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Friday
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Administrative Practice and Procedure
Administrative Conference of United States
Engineers Corps

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Arms and Munitions
Alcohol, Tobacco and Firearms Bureau

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 226, and 235

[Amdts. 62, 30, 49, 5, and 12, respectively]

Claim and Report Submission

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the National School Lunch Program (NSLP), Special Milk Program (SMP), School Breakfast Program (SBP) and Child Care Food Program (CCFP) to permanently establish a 60 day deadline for the submission of monthly claims for reimbursement and a 90 day deadline for the submission of monthly program operations reports by State agencies (SAs). These deadlines were originally mandated for Fiscal Year 1983 by Pub. L. 97-370, enacted on December 18, 1982, and were subsequently extended into Fiscal Year 1984 by Pub. L. 98-151, signed by the President on November 11, 1983. These final amendments are designed to ensure timely and accurate reporting of program participation data for the purpose of improving fiscal accountability for program funds at the State and Federal level. For the NSLP, SMP, SBP and for State Administrative Expense Funds (SAE), these amendments also restructure reporting and recordkeeping provisions for clarity and consistency and implement the suspension, termination and grant closeout procedures specified in the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart N). This rule finalizes two proposed rules which were published on September 26 and October 7, 1983 and implements the statutory 60 and 90 day claim and report submission deadlines of Pub. L. 98-151.

EFFECTIVE DATE: This rule is effective June 3, 1984. However, under Pub. L. 98-151, the 60 and 90 day claim and report submission deadlines reflected in this rule were effective on November 11, 1983. Therefore, Fiscal Year 1984 Claims for Reimbursement paid after November 11, 1983 and Fiscal Year 1984 program operations reports received by FNS after that date must have been submitted within the statutory deadlines unless an exception was granted by FNS.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Acting Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

Although this rule does establish certain reporting deadlines, the actual reporting or recordkeeping requirements that are contained in the rule have not been changed. These requirements were approved by the Office of Management and Budget (OMB) as follows: (1) Part 210—through March 1984 for reporting and recordkeeping (0584-0006), (2) Part 215—through June 1986 for reporting and recordkeeping (0584-0005), (3) Part 220—through September 1985 for reporting (0584-0012) and recordkeeping (0584-0310), (4) Part 226—through September 1984 for reporting and recordkeeping (0584-0055), and (5) Part 235—through September 1984 for reporting (0584-0067) and through January 1985 for recordkeeping (0584-0319).

Background

FNS published proposed rules on September 26, 1983, 48 FR 43692, and October 7, 1983, 48 FR 45779, to permanently establish 60 and 90 day claim and report submission deadlines for the School Nutrition and Child Care Food Programs. These deadlines had previously been prescribed for Fiscal Year 1983 by Pub. L. 97-370. Subsequent to publication of the proposed rules, the statutory 60 and 90 day deadlines were extended into Fiscal Year 1984 by Pub. L. 98-151 which was enacted on November 11, 1983. The Proposed rule also restructured the reporting and recordkeeping requirements in Parts 210, 215, 220 and 235 and revised the suspension, termination and grant closeout provisions within those Parts to reflect Departmental regulations (7 CFR Part 3015, Subpart N).

The preambles to the proposed rules provided detailed background on the efforts made by Congress and the Department over the past several years to improve child nutrition program reporting and with it accountability for Federal program funds. Those efforts culminated in the development of a program reporting system based on the 60 and 90 day claim and report submission deadlines as well as other provisions of the proposed rules.

Interested parties were given 60 days in which to submit comments on the proposed rules. In response, the Department received 27 comments—one from a professional association, two from a food advocacy group, two from child care institutions/sponsors, 10 from Food and Nutrition Service regional and field offices and 12 from State agencies. Commentors were generally supportive of the Department's proposals; only three were clearly opposed. Twenty-three commentors had concerns about specific provisions and/or offered recommendations for changing the proposed rules. The Department has made every effort to incorporate into this final rule all commentor suggestions which clarify or improve the overall

approach to program reporting as set forth in the proposed rules.

The remainder of this preamble will address the major areas of comment and will focus primarily on the specific changes from the proposals that are made in this final rule. For ease of reference, these changes are presented under the same headings as in the preambles of the proposed rules. All other provisions of the proposed rules have been retained, however, in some cases, minor editorial changes have been made for clarification purposes.

1. Deadlines for Submissions of Final Claims and Reports

Sixteen commentors addressed this area with seven expressing overall agreement with the provisions of the proposed rules. These commentors indicated that the 60 and 90 day timeframes provided ample time for submission of claims and reports and agreed that the deadline should be based on when the documents are postmarked and/or submitted.

One commentor felt that permanent 60 and 90 day deadlines should not be issued in final form without specific legislative authority and was joined by another commentor in advocating that the existing reporting deadlines be maintained. The Department disagrees with these commentors and would like to point out that, under Section 10 of the Child Nutrition Act, the Secretary has general authority to "* * * prescribe such regulations as he may deem necessary to carry out this Act and the National School Lunch Act". As indicated earlier in this preamble, detailed background information on the need for timely reporting as well as the efforts made by Congress and the Department in recent years to meet that need was presented in the preambles to the proposed rules and is incorporated by reference herein.

