser scope, such as one of the following:

*A. Remove the restrictions on knitted outerwear homework in rural areas but retain restrictions for urban areas*

Under this alternative proposal, only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in knitted outerwear homework. The considerations favoring this approach appear to include the following: persons residing in areas remote from cities commonly live at considerable distances from available factory employment. Even where factories exist in the general vicinity, public transportation is often limited or non-existent. Especially in northern parts of the country, winter weather conditions may impede access to factory sites. Need to tend to wood stoves and farm animals is also a special factor pertinent to rural residents. For these reasons, it is arguable that persons residing in such areas may be particularly dependent on homework as a source of employment.

Considerations weighing against this alternative include the problem of devising a workable definition of "rural" vs. "urban" that would avoid inequitable treatment of employees. There are "urban" areas in States that are generally considered to be "rural" in nature. And there are "rural" areas in States that would generally be characterized as "urban". There is also

a lack of evidence that minimum wage or overtime violations are less prevalent among rural than among urban homeworkers. In addition, it is unclear that the needs of workers are similar in all "rural" areas of the country, or that these needs are essentially different from those of workers in "urban" areas, so as to justify differential treatment.

Finally, as noted above, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that effective enforcement of the minimum wage provisions of the Act is possible in the homework sector of the knitted outerwear industry in both urban and rural areas. Therefore the essential predicate for a prohibition against homework in urban areas may be lacking.

*B. Expand the conditions for granting certificates permitting homework employment in the knitted outerwear industry*

Under this alternative proposal, the present system for granting special certificates authorizing homework in the knitted outerwear industry would be expanded to include various additional categories of need, such as the following: need to care for children or other family members in the home; lack of accessible factory employment; lack of public transportation; and economic need. The perceived advantage of this alternative is that it would target the specific needs expressed by homework, without broadly validating all such work.

Disadvantages would appear to include the difficulty of defining what constitutes a legitimate need and avoiding inequities among workers. In addition, a certificate program might engender substantial paperwork for the public. It would also appear difficult to police the program to guard against abuses, yet provide necessary flexibility to take into account individual circumstances.

*C. Transfer homework certification and enforcement responsibilities to the States*

It has been suggested that the Department delegate responsibility for homeworker certification and enforcement to the States. The Department notes that its existing regulations provide that it may designate a State agency to act as its authorized representative for the purpose of issuing or denying homework certificates. 29 CFR 530.10. In deciding whether to issue a homework certificate, the State agency applies the same

standards that the Department would apply. These are set forth in the regulations. See 29 CFR 530.4. Existing regulations also authorize the Department to enter into an agreement with a State agency, providing that the agency will conduct investigations for compliance with the FLSA. 29 CFR Part 515. In conducting investigations, the State agency must conform to the Department's enforcement policies and to the provisions of the Department's Inspection Manual. 29 CFR 515.5.

The question whether the Department or the States should administer the homeworker certification process is essentially procedural. Resolution of the question does not answer the substantive policy issue of the conditions under which certificates should be issued. Therefore, commenters addressing the States' role in the certification process are urged to provide their views regarding the substantive issue as well.

The Department will consider all proposals which it receives. It notes, however, that there are legal limits on the extent to which it may delegate its authority under the FLSA. Commenters supporting increased State responsibility in the homework area should consider this factor. The Department also notes that its proposed rule lifting the federal ban on homework in the knitted outerwear industry would not affect a State's right to impose homework restrictions in the industry under state law, if it chooses to do so.

*D. License employers utilizing homeworkers in the knitted outerwear industry*

Under this alternative proposal, all employers of homeworkers in the knitted outerwear industry would be required to obtain licenses from the Department. In theory, this would put in place a control mechanism whereby the Department would have a record of all such employment, and thereby be in a better position to insure FLSA compliance.

A countervailing consideration is that only law-abiding employers might apply for such licenses, thereby undercutting the purpose of the requirement. A licensing requirement could also generate a paperwork burden.

**Conclusion**

The Department currently is inclined to believe that removal of the ban on homework in the knitted outerwear industry is warranted. The Department's experience suggests that it has the ability to enforce the protections of the Act with respect to this category of

workers as effectively as it does for other industries.

The Department invites comments on this proposal and on alternatives. The Department requests that commenters do not merely state whether they favor or oppose the proposed rule or a particular alternative, but that they provide their reasons, and any supporting information which they possess. The Department also requests that commenters supporting adoption of an alternative proposal provide their views as to how the terms used in the alternative proposal would be defined and by what mechanisms the alternative would be implemented and administered. Finally, commenters should bear in mind that the Department's authority to restrict homework is limited to those measures which are "necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage \* \* \*". Commenters should address matters relevant to this statutory objective, rather than general conceptions of appropriate public policy.

The Department invites comments particularly with respect to the following:

1. The appropriateness and/or feasibility of the present proposal to remove the ban on homework in the knitted outerwear industry;
2. The appropriateness and/or feasibility of alternatives A through D above; and
3. The appropriateness and/or feasibility of other alternatives to the present proposal.

Further comments are also invited on the subject matter of the May 5, 1981 proposal, i.e., 1) the impact of the current proposal, or alternative proposals, on the minimum wage provisions of the Act; 2) the impact of the current proposal, or alternative proposals, on the knitted outerwear industry, including firms which do not employ homeworkers; and 3) the impact of this proposal, or alternative proposals, on small businesses. However, *commenters may be assured that all comments submitted in response to the May 5, 1981 proposal as well as the entire record of the January and February 1981 hearings, will be considered and made a part of the record of the present rulemaking, and that only new or additional information need be submitted.*

The entire record of this proceeding will be made available for inspection during office hours at Room C-4316, Frances Perkins Building, 200 Constitution Ave., NW., Washington, D.C. 20210.

#### Classification

This rule is not classified as a "major

rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Furthermore, the Department certifies that the rule will have no "significant economic impact . . . upon a substantial number of . . . small [business] entities" within the meaning of § 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)).

This conclusion is based upon all information presently available to the Department, including the entire record compiled by the Department in the 1981 rulemaking proceedings. Accordingly, no initial regulatory flexibility analysis is required.

#### Paperwork Reduction Act

Because this rule does not require the collection or retention of information, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, U.S. Department of Labor.

#### List of Subjects in 29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages.

Accordingly, the following action is proposed: The prohibition of homework in the knitted outerwear industry under 29 CFR 530.1(f) and 530.2, the text of which appeared in the July 1, 1981 edition of the *Code of Federal Regulations* and is contained in Appendix A to this document, and which was reinstated as a result of the Court of Appeals ruling, effective February 29, 1984, is removed.

(Sec. 11, 52 Stat. 1066; (29 U.S.C. 211) unless otherwise noted; Secretary's Order No. 16-75, 40 FR 55913, December 2, 1975; and Employment Standards Order No. 78-1, 43 FR 51469, November 3, 1978)

Signed at Washington, D.C., this 23rd day of March, 1984.

William M. Otter,  
Administrator.

#### Appendix A

The text of 29 CFR 530.1(f) and 530.2 which appeared in the July 1, 1981, edition of the Code of Federal Regulations reads as follows:

#### § 530.1 Definitions.

(f) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided*, That the manufacturing, dyeing or other finishing of the following shall not be included:

- (1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.
- (2) Fulleo suitings, coatings, topcoatings, and overcoatings.
- (3) Garments or garment accessories made from purchased fabric, except bathing suits.
- (4) Gloves or mittens.
- (5) Hosiery.
- (6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(7) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or finer: *Provided*, That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

#### § 530.2 Restriction of homework.

No work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homemaker or unless the homemaker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.1 of this chapter.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards

Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[FR Doc. 84-8289 Filed 3-26-84; 8:45 am]

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Tuesday  
March 27, 1984

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## **Part VII**

### **Department of Labor**

Wage and Hour Division, Employment  
Standards Administration

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29 CFR Part 530

Employment of Homeworkers in Certain  
Industries; Emergency Rule Temporarily  
Suspending Ban on Homework for  
Certain Employees in the Knitted  
Outerwear Industry

## DEPARTMENT OF LABOR

## Wage and Hour Division, Employment Standards Administration

## 29 CFR Part 530

## Employment of Homeworkers in Certain Industries

**AGENCY:** Wage and Hour Division, ESA, Labor.

**ACTION:** Emergency rule temporarily suspending the ban on homework for certain employees in the knitted outerwear industry.

**SUMMARY:** On October 9, 1981, the Department of Labor published a final rule rescinding the restriction on the employment of homeworkers in the knitted outerwear industry. A suit was filed challenging the rescission of the homework restriction, and the United States District Court for the District of Columbia upheld the Department's rule. On November 29, 1983 the U.S. Court of Appeals for the D.C. Circuit reversed the district court and vacated the rule on the ground that the explanation provided by the Department in support of rescission of the restriction was inadequate. The court directed that the matter be returned to the Department for such further proceedings as might be appropriate. The court's mandate issued on February 29, 1984; as a result, the restriction on homework in the knitted outerwear industry is now in effect.

In accordance with the court's decision, the Department is today publishing two documents. The first is a proposed rule permanently rescinding the restriction on homework in the knitted outerwear industry appearing elsewhere in this issue. The second is this final rule, which temporarily suspends the restriction on homework for those persons who were employed as homeworkers in the knitted outerwear industry during the period when the Department's final rule lifting the homework restriction was in effect (from November 8, 1981 through February 29, 1984). This suspension is intended to avoid the disruption and economic hardship to homework employees that would result from reinstatement of the restriction during the pendency of the permanent rulemaking proceedings.

**DATES:** This rule becomes effective March 27, 1984. It will remain in effect not longer than 120 days thereafter.

**FOR FURTHER INFORMATION CONTACT:** Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200

Constitution Avenue, N.W., Washington, D.C. 20210. 202-523-8305. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:****Background**

Section 11(d) of the Fair Labor Standards Act (FLSA) provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homeworkers in seven industries: knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework has been permitted in all other industries.

On May 5, 1981, the Department published a proposal to remove the existing restrictions on homework in all seven industries (46 FR 25108). On October 9, 1981, after reviewing a record which was developed during public hearings in Burlington, Vermont, and Washington, D.C. and which included comments received from more than 10,000 individuals, organizations, and agencies, the Department of Labor rescinded the restriction on homework in the knitted outerwear industry (46 FR 50348). A more extensive discussion of the background of those rulemaking proceedings is contained in the Department's Notice of Proposed Rulemaking appearing elsewhere in this issue which is being published today simultaneously with the issuance of this emergency rule.

After issuance of the new rule, a number of organizations filed a suit seeking an injunction against rescission of the homework ban. Individual homeworkers in the knitted outerwear industry intervened in defense of the Department's rule. The district court upheld the rule, but the court of appeals reversed, vacating the rescission of the restriction. *International Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795 (D.C. Cir. 1983). The court of appeals held that the Department had failed to articulate adequately the reasons for its action, and that the rulemaking process had therefore not conformed to the requirements of the Administrative Procedure Act. The case

was remanded to the district court with instructions to return the matter to the Department for such further proceedings as might be appropriate, and to reinstate the restriction against homework unless properly modified consistent with the opinion of the court. The court of appeals subsequently denied the intervenors' petition for rehearing and also denied the Department's motion for a stay of the mandate pending consideration of a petition for a writ of certiorari. The Chief Justice subsequently denied a further motion filed by the intervenors to stay issuance of the mandate. The mandate issued February 29, 1984, reimposing the ban after a period of two years during which homework in the knitted outerwear industry was lawful.

Pursuant to the opinion of the court of appeals, the Department is today publishing separately a proposed rule permanently rescinding the ban on homework in the knitted outerwear industry. The Department has tentatively concluded that it can effectively enforce the minimum wage in the homework sector of the knitted outerwear industry, and that rescission is therefore fully consistent with Section 11(d) and the purposes of the FLSA. The Department will carefully consider all comments and other relevant evidence it receives in response to the proposed rule before issuing a permanent rule regarding homework.