Three commentors suggested that the 60 and 90 day timeframes be changed to two and three months, respectively, to avoid the month-to-month variation in submission dates caused by non-30 day months. The Department considered changing the 60 and 90 day deadlines to two and three months but decided it could not for two reasons. First, Pub. L. 98–151 has mandated the 60 and 90 day deadlines for Fiscal Year 1984 and a change could not be effective until Fiscal Year 1985. Secondly, other regulatory timeframes such as those for submission of quarterly Financial Status Reports (SF–269) are also based on days rather than months and changing the 60 and 90 day timeframes would create inconsistencies.

Finally, five commentors disapproved of the provision allowing State agencies to establish deadlines of less than 60 days for submission of claims for reimbursement. Some of these commentors indicated that shorter deadlines might place an unreasonable burden on some local program operators while others questioned whether State agencies could realistically establish shorter deadlines than those specified in Federal regulations. The Department included this provision in the proposed rules to provide State agencies with flexibility in establishing internal State reporting systems that would enable them to comply with the 90 day State reporting deadline. Furthermore, this provision was in keeping with the Department's long established policy of allowing State agencies to impose additional requirements for participation in child nutrition programs which may be more stringent than the Departments' regulations but are not inconsistent with them. Experience to date has indicated prudent use of this general authority by State agencies. Therefore, in this final rule, the Department has retained the provision allowing State agencies to establish shorter deadlines.

2. Adjustments

The proposed rules require that downward adjustments in final Claims for Reimbursement and final reports of program operations shall always be made regardless of when it is determined that such adjustments are necessary. One commentor suggested that it be made clear that FNS approval is not required for downward adjustments. The Department agrees and has made the appropriate revisions in this final rule.

Twelve of the thirteen commentors who addressed adjustments expressed concern that the proposals provide for upward adjustments to claims and reports only if an exception is granted by FNS, whereas downward adjustments are required to be made without FNS approval. It was pointed out that audits and administrative reviews routinely reveal the need for legitimate upward adjustments and that State agencies should have the authority to make such adjustments without obtaining exceptions from FNS. The Department is sensitive to these concerns and has revised the language dealing with upward adjustments in this final rule to indicated that FNS "authorization" and not "an exception" is needed to make upward adjustments in claims and reports. This language will enable the Department to provide both general authorization for upward adjustments in certain specific situations and case-by-case authorization in all other instances. The Department will issue guidance concerning this authorization.

Five commentors were concerned that the proposed method for reporting adjustments to claims and reports would create an inordinate amount of paperwork and additional reporting. Under the proposal, a State agency would have been required to submit a form FNS–10A or FNS–44A each time an adjustment was made. The Department shares the concern of these commentors and has revised the system for reporting adjustments to minimize paperwork and reporting. Under the revised system, which will be detailed in administrative guidance, State agencies would report most adjustments on a cumulative basis by submitting revised monthly reports (FNS–10s or FNS–44s) at the end of each fiscal year quarter. These final rules have been revised to simply state that adjustments be reported in accordance with procedures established by FNS. This language will serve to simplify the regulations and would enable the Department to further streamline the system without delay.

3. Exceptions

Eight respondents cited the exception provisions in their comment letters. One expressed support for a firm policy with a minimum number of exceptions while five felt that provision should be made for granting one-time exceptions to the deadlines for a variety of extenuating circumstances. Two commentors felt that the exception process would generate excessive paperwork. The Department wishes to emphasize that the primary focus of the 60/90 reporting system is on timely and accurate reporting and not on penalizing State and local program cooperators. In this context, the Department is developing administrative guidance to implement the Secretary's discretionary authority to grant exceptions, and commentor's concerns will be considered. With respect to the comments on excessive paperwork, the general authorization to make upward adjustments in claims and reports, which was discussed under "Adjustments" above, will significantly reduce the amount of paperwork associated with obtaining exceptions.

4. Sanctions

The two commentors who addressed this area both felt that the potential SAE sanctions against State agencies for failure to comply with reporting requirements were too severe. In reviewing these sanctions, the Department noted that the maximum

sanction for FNS–10 reporting failure was one-third of school nutrition SAE funds while for FNS–44 failure, 100 percent of child care SAE funds could be sanctioned. Part 235 of this final rule has been revised to make the maximum sanction one-third of applicable SAE funds for either FNS–10 or FNS–44 reporting failure. In view of the importance of accurate and timely program reporting, the Department believes that this potential sanction level is appropriate and not overly severe.

5. Appeals (CCFP only)

Three commentors pointed out that the institution/sponsor appeal rights specified in § 226.6 paragraph (j) should not apply to the denial of claims that are submitted after the 60-day deadline since State agencies would be obligated by the rule to deny payment of Federal funds for such claims. In such cases, the State agency would decide whether or not to forward the sponsor's request for an exception to FNS. This decision is the "State action" that would be subject to appeal. The Department agrees with the commentors and has revised § 226.6 paragraph (j) accordingly. Section 226.6 subparagraph (j)(11) has also been revised to make it clear that FNS decisions on requests for upward adjustments to claims as well as on late claims submissions are not appealable.

6. Miscellaneous

The provisions within the proposed rule which prohibit payment of claims not filed within 60 days were limited to the payment of Federal program funds. In the absence of an exception from FNS, State agencies would have the option of using State funds to pay late claims. The Department has revised this final rule to make it clear that only Federal program funds are affected by the 60 day claim submission requirement.