In view of the pendency of the Department's proposed rule rescinding the ban on knitted outerwear homework, reinstatement of the ban at this time is likely to result in substantial unnecessary economic disruption and hardship to persons in the industry who are currently dependent on such homework for their livelihood. The Department has received petitions filed on behalf of a number of homeworkers requesting that it issue an emergency rule permitting them to continue working in their homes pending the completion of permanent rulemaking proceedings resolving the status of homework in the knitted outerwear industry.

Because of the prospect that irreparable harm to home knitters will otherwise occur, the Department is today issuing an emergency rule, pursuant to Section 11(d) of the Fair Labor Standards Act, suspending the homework ban in the knitted outerwear industry for a period of 120 days for those persons who were employed as homeworkers in the knitted outerwear industry at any time during the period when the Department's final rule rescinding the homework ban was in

effect (from November 8, 1981 through February 29, 1984).

During the previous rulemaking, the Department estimated that there were approximately 1,000 homeworkers in the knitted outerwear industry.

Subsequently, in the course of its concerted program to enforce the minimum wage and overtime provisions of the Act among homeworkers, the Department identified 28 firms employing approximately 474 homeworkers in the knitted outerwear industry. If homework is made unlawful, the individuals currently employed at home in the knitted outerwear industry will lose their current jobs. The only exception would be those few individuals who could qualify for a special certificate permitting homework under the exceptional circumstances set forth in the Department's regulations at 29 CFR 530.4.

Evidence adduced in the earlier rulemaking proceedings, moreover, indicates that many homeworkers in the knitted outerwear industry may find it difficult or impossible to obtain other work outside the home. Even a temporary loss of employment is likely to cause substantial hardship to the individual affected. These concerns are reflected in the petitions for issuance of an emergency rule filed with the Department on behalf of individual home knitters, some of whom are intervenors in the litigation. These individual petitioners relate that they will suffer severe and irreparable hardship in the form of lost employment and income if they are unable to continue working in their homes.

Finally, if homework is banned, firms in the knitted outerwear industry that have employed homeworkers will be forced to go out of business, or to shift to an alternative mode of production. Should homework again become lawful, these firms may not find it practicable to resume operations involving homework. Thus, the loss of job opportunities could be permanent.

The prospect that the ban on homework may be permanently rescinded or modified in the near future makes the hardship which reimposition of the ban at this time would cause to those individuals who are currently engaged as home knitters doubly unfortunate. Surely, if the Department may issue a final rule permanently rescinding or modifying the ban on homework in the knitted outerwear industry within a few months, it is inappropriate to close down the whole homework sector for the industry at this time and to throw the hundreds of individuals involved out of work. The Department believes that the better and

more equitable course is to preserve the status quo for those individuals during the brief period in which it conducts rulemaking proceedings. If, at that time, the Department reimposes the ban, it can do so with adequate notice to the public.

The legal authority supporting issuance of a final rule of limited duration to deal with exigent circumstances is found in the Administrative Procedure Act (A.P.A.), 5 U.S.C. 553(b)(B), which provides a "good cause" exception to notice-and-comment rulemaking. See *Council of Southern Mountains, Inc. v. Donovan*, 653 F.2d 573, 580 (D.C. Cir. 1981). That provision permits rulemaking without comment when "the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The APA also provides that a substantive rule may be immediately effective when it relieves a restriction, or for good cause. 5 U.S.C. 553(d)(1), (3).

As applied by the courts, the "good cause" provision may properly be invoked when the following criteria are satisfied: (1) The rule responds to an emergency created by forces beyond the agency's control; (2) the agency states the reasons why "good cause" exists; (3) the rule is effective for a finite period of time and (4) the agency acts diligently to implement a permanent rule pursuant to A.P.A. notice-and-comment procedures. See, e.g., *National Federation of Federal Employees v. Devine*, 671 F.2d 607, 610-612 (D.C. Cir. 1982); *Council of Southern Mountains, supra*, 653 F.2d at 580-582; *American Federation of Government Employees v. Block*, 655 F.2d 1153, 1155-1159 (D.C. Cir. 1981) ("good cause" found where agency acted in response to judicial directive, to avoid disruptive effect of relying on antiquated guidelines).

These criteria are met by the circumstances now present with respect to homework in the knitted outerwear industry. First, as discussed above, there is an emergency threatening severe disruption to those individuals who had lawfully engaged in homework in the knitted outerwear industry. This emergency arose when the court of appeals denied the Department's motion for a stay out of the court's mandate pending a determination whether to seek Supreme Court review, and the Court thereafter issued its mandate, reinstating the former ban. Second, as discussed above, cogent reasons support promulgation of an emergency rule to alleviate the disruption that would otherwise occur while the Department conducts further rulemaking consistent

with the Court's decision. Third, the emergency rule is for a period of at most 120 days. Thus, any disadvantage that occurs to interested parties as the result of implementation of the emergency rule will be eliminated at the expiration of that time. Finally, the notice of proposed rulemaking accompanying issuance of this emergency rule evidences the Department's good faith in acting as quickly as possible to remedy the defects identified by the Court in the rescission of the homework ban. Therefore, the "good cause" exception may properly be invoked in this instance.

The Department notes, in addition, that the public has already commented extensively on the earlier rescission proposals. *ILGWU, supra*, 722 F.2d at 804. The purpose of the A.P.A. provision requiring an opportunity to comment therefore, has, as a practical matter, been fulfilled in some measure. Cf. *Consumer Energy Council of America v. F.E.R.C.*, 673 F.2d 524, 446 (D.C. Cir. 1981) ("The value of notice and comment prior to repeal of a final rule is that it ensures that an agency will not undo all that it accomplished through its rulemaking without giving all parties an opportunity to comment on the wisdom of repeal.") Moreover, further comments on the Department's new proposal to permanently lift the ban on homework in the knitted outerwear industry are solicited in the accompanying notice of proposed rulemaking.