In revising the suspension, termination and grant closeout provisions for School Nutrition Programs, the proposed rule inadvertently omitted the reference to "FNS guidelines and instructions" in § 210.19 and the references to "conditions of the Program" in §§ 215.15 and 220.20. FNS instructions and guidelines supplement program regulations and provide necessary operating details. Together with program regulations, these instructions and guidelines comprise the "conditions of the Program" that State agencies must comply with. For sake of consistency, the phrase "FNS instructions and guidelines" has been used in the suspension, temination and grant closeout provisions of this final rule for each of the School Nutrition Programs.

Finally, under the provisions dealing with the submission of Claims for Reimbursement, the Department has added language which will enable FNS to approve the submission of claims on other than a calendar month basis. Such approval will be limited to individual local program operators and would only be given in cases of demonstrated need in order to promote efficient and effective reporting.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs-Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs-Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs-Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, Parts 210, 215, 220, 226 and 235 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. In § 210.4, paragraph (a) is amended by revising the first and second sentences, paragraph (b) is amended by adding a sentence after the third sentence, introductory paragraph (c) is revised, and paragraph (e) is removed.

§ 210.4 Payments to States.

(a) *Schools participating in the National School Lunch Program:* To the extent funds are available, the Secretary shall make general assistance payments under Section 4 of the Act to each State agency for lunches served to children under the Program except in commodity schools. Subject to § 210.14(g)(2), the total of these payments for each State for any fiscal year shall be the product of: The total number of lunches served under the Program from October 1 to September 30, multiplied by the applicable national payment rates. * * *

(b) *Commodity schools:* * * * Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.14(g)(2). * * *

(c) *Special assistance:* To the extent funds are available, the Secretary shall make special assistance payments under Section 11 of the Act to each State agency for lunches served free or at a reduced price to eligible children under the Program. Subject to § 210.14(g)(2), the total of these payments for each State for any fiscal year shall be calculated as follows:

* * * * *

2. In § 210.8, paragraph (e)(8) is revised to read as follows:

§ 210.8 Requirements for participation.

* * * * *

(e) * * *

(8) Submit Claims for Reimbursement in accordance with § 210.13 of this part and procedures established by the State agency, or FNSRO where applicable;

* * * * *

3. In § 210.13, paragraph (b) is revised and paragraph (b–1) is amended by removing the phrase "the consolidated Claim for Reimbursement is accompanied by a list of participating schools,".

§ 210.13 Reimbursement procedures.

* * * * *

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Programs Operations required under § 210.14(g)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only lunches served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days

following the last day of the full month covered by the claim State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month which is required under § 210.14(g)(2). Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

* * * * *

4. In § 210.14, paragraph (g)(1) and (g)(2) are revised to read as follows:

§ 210.14 Special responsibilities of State agencies.

* * * * *

(g) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to School Food Authorities under § 210.11 and § 210.13 and the reports submitted to FNS under § 210.14(g)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, except that if audit findings have not been resolved, the records shall be retained beyond the three-year periods as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS–10) for each month, which shall be limited to claims submitted in accordance with § 210.13(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of the fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

* * * * *

§ 210.8 [Amended]

5. In § 210.19, the title "Miscellaneous provisions." is revised to read "Suspension, termination and grant closeout procedures."; paragraph (b) is redesignated as § 210.8, paragraph (f); and the balance of the section is revised as follows:

§ 210.19 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency, or FNS where applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. In § 215.4, paragraph (a) is revised, the second sentence of paragraph (b) is amended by replacing the semicolon with a period and removing the balance of the sentence, and paragraph (c) is removed.

§ 215.4 Payments of funds to States and FNSROs.

(a) For each fiscal year, the Secretary shall make payments to each State agency at such times as he may determine from the funds appropriated for Program reimbursement. Subject to § 215.11(c)(2), the total of these payments for each State for any fiscal year shall be limited to the amount of reimbursement payable to School Food Authorities and child care institutions under § 215.8 of this part for the total number of half-pints of milk served under the Program to eligible children from October 1 to September 30.

* * * * *

2. In § 215.7, paragraph (d)(5) is revised to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(d) * * *

(5) Submit Claims for Reimbursement in accordance with § 215.10 of this part and procedures established by the State agency or FNSRO where applicable;

* * * * *

3. In § 215.10, paragraph (c) is removed and reserved and paragraph (b) is revised to read as follows:

§ 215.10 Reimbursement procedures.

* * * * *

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under § 215.11(c)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only milk served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such

corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month which is required under § 215.11(c)(2). Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

* * * * *

4. In § 215.11, paragraph (c) is revised to read as follows:

§ 215.11 Special responsibilities of State agencies.

* * * * *

(c) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to child care institutions or School Food Authorities under § 215.8 and § 215.10 and the reports submitted to FNS under § 215.11(c)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS–10) for each month which shall be limited to claims submitted in accordance with § 215.10(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

* * * * *

§ 215.7 [Amended]

5. In § 215.15, the title "Miscellaneous provisions." is revised to read "Suspension, termination and grant closeout procedures."; paragraph (d) is redesignated as § 215.7, paragraph (e); and the balance of the section is revised as follows:

§ 215.15 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures.

Furthermore, the State agency, or FNSRO where applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

PART 220—SCHOOL BREAKFAST PROGRAM

1. In § 220.4, paragraph (d) is removed, and paragraph (a) is revised to read as follows:

§ 220.4 Payments to States and FNSROs.

(a) To the extent funds are available, the Secretary shall make breakfast assistance payments to each State agency for breakfasts served to children under the Program. Subject to § 220.13(b)(2), the total of these payments for each State for any fiscal year shall be limited to the total amount of reimbursement payable to eligible schools within the State under this part for the fiscal year.

* * * * *

2. Section 220.7, paragraph (e)(7) is revised to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(e) * * *

(7) Submit Claims for Reimbursement in accordance with § 220.11 of this part and procedures established by the State agency, or FNSRO where applicable;

* * * * *

3. In § 220.11, paragraph (d) is removed and reserved and paragraph (b) is revised to read as follows:

§ 210.11 Reimbursement procedures.

* * * * *

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under § 220.13(b)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only breakfasts served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month which is required under § 220.13(b)(2). Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is

determined that such adjustments are necessary.

* * * * *

4. In § 220.13, paragraph (b–1) is removed and paragraph (b) is revised to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(b) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to School Food Authorities under § 220.9 and the reports submitted to FNS under § 220.13(b)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS–10) for each month which shall be limited to claims submitted in accordance with § 220.11(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

* * * * *

5. Section 220.18, previously reserved, is added to read as follows:

§ 220.18 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency or FNSRO were applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

§ 220.20 [Removed]

§ 220.21 [Redesignated as § 220.20]

6. § 220.20 is removed and § 220.21 is redesignated as § 220.20.

PART 226—CHILD CARE FOOD PROGRAM

1. Section 226.6 is amended by adding language to the first sentence of introductory paragraph (j) after the words "a denial of all or a part of the claim for reimbursement" and by adding a new paragraph (j)(11), to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(j) Institution appeal procedures. * * * (except for late submission under § 226.10(e)), a denial by the State agency to forward to FNS an exception request by the institution or sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim, * * *

* * * * *

(11) Appeals shall not be allowed on decisions made by FNS on requests for exceptions to the claims submission deadlines stated in § 226.10(e) or requests for upward adjustments to claims.

* * * * *

2. Section 226.7(d) is revised to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(d) *Reports.* Each State agency shall submit to FNS a final report of Child Care Food Program Operations (FNS–44) for each month which shall be limited to claims submitted in accordance with § 226.10(e) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

* * * * *

3. In § 226.10, paragraphs (c), (d), and (e), are revised to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) Claims for Reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Child Care Food Program Operations required under § 226.7(d). In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. Independent proprietary Title XX centers, for months in which not less than 25 percent of enrolled children were Title XX beneficiaries, shall submit the percentages of enrolled children receiving Title XX benefits for the month covered by the claim month. Sponsoring organizations of such centers shall submit the percentage of enrolled children receiving Title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not

include in any claim those centers in which less than 25 percent of enrolled children were Title XX beneficiaries for the month claimed.

(d) All records to support the claim shall be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three year period as long as may be required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(e) Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall cover only Program operations for that month except if the first or last month of Program operations in any fiscal year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of Child Care Food Program Operations (FNS–44) for the claim month which is required under 226.7(d). Upward adjustments in Program funds claimed which are not reflected in the final FNS–44 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization regardless of when it is determined that such adjustments are necessary.

* * * * *

4. In § 226.18, a new paragraph (b)(10) is added to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(10) If the State agency has approved a time limit for submission of meal records by day care homes, that time limit shall be stated in the agreement.

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. In § 235.7, the first sentence of paragraph (b) is removed and five new sentences are added in its place:

§ 235.7 Records and reports.

* * * * *

(b) Each State agency shall submit to FNS a quarterly Financial Status Report (SF–269) on the use of State administrative expense funds provided for each fiscal year under this part. Reports shall be postmarked and/or submitted to FNS no later than 30 days after the end of each quarter of the fiscal year and, in case of funds carried over under § 235.4(c) of this part, each quarter of the following fiscal year until all such funds have been obligated and expended. Obligations shall be reported for the fiscal year in which they occur. Each State agency shall submit a final Financial Status Report for each fiscal year's State administrative expense funds. This report shall be postmarked and/or submitted to FNS no later than 30 days after the end of the fiscal year following the fiscal year for which the funds were intially made available.

* * *

* * * * *

2. In § 235.11:

a. paragraph (b)(1) is amended by adding the words "and in Parts 210, 215, 220 and 226 of this title." to the end of the paragraph;

b. paragraph (b)(2)(v) is revised;

c. paragraphs (b)(3) through (b)(6) are redesignated as paragraphs (b)(4) through (b)(7), respectively, and a new paragraph (b)(3) is added;

d. the first sentence of redesignated paragraph (b)(4) is amended by changing the words "paragraph (b)(2)" to the words "paragraphs (b)(2) and (b)(3)," and by removing the words "allocated under § 235.4(a) and § 235.4(b)(3)" and inserting the words "subject to sanction" in lieu thereof;

e. redesignated introductory paragraph (b)(5) is amended by removing the words "in accordance with this paragraph" and inserting the words "under this section" in lieu thereof; and

f. paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), respectively, and a new paragraph (d) is added.

The revision and additions specified above read as follows:

§ 235.11 Other provisions.