The Department finds additional legal grounds supporting issuance of this emergency rule in the Supreme Court's recent decision in *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 103 S.Ct. 2856 (1983), where the court distinguished between evidence sufficient to justify rescission of the standard at issue and evidence sufficient to justify suspension of that standard pending further consideration. 103 S.Ct. at 2870 n.15, 2874 n.21. The Department's view is that sufficient evidence, set forth herein, is available at this time to justify suspending the ban on homework on an emergency basis while the agency proceeds with its consideration of whether to rescind the ban permanently in light of the comments submitted in response to its new proposal.

The Department's decision to issue this emergency rule suspending the homework ban is based on its current belief, supported by the information detailed below, that it can effectively enforce the Act in the homework sector of the knitted outerwear industry during the next 120 days, and that it has done

so over the past two years. Federal law does not prohibit homework in the great majority of industries in this country; only in seven industries has it ever been restricted pursuant to Section 11(d) of the FLSA. Moreover, knitted outerwear is a very small industry, with only about 63,000 total employees in 1981. This compares with a universe of more than 50 million employees subject to the FLSA. The relatively small scale of the industry increases the Department's ability to conduct an effective enforcement program in the knitted outerwear industry during the next 120 days.

A restriction on homework is permissible under the FLSA only when necessary to safeguard the minimum wage. Section 11(d), 29 U.S.C. 211(d). A restriction is simply one tool among many the Department has available to enforce the Act. It is a harsh tool because it deprives persons of the right they would otherwise have to work in their own homes if they so choose. Many Americans prefer to work at home because it is more convenient. Others would be unable to work at all if not permitted to work at home. For these reasons, the Department is disinclined to restrict homework in an industry, unless there is clear evidence that the Act cannot effectively be enforced by other means.

Particularly in view of the Department's enforcement experience, described below, in the many industries in which homework has been lawfully practiced for decades, the Department, during the next 120 days, believes that it should not employ the extraordinary enforcement mechanism of a total ban on homework in an industry in which there appear to be no enforcement problems that are unique or insurmountable. In light of the fact that homework may be freely engaged in by the vast majority of workers who are employed in non-restricted industries, and that enforcement is possible in the knitted outerwear industry, a total prohibition against homework in the knitted outerwear industry appears to unfairly and arbitrarily deprive individuals currently engaged as homeknitters of a basic prerogative—the opportunity to work at home.

Since 1981, the Department has pursued a vigorous concerted enforcement program to detect violations of the Act among homeworkers as an alternative to the imposition of restrictions against homework. In the period from October 1, 1981 to December 31, 1983, a total of 591 investigations of employers utilizing homeworkers were conducted, as

compared with approximately 75–80 such investigations during the previous six-year period. This is an increase of approximately 1900% in the number of homework investigations conducted annually. The Department has investigated all complaints received involving homework, and it has actively sought, through a variety of information sources, to make sure that homework activity, wherever it occurs, is in compliance with the FLSA. Information is obtained from unions, manufacturers' associations, local newspapers, crafts newsletters, and lists of firms that have requested subminimum wage certificates for homework under FLSA Regulations 29 CFR Part 524 or 525 or homework handbooks, as well as from homeworkers themselves. The Department has made the scheduling and conduct of special "directed" (i.e., noncomplaint) investigations of homework firms a top priority.

The Department has also taken steps to update and improve procedures and techniques for homework investigations. As part of this effort, a task force of experienced compliance officers from offices located in areas of the country that are major garment centers was assembled to develop specialized policies and operating procedures for conducting investigations in the garment industry. These procedures, which were issued to the entire Wage-Hour enforcement staff, included definitions of industry terminology and job classifications, identification of common industry practices and potential violations, and detailed guidance on effective investigation techniques. Timestudy training material was also made available to compliance officers. Selected field enforcement staff received detailed training in timestudy techniques, in order to enhance the Department's ability, in the absence of accurate time records, to reconstruct the hours worked by homeworkers, to determine whether they are properly paid under the FLSA.

Since institution of the Department's concerted enforcement program in 1981, there has been a steady increase in the percentage of homework employers investigated found to be in compliance with the monetary provisions of the FLSA. The overall compliance rate for homework employers investigated by the Department was 52% in fiscal year 1982, 56% in 1983, and 68% during the first quarter of 1984.

Furthermore, a significant percentage of homework investigations have been initiated as a result of complaints. Such complaints, whether from employees or competitors, have provided a productive

basis for investigation of employers operating in violation of the FLSA. Of the 591 investigations of employers utilizing homeworkers which the Department has conducted since the beginning of its concerted compliance effort, 39 percent were based on complaints.

The investigative results also suggest that the prohibition against homework in the restricted industries has not been especially effective. The Department's enforcement activities since 1981 have disclosed many firms operating in the restricted industries that are using homeworkers. Of the 591 investigations referenced above, 195 were of firms in the six restricted industries. Moreover, a prohibition probably makes it more difficult to identify firms in the industry that use homeworkers, since such firms would be inclined to conceal their existence. Because the homework practices of such firms would be unlawful *per se*, such firms would have a reduced incentive to comply with the Act's monetary provisions. Indeed, the results of the Department's concerted enforcement program to date indicate that the compliance rate for homework employers in the restricted industries is slightly lower (51%) than for homework employers in unrestricted industries (58%).

The Department's concerted homework enforcement program suggests that the rate of compliance among homework employers is not at present exceptionally low, as some have contended. Rather, it appears to be roughly comparable to that found in all covered industries. Of the 591 homework firms investigated, 56% were found to be in compliance with the FLSA. The compliance rate was 40% for investigations arising from complaints, and 66% for noncomplaint investigations. Of the 396 homework firms investigated in the unrestricted industries, 58% were found to be in compliance (41% in complaint investigations, and 69% in noncomplaint investigations).

Wage-Hour investigations in all industries during fiscal year 1981 through 1983 revealed a 34% to 36% compliance rate (25% to 27% for complaint investigations and 53% to 56% for non-complaint investigations).

The compliance rate found among homework employers in the knitted outerwear industry (39% overall: 11% for complaint investigations and 53% for non-complaint investigations) although somewhat lower than in other homework industries, is comparable to the 34% to 36% compliance rate found for all covered employers investigated.