* * * * *

(b) Sanctions imposed. * * *

(2) * * *

(v) Meeting the reporting deadlines prescribed for the forms (FNS–10 and SF–269) required under § 210.14(g)(2) of this title.

(3) Furthermore, FNS may for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) percent of the funds payable to, and to be used by, a State agency under § 235.4(b), § 235.4(b)(1) and § 235.4(b)(4) for administration of the Child Care Food Program if FNS determines that a State agency is deficient in meeting the reporting deadlines prescribed for the forms (FNS–44 and SF–269) required under § 226.7(d) of this title.

* * * * *

(d) In taking any action under paragraphs (b) or (c) of this section, FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015 Subpart N concerning grant suspension, termination and closeout procedures.

* * * * *

(42 U.S.C. 1779, Pub. L. 98–151)

(Catalog of Federal Domestic Assistance Nos. 10.553, 10.555, 10.556, 10.558 and 10.560.)

Dated: April 27, 1984.

Sonia F. Crow,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 84–12055 Filed 5–3–84; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 83–348]

European Larch Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations in Part 301 by adding a new subpart captioned, "European Larch Canker", to the domestic quarantine notices. This subpart quarantines the State of Maine for European Larch Canker, *Lachnellula willkommii*

(Dasycypha), designates certain areas of Hancock and Washington Counties in Maine as regulated areas, designates certain articles as regulated articles and establishes conditions governing the interstate movement of regulated articles from regulated areas. This amendment is necessary to prevent the artificial spread of European larch canker, a dangerous plant disease. The effect of this amendment is to prohibit the interstate movement of regulated articles from regulated areas except in accordance with conditions described in this subpart.

DATES: The effective date of this interim rule is May 4, 1984. Written comments must be received on or before July 3, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday throught Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Elliott Crooks, Senior Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8249.

SUPPLEMENTARY INFORMATION: .

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. This action is necessary to prevent the artificial spread interstate of European larch canker, *Lachnellula willkommii* (Dasycypha).

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

European larch canker, *Lachnellula willkommii* (Dasycypha), is a serious plant disease caused by a fungus that can kill mature and immature species of the genus *Larix* (Larch) and *Pseudolarix* (Golden larch). In parts of Europe it has eliminated European larch as a plantation species. European larch canker has recently been discovered for the first time in Maine, in Hancock and Washington Counties. European larch canker was first discovered in the United States in Massachusetts in 1927. It was declared eradicated in 1965 after cutting and burning larch in the infested area over a period of several years. The disease is spread naturally for short distances by wind dispersed spores. There is a potential threat to several million acres of Western larch in the United States due to the artificial spread associated with the interstate movement of regulated articles. In order to prevent the artificial spread of European larch canker interstate, it is necessary to quarantine the State of Maine and impose restrictions on the interstate movement of certain articles that are carriers of European larch canker.

Therefore, this document amends the regulations in Part 301 (Domestic Quarantine Notices) of Title 7 of the Code of Federal Regulations (7 CFR Part 301) by adding a new subpart 301.91, captioned "European Larch Canker". This subpart; (1) quarantines the State of Maine for European larch canker; (2) designates certain areas in Hancock and Washington Counties in Maine as "regulated areas"; (3) designates certain articles as "regulated articles"; and (4) establishes regulations governing the interstate movement of regulated article from regulated areas.

Quarantine and Regulations

(Section 301.91)

Section 301.91(a) of subpart 301.91 reflects a finding by the Secretary of Agriculture that is necessary to quarantine the State of Maine and impose regulations on the interstate movement of certain articles designated as regulated articles in order to prevent the artificial spread of European larch canker, a dangerous plant disease. Section 301.91(b) prohibits any common carrier or other person from moving interstate from any regulated area any regulated article except in accordance with conditions prescribed in § 301.91–4. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect, seize, quarantine, treat and otherwise dispose of regulated articles in accordance with the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) and the Plant Quarantine Act (7 U.S.C. 164a).

Regulated Areas

(Section 301.91–3)

The areas in the State of Maine designated as regulated areas are described in § 301.91–3(c). The regulated areas are located in Hancock and Washington Counties. The regulated areas in Hancock County include the entire townships of: Gouldsboro, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division.

The regulated areas in Washington, County include the entire townships of: Addison, Beals, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cutler, Deblois, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division and 19th Middle Division.

Based on surveys and field observations conducted by the Department and the Maine Forest Service, it appears that European larch canker occurs only in these areas in Maine at this time. Less than the entire State of Maine has been designated as a regulated area because the State of Maine has adopted and is enforcing regulations pertaining to the intrastate movement of regulated articles which are parallel to the Federal quarantine and regulations.

An area is designated as a regulated area if it is determined that it is an area in which European larch canker has been found, or an area in which the Deputy Administrator has reason to believe European larch canker is present, or an area deemed necessary to regulate because of its proximity to infestations of European larch canker, or its inseparability for quarantine enforcement purposes from localities where European larch canker has been found.

Regulated Articles

(Section 301.91–2)

The regulations impose conditions on the interstate movement of articles which pose a significant risk of spreading European larch canker if

moved without restrictions from areas regulated for European larch canker into or through noninfested areas. These conditions are necessary to prevent the artificial spread interstate of European larch canker by the movement of these articles. Such articles are designated as regulated articles and are subject to restrictions prescribed by § 301.91–4.

Section 301.91–2 designates the following articles as regulated articles:

(1) logs, pulpwood, branches, twigs, plants, scion, and other propagative material of the *Larix* or *Pseudolarix* spp. except seed; and

(2) any other product, article, means of conveyance, of any character whatsoever, not covered above when it is determined by an inspector that it presents a risk of spread of European larch canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the quarantine and regulations.

Definitions

(Section 301.91–1)

For informational purposes, § 301.91–1 contains definitions of certain terms used in the regulations. These include definitions of the terms "certificate", "compliance agreement", "Deputy Administrator", "inspector", "limited permit", "Plant Protection and Quarantine", "regulated area", and "regulated article." Section 301.91–1 also contains definitions of the terms "interstate", "moved", "person", and "State" which are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 161, 162) and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

Additional Provisions

In addition to the provisions described above which quarantine Maine (§ 301.91), designate certain articles as regulated articles (§ 301.91–2), designate certain areas as regulated areas (§ 301.91–3) and define key terms used in subpart 301.91 (§ 301.91–1), subpart 301.91 also prescribes conditions governing the interstate movement of regulated articles from regulated areas. These conditions are described below in § 301.91–4.

Requirements for Interstate Movement of Regulated Articles

(Sections 301.91–4, 301.91–5, 301.91–7 and 301.91–8)

Section 301.91–4(a) authorizes the interstate movement of regulated articles from regulated areas if such articles are accompanied by a certificate or limited permit issued and attached in accordance with conditions set forth in §§ 301.91–5 and 301.91–8.

Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by the Department that, because of certain conditions (e.g. the article is free of European larch canker), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas and movement for limited purposes.

Section 301.91–4(b) permits the interstate movement of regulated articles from regulated areas without a certificate or limited permit if moved to a contiguous regulated area.

Also, under § 301.91–4(b) a regulated article originating outside a regulated area but moving through a regulated area, before being moved interstate, may be moved without a certificate or limited permit if the article is moved directly through any regulated area, if the point of origin of the article is clearly indicated by shipping documents and if the identity of the article has been maintained.

Footnote 2 is added to remind persons of other applicable domestic plant quarantine and regulation requirements that must be met.

Conditions Governing the Issuance and Cancellation of Certificates and Limited Permits

(Section 301.91–5)

Section 301.91–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if: (1) The inspector determines that the article comes from a premise(s) of origin which is free from European larch canker or the inspector determines that the regulated article is free of European larch canker; and (2) the inspector determines that it will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of European larch canker pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

Footnote 3 has been added for informational purposes. Footnote 3 explains the emergency actions authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) that USDA can take against any article moving into or through the United States or interstate which are believed to be infested or infected by plant pests.

Section 301.91–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if, after consultation with the Deputy Administrator, it is determined that such article is to be moved to a specified destination for specified handling, utilization or processing, and upon evaluation of all of the circumstances involved, the movement will not result in the spread of European larch canker.

It appears that there are no known feasible methods for treating infected regulated articles which are considered adequate to destroy infections of European larch canker. Therefore, there are no provisions allowing for the issuance of a certificate or limited permit for the interstate movement of regulated articles found to be infected with European larch canker based on treatment.

Section 301.91–5(c) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited permit for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate or limited permit in accordance with § 301.91–5 (a) or (b). These initial determinations concerning the eligibility for issuance of a certificate or limited permit are limited to inspectors because of their nature and complexity.

Also, § 301.91–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector, upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and to ensure that if there is any conflict as to any material fact, a hearing shall be held to resolve the conflict.

Assembly of Regulated Articles; Attachment and Disposition of Certificates and Limited Permits

(Sections 301.91–7 and 301.91–8)

Section 301.91–7 and 301.91–8 contain additional restrictions on the interstate

movement of regulated articles. Specifically, § 301.91–7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote, number 5, is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine. Section 301.91–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interestate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Compliance Agreements

(Section 301.91–6)

Section 301.91–6 provides for the issuance and cancellation of compliance agreements. This section provides that a compliance agreement can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.91 and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from regulated areas and are designed to assure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements of this subpart and have agreed to comply with them.

Section 301.91–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of this subpart or any conditions imposed pursuant thereto. This section also contains provisions for notifying the holder of the compliance agreement of the reasons for cancellation and to provide such holder with an opportunity for a hearing to resolve a conflict as to any material fact. Footnote 4 is added to explain where compliance agreement forms can be obtained.

Cost and Charges

(Section 301.91–9)

Section 301.91–9 explains the Department's policy that services of an inspector which are needed in order for a person to comply with the provisions of the quarantine and regulations in subpart 301.91 are provided without cost during normal business hours but that any other incidental costs or charges shall not be the responsibility of the Department.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have no significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment only affects the interstate movement of regulated articles from portions of Hancock and Washington Counties in Maine by imposing restrictions on the movement of such articles. As noted below, it appears that there is very little movement of such articles.

It appears, based on information from the Maine Forest Service and the USDA Forest Service, that the items designated as regulated articles (namely, logs, pulpwood, branches, twigs, plants, scion and other propagative material from larch trees) have little commercial value, and there is very little interstate movement of these regulated articles for commercial purposes or otherwise.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or record-keeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plants (agriculture), Quarantine, Transportation, European Larch Canker.