Moreover, persons who have contended that minimum wage violations are pervasive in homework industries have relied on factors which are inherent in the nature of homework itself. They have advanced no reasons for concluding that enforcement problems relating to homework would be different in the knitted outerwear industry than in other industries where homework is permitted. The Department therefore believes that the compliance rate found among all homework firms investigated is probably more indicative of enforcement feasibility than the rate found in knitted outerwear investigations alone. In any event, as noted above, the compliance rate found in knitted outerwear investigations is comparable to that found in Wage-Hour investigations overall. This equivalence itself supports the Department's belief that enforcement of the Act in the homework sector of the knitted outerwear industry is feasible.

Comparison of the compliance rate in non-complaint investigations of homework employers with that of industry as a whole is inexact because, industrywide, the available figures include a small percentage of investigations under government contract labor standards statutes as well as the FLSA. Moreover, industrywide, only a small proportion of employers were selected for investigation, while, as a result of the concerted homework enforcement program, it is likely that a higher share of homework employers were investigated. Nonetheless, the evidence indicates that the compliance rate among homework employers, including those in the knitted outerwear industry, is not exceptionally low, but rather appears to be roughly comparable with industry as a whole.

In his 1942 findings, the Administrator noted three particular difficulties associated with industrial homework which, in his view, rendered minimum wage enforcement infeasible: (1) The difficulty of identifying and locating homeworkers; (2) the difficulty of accurately ascertaining hours worked by homeworkers; and (3) the length of time required to conduct investigation of homework. Initially, we note that the premise underlying the 1942 findings was that violations were ubiquitous among homework employers. The Department's recent experience indicates that there is no current basis in fact for this premise; the compliance rate among employers of homeworkers, as noted above, appears to be roughly proportional to that among other employers.

Based on the results of its enforcement program since 1981, the Department currently believes, for a number of reasons, that the difficulties noted in 1942 can be dealt with short of the drastic remedy of banning all homework in the knitted outerwear industry. First, the Department can locate homeworkers, and has done so. As noted above, some 591 investigations involving homeworkers have been conducted since 1981, using a variety of information sources. Twenty-eight firms, employing approximately 474 homeworkers, have been identified in the knitted outerwear industry.

Second, the Department has not found accurate recordkeeping to be an insurmountable problem in homework investigations. The Department has had considerable experience with investigations in industries where time clocks are not maintained and employees are not closely supervised; the problem is no different in kind in homework. In such cases the Department's compliance officers rely on personal interviews with employees as well as personal observations concerning the time required to produce an article and other investigative techniques referred to above. In homework, these procedures are supplemented by a Departmental regulation requiring all homeworkers to maintain special handbooks recording their hours worked and units of production. See 29 CFR 516.31(c).

Third, while it is apparent that thorough investigation of homework is time-consuming, the Department has committed substantial resources for this purpose and intends to continue vigorous enforcement. As a result of the concerted enforcement program, enforcement of the Act in the homework setting is far more effective now than was the case in the years preceding the 1981 rescission of the homework ban in the knitted outerwear industry. Moreover, as noted above, knitted outerwear is a relatively small industry, and the number of homeworkers currently engaged in knitted outerwear manufacture is not likely to exceed the Department's enforcement capabilities.

Finally, the suggestion has been made that rescission of homework restrictions in the knitted outerwear industry would result in the hiring and exploitation of illegal aliens and other immigrants. The Department has had considerable experience with the general enforcement implications of the presence of illegal aliens as employees. The enforcement problems in homework are not significantly different in kind from those found in other types of employment.

Since 1978 the Department has earmarked resources for targeting investigations of employers in specific industries and geographic areas who are believed likely to be employing illegal aliens under terms violative of Federal labor laws. The Department relies heavily upon information provided by the Immigration and Naturalization Service in scheduling these investigations; in turn, it provides appropriate information to the INS. In addition, in recognition of language barriers that are frequently present when dealing with legal as well as illegal aliens, the Department employs bilingual enforcement personnel who are proficient in Spanish, Chinese, Haitian Creole, Vietnamese and other foreign languages.

In the permanent rulemaking proceedings instituted today, the Department will give careful consideration to alternatives such as retaining the homework restrictions or adopting a proposal of lesser scope than a complete rescission of the restriction. However, none of the currently known alternatives could be implemented feasibly in the short time period during which this emergency rule will be in effect. Furthermore, none of these alternatives would fully serve the Department's purpose of preventing unnecessary hardship by maintaining the status quo for employees in the industry pending a decision whether to permanently rescind the ban on homework. These alternatives include the following:

*A. Remove the restrictions on knitted outerwear homework in rural areas but retain restrictions for urban areas*

Under this alternative proposal, only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in knitted outerwear homework. There are a number of considerations, discussed in the preamble to the proposed permanent rule, which would have to be weighed carefully before the proposal could be implemented. In particular, the process of defining rural areas for purposes of the rule would require careful study and could not feasibly be completed during the brief period in which this emergency rule will be in effect.

Moreover, as noted above, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that effective enforcement of the minimum wage provisions of the Act is possible in the homework sector of the knitted outerwear industry over the next 120

days in both urban and rural areas; therefore, it appears neither necessary nor appropriate to ban homework in urban areas in the knitted outerwear industry at this time.

*B. Expand the conditions for granting certificates permitting homework employment in the knitted outerwear industry*

Under this alternative proposal, the present system for granting special certificates would be expanded to include various additional categories of need, such as one or more of the following: need to care for children or other family members in the home; lack of accessible factory employment; lack of public transportation; economic need. The time needed to study this alternative and to give it definite content precludes its adoption as an emergency rule. Moreover, in light of the possibility that rulemaking may lead to a complete rescission of the ban on homework within the next few months, expansion of the certificate system at this time would be premature.

*C. Transfer homework certification and enforcement responsibilities to the States*

It has been suggested that the Department delegate responsibility for homeworker certification and enforcement to the States. The Department notes that its existing regulations provide that it may designate a state agency to act as its authorized representative for the purpose of issuing or denying homework certificates. 29 CFR 530.10.

The transfer of responsibility for certification and enforcement from one level of government to another is a complex matter which could not feasibly be accomplished on an emergency basis, effective at once. The development of standards, drafting of federal-state agreements, and training of state personnel are incompatible with the time constraints inherent in emergency rulemaking.