Part 301 is amended by adding a new subpart to read as follows:

PART 301 DOMESTIC QUARANTINE NOTICES

Subpart—European Larch Canker

Quarantine and Regulations

Sec.

301.91 Quarantine and regulations; restrictions on interstate movement of regulated articles.
301.91–1 Definitions.
301.91–2 Regulated articles.
301.91–3 Regulated areas.
301.91–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.
301.91–5 Issuance and cancellation of certificates and limited permits.
301.91–6 Compliance agreement and cancellation thereof.
301.91–7 Assembly and inspection of regulated articles.
301.91–8 Attachment and disposition of certificates and limited permits.
301.91–9 Costs and charges.

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C 161, 162); secs. 105 and 106, 71 Stat. 32, and 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, 371.2(c).

Subpart—European Larch Canker

§ 301.91 Quarantines and regulations; restrictions on interstate movement of regulated articles.[1]

(a) *Quarantines and regulations.* The secretary of agriculture hereby quarantines the State of Maine in order to prevent the artificial spread of European larch canker, *Lachnellula willkommi* (Dasycypha), a dangerous plant disease of trees of the *Larix* and *Pseudolarix* species not hereto fore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interstate movement of regulated articles specified in § 301.91–2

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 301.91–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) *Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.91–5(a).

(b) *Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

(d) *European larch canker.* The plant disease known as European larch canker, *Lachnellula willkommi* (Dasycypha), in any stage of development.

(e) *infestation.* The presence of European larch canker or the existence of circumstances that make it reasonable to believe that the European larch canker is present.

(f) *Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

(g) *Interstate.* From any State into or through any other State.

(h) *Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.91–5(b).

(i) *Moved (movement, move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved or caused to be moved by any means. "Movement" and "move" shall be construed accordingly.

(j) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(k) *Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

(l) *Regulated area.* Any State, or any portion thereof, listed in § 301.91–3(c) or otherwise designated as a regulated area in accordance with § 301.91–3(b).

(m) *Regulated article.* Any article listed in § 301.91–2(a) or otherwise designated as a regulated article in accordance with § 301.91–2(b).

(n) *State.* Each of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

§ 301.91–2 Regulated articles.

The following are regulated articles:

(a) Logs, pulpwood, branches, twigs, plants, scion and other propagative material of the *Larix* or *Pseudolarix* spp. except seeds;

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of European larch canker and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions in the quarantine and regulations.

§ 301.91–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, the State, or any portion thereof, in which European larch canker has been found by an inspector or in which the Deputy Administrator has reason to believe that European larch canker is present, or any portion of a quarantined State which the Deputy Administrator deems necessary to regulate beacuse of its proximity to a European larch canker infestation or its inseparability for quarantine enforcement purpose from localities in which European larch canker occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artifical interstate spread of European larch canker.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designaton shall be given to the owner or person in possession of such nonregulated area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

Maine

Hancock County. The entire townships of Gouldsboro, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division.

Washington County. The entire townships of Addison, Beals, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cutler, Debolis, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division, and 19th Middle Division.

§ 301.91–4 Conditions governing the interstate movement of regulated article from regulated areas in quarantined States.[1]

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.91–5 and 301.91–8 of this subpart; or

(b) Without a certificate or limited permit:

(1) If moved to a contiguous regulated area; or

(2)(i) If moved directly through (moved without stopping except under

[1] Requirements under all other applicable Federal domestic plant quarantines must also be met.

normal traffic conditions such as traffic lights or stop signs) any regulated area in an enclosed vehicle or in an enclosed container on a vehicle to prevent the introduction of European larch canker;

(ii) If the article originated outside of any regulated area; and

(iii) If the point of origin of any article is clearly indicated by shipping documents and its identity has been maintained.

§ 301.91-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector, except as provided in paragraph (c), for the movement of a regulated article if such inspector:

(1)(i) Determines based on inspection of the premises of origin that the premises are free from European larch canker; or

(ii) Determines that it has been grown, processed, stored, or handled in such a manner that the regulated article is free of European larch canker; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the European larch canker pursuant to § 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);[3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector, except as provided in paragraph (c), for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of European larch canker because the disease will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the European larch canker pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd)[3]; and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits may be issued by any person engaged in the business of growing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate or limited permit for the interstate movement of a regulated article if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.91-5(a) or is eligible for a limited permit in accordance with § 301.91-5(b).

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in witing, stating the reasons for such decision, as promptly as circmstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.91-6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[4] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.91-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.91-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector[5] to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such articles shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.91-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during

[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means or conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

[4] Compliance agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

[5] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspector Service, Federal Building, Hyattsville, MD 20782.

such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided,* however, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.91-9 Costs and charges.

The services of the inspector shall be furnished without cost, except as provided in 7 CFR 354. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Done at Washington, D.C., this 1st day of May 1984.

Elliott E. Crooks,

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

[FR Doc. 84-10717 Filed 5-3-84; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 324; Valencia Orange Regulation 325]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 324 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 4–10, 1984. Regulation 325 establishes the quantity of such oranges that may be shipped during the period May 11–17, 1984. These regulations are needed to provide for the orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Regulation 324 (§ 908.624) becomes effective May 4, 1984. Regulation 325 (§ 908.625) becomes effective May 11, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures 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.