*D. License employers utilizing homeworkers in the knitted outerwear industry*

Under this alternative proposal, all employers of homeworkers in the knitted outerwear industry would be required to obtain licenses from the Department. Apart from the infeasibility of immediately implementing this proposal, it does not seem sensible to establish a licensing system which, depending upon the outcome of the rulemaking process, may become unnecessary in a few months.

Again, the Department emphasizes that it will review and consider all alternative proposals in the course of the rulemaking proceedings.

**Conclusion**

Pursuant to Section 553(b)(B) of the Administrative Procedure Act, the Department finds that there is good cause for dispensing with notice and public comment concerning this final rule. The disruption among homeworkers currently engaged in the knitted outerwear industry constitutes an emergency which is beyond the control of the Department. The Department also notes that this rule is for a short and definite duration. The regular rulemaking proceedings will be completed by the expiration of the 120 day period, at which time the emergency in the knitted outerwear industry will be ended.

Finally, the Department finds that this emergency rule is a rule which relieves a restriction within the meaning of Section 553(d)(1) of the Administrative Procedure Act. Therefore, this rule shall become effective immediately rather than 30 days after its publication. In the event that it is necessary under Section 553(d)(3) of the Act, the Department also finds that there is good cause for waiving the 30-day delay in effectiveness, for the same reasons set forth regarding waiver of prior notice and opportunity for public comment.

**Classification**

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Furthermore, the Department certifies that the rule will have no "significant economic impact . . . upon a substantial number of . . . small [business] entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)).

**Paperwork Reduction Act**

Because this rule does not require the collection or retention of information, it is not subject to section 3504(h) of the

Paperwork Reduction Act, 44 U.S.C. 3504(h).

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, U.S. Department of Labor.

**List of Subjects in 29 CFR Part 530**

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages.

Accordingly, the following action is taken: The prohibition of homework in the knitted outerwear industry under 29 CFR 530.1 (f) and 530.2, the text of which appeared in the July 1, 1981, edition of the Code of Federal Regulations and is contained in Appendix A to this document, and which was reinstated as a result of the Court of Appeals ruling, effective February 29, 1984, is suspended for a period of 120 days for those individuals who were employed as homeworkers in the knitted outerwear industry at any time during the period from November 8, 1981 through February 29, 1984.

(Sec. 11, 52 Stat. 1066; (29 U.S.C. 211) unless otherwise noted; Secretary's Order No. 16-75, 40 FR 55913, December 2, 1975; and Employment Standards Order No. 78-1, 43 FR 51469, November 3, 1978)

Signed at Washington, D.C., this 23rd day of March, 1984.

William M. Otter,  
Administrator.

**Appendix A**

The text of 29 CFR 530.1(f) and 530.2 which appeared in the July 1, 1981 edition of the Code of Federal Regulations reads as follows: § 530.1 Definitions.

(f) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided*, That the manufacturing, dyeing or other finishing of the following shall not be included:

- (1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.
- (2) Filled suitings, coatings, topcoatings, and overcoatings.
- (3) Garments or garment accessories made from purchased fabric, except bathing suits.
- (4) Gloves or mittens.
- (5) Hosiery.
- (6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.
- (7) Fleece-lined garments made from knitted fabric containing cotton only or

containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or finer:

*Provided*, That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if

such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

\* \* \* \* \*

*§ 530.2 Restriction of homework.*

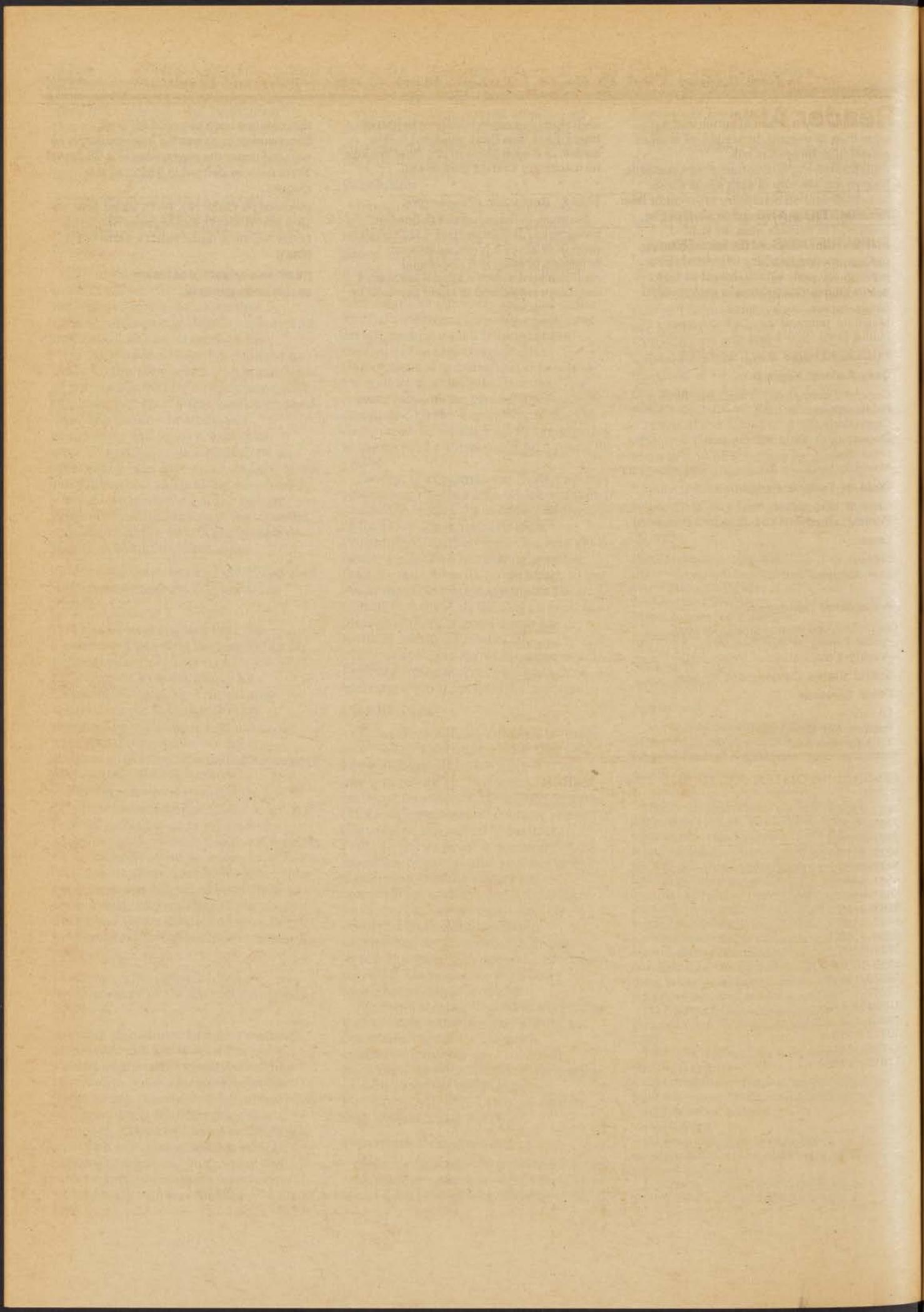
No work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to

this part has been obtained for each homemaker or unless the homemaker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.1 of this chapter.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[FR Doc. 84-8290 Filed 3-26-84; 8:45 am]

**BILLING CODE 4510-27-M**



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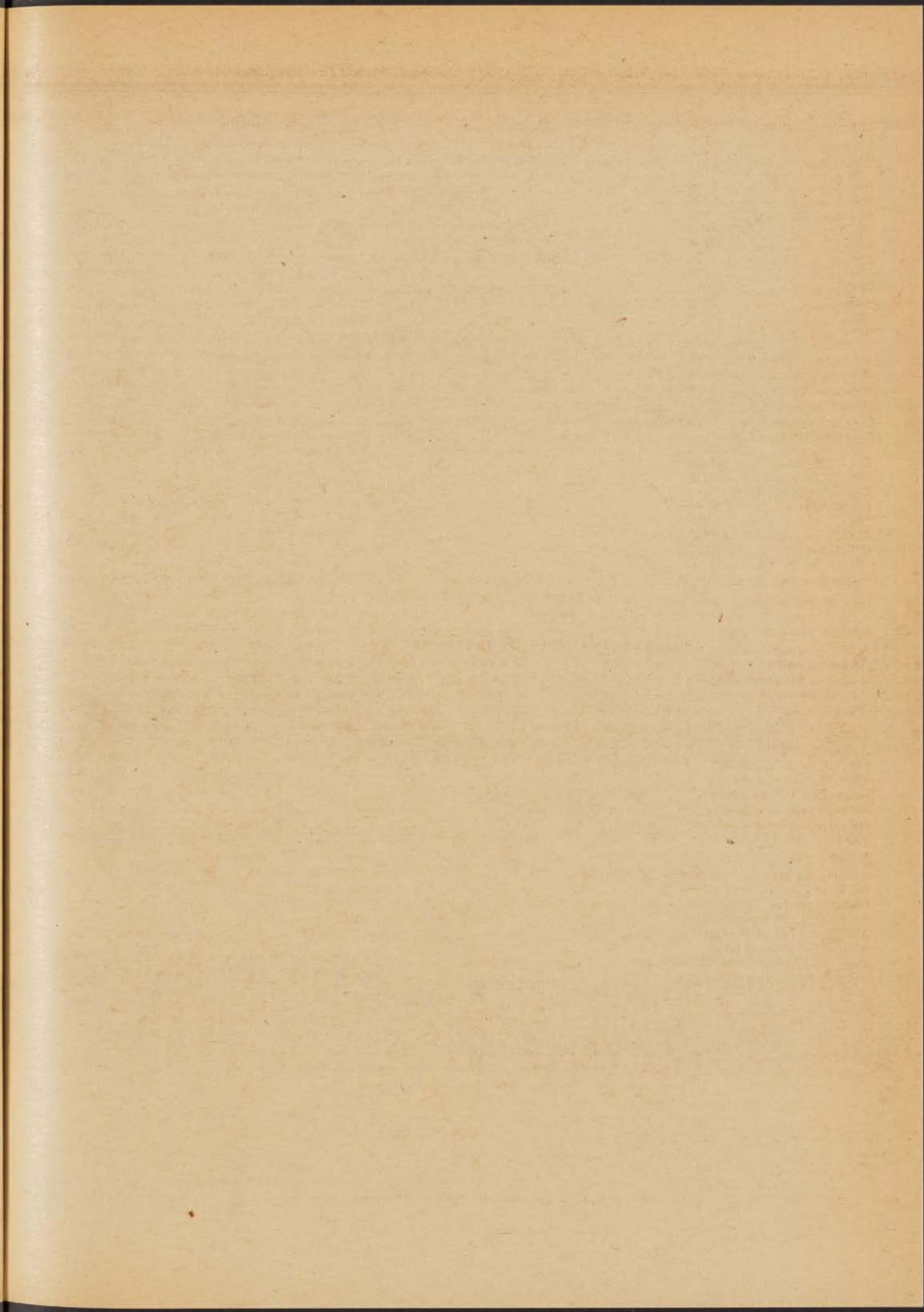
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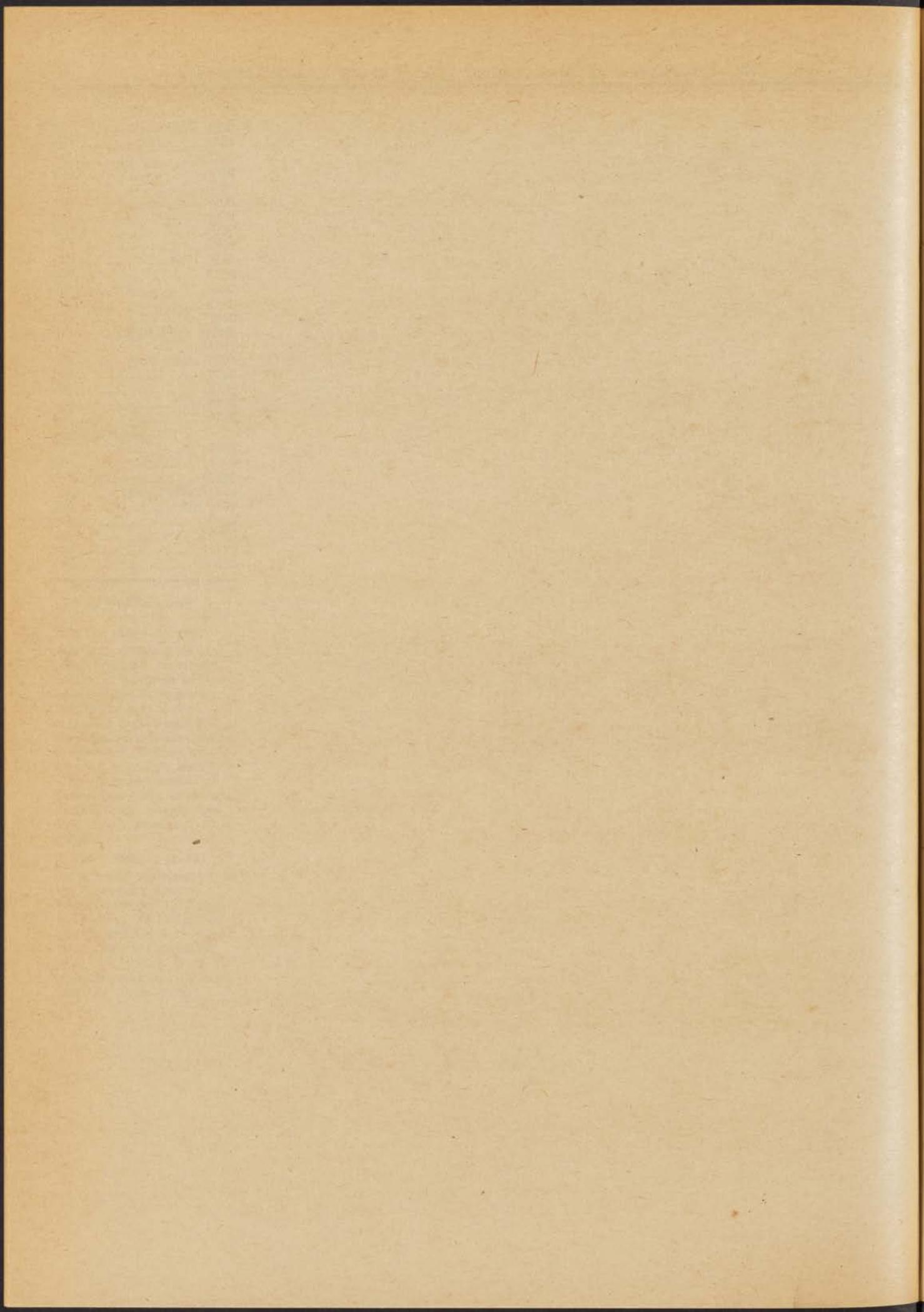
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**S. 820 / Pub. L. 98-241**

To authorize appropriations for the Earthquake Hazards Reduction Act of 1977 and the Federal Fire Prevention and Control Act of 1974 for fiscal year 1984 and fiscal year 1985, and for other purposes. (Mar. 22, 1984; 98 Stat. 95) Price: \$1.50





# Code of Federal Regulations

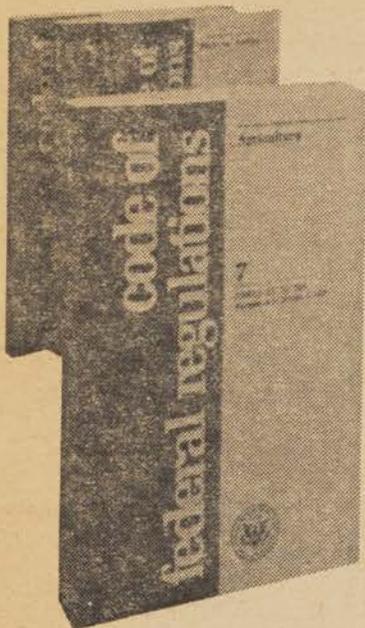
Revised as of October 1, 1983

Quantity	Volume	Price	Amount
	100 12 - Public Health (Part 400-410) (Check for 022-002-9212-4)	\$17.00	\$17.00
	100 13 - Public Health (Part 400-380) (Check for 022-002-9212-4)	18.00	18.00
	100 14 - Planning (Part 41-20) (Check for 022-002-9212-4)	8.00	8.00
	100 15 - Transportation (Part 40-10) (Check for 022-002-9212-4)	12.00	12.00
<b>Total Order</b>			<b>\$53.00</b>

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# Code of Federal Regulations

Revised as of October 1, 1983

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_____	Title 43—Public Lands: Interior (Parts 1000-3999) (Stock No. 022-003-95245-4)	14.00	_____
_____	Title 46—Shipping (Parts 41-69) (Stock No. 022-003-95253-5)	9.00	_____
_____	Title 47—Telecommunication (Part 80—End)— 48 (Stock No. 022-003-95264-1)	13.00	_____

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# Inventory

Inventory List

Amount	Price	Description
100	1.50	Item 1
200	2.00	Item 2
300	3.00	Item 3
400	4.00	Item 4
500	5.00	Item 5
600	6.00	Item 6
700	7.00	Item 7
800	8.00	Item 8
900	9.00	Item 9
1000	10.00	Item 10

Inventory Summary

Total Inventory Value: \$10,000

Inventory Count: 1000

Inventory Location: Warehouse

Item	Quantity	Price	Total
Item 1	100	1.50	150
Item 2	200	2.00	400
Item 3	300	3.00	900
Item 4	400	4.00	1600
Item 5	500	5.00	2500
Item 6	600	6.00	3600
Item 7	700	7.00	4900
Item 8	800	8.00	6400
Item 9	900	9.00	8100
Item 10	1000	10.00	10000