These regulations are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The regulations are based upon the recommendation of and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the regulations will tend to effectuate the declared policy of the Act.

The regulations are consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984. The committee met again publicly on May 1, 1984, to consider current and prospective conditions of supply and demand for California-Arizona Valencia oranges. The committee reports the demand for Valencia oranges is good to excellent.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). There is insufficient time between the date when the information upon which these regulations are based became available and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. To effecuate the declared purposes of the Act, it is necessary to make these regulatory provisions effective as specified, and handlers have been notified of the regulations and their effective dates.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

Sections 908.624 and 908.625 are added to read as follows:

§ 908.624 Valencia Orange Regulation 324.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 4, 1984, through May 10, 1984, are established as follows:

(a) District 1: 235,000 cartons;
(b) District 2: 265,000 cartons;
(c) District 3: Unlimited cartons.

§ 908.625 Valencia Orange Regulation 325.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 11, 1984, through May 17, 1984, are established as follows:

(a) District 1: 282,000 cartons;
(b) District 2: 318,000 cartons;
(c) District 3: Unlimited cartons.

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

Dated: May 2, 1984.

Thomas R. Clark,

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

[FR Doc. 84-12261 Filed 5-3-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 462]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period May 6–May 12, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: May 6, 1984.

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

SUPPLEMENTARY INFORMATION: This final 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 final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on May 1, 1984, at San Bernardino, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that order business is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date 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 regulation 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 regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.762 is added as follows:

§ 910.762 Lemon Regulation 462.

The quantity of lemons grown in California and Arizona which may be handled during the period May 6, 1984, through May 12, 1984, is established at 300,000 cartons.

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

Dated: May 2, 1984.

Thomas R. Clark,

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

[FR Doc. 84-12240 Filed 5-3-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 223a

Refugee Travel Documents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the existing regulation relating to refugee travel documents to provide for a more uniform definition of the term "refugee", extends the period of issuance of a refugee travel document from one to two years, and eliminates applications for extensions of refugee travel documents, thus reducing paperwork reporting requirements.

EFFECTIVE DATE: May 4, 1984.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: F. Gerard Heinauer, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: The term "refugee", as presently defined in 8 CFR 223a.1 is outdated. Refugee as defined in Section 101(a)(42) of the Act provides a more uniform definition of the term and is easily identifiable. 8 CFR 223a.1 is revised to provide that the term "refugee" be as defined in Section 101(a)(42) of the Act.

The present 8 CFR 223a.5 provides that a refugee travel document shall be valid for a period not to exceed one year from the date of issuance and its validity may be extended for a period not to exceed an additional year. The revised 8 CFR 223a.5 extends the period of validity of a refugee travel document from one to two years, and eliminates subsequent extensions.

The present 8 CFR 223a.7 provides for the extension of a refugee travel document. The revised 8 CFR 223a.7 eliminates extensions of refugee travel documents by extending the period of validity of currently valid refugee travel documents to the date two years from the original date of issuance.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule is interpretative and merely clarifies the provisions of an existing rule and revises procedures which reduces the paperwork reporting burden upon the public.

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

This order is not a major rule within the definition of section 1(b) E.O. 12291.

List of Subjects in 8 CFR Part 223a

Administrative practice and procedure, Refugees, Travel restrictions.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 223a—REFUGEE TRAVEL DOCUMENTS

1. Section 223a.1 is revised to read as follows:

§ 223a.1 Definition of refugee.

For the purposes of this part, the term "refugee" shall be as defined in Section 101(a)(42) of the Act.

2. In section 223a.5, paragraph (a) is revised as follows:

§ 223a.5 Validity of refugee travel document.

(a) *General.* A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

* * * * *

3. Section 223a.7 is revised as follows:

§ 223a.7 Extension.

Refugee travel documents may not be extended. However, currently valid refugee travel documents issued for a one year period without restrictions, shall be valid for a period of two years from the original date of issuance.

(Secs. 101 and 103 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1101 and 1103))

Dated: April 20, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 84-12133 Filed 5-3-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84-023]

Change in Disease Status of Denmark Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which added Denmark to the list in 9 CFR 94.1(a)(2) of countries declared to be free of rinderpest and foot-and-mouth disease, and added Denmark to the list in 9 CFR 94.11(a) of countries declared to be free of rinderpest and foot-and-mouth disease and from which the importation of meat and other animal products into the United States is subject to special restrictions. Denmark was not listed as free of rinderpest and foot-and-mouth disease only because it was infected with foot-and-mouth disease. Data furnished to the Department establishes that foot-and-mouth disease has been eradicated from Denmark. The addition of Denmark to the lists allows the importation of cattle, sheep, or other ruminants, or swine, or fresh, chilled, or frozen meats of such animals into the United States from Denmark under certain restrcitions.

DATE: The effective date of this document is May 4, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 846, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on Janaury 16, 1984 (49 FR 1886-1887) amended 9 CFR Part 94 by adding Denmark to the list in § 94.1(a)(2) of countries declared to be free of rinderpest and foot-and-mouth disease, and by adding Denmark to the list in § 94.11(a) of countries declared to be free of rinderpest and foot-and-mouth disease and from which the importation of their meat and other animal products into the United States is subject to special restrictions.

The interim rule became effective on the date it was published, January 16, 1984.

Comments were solicited for 60 days after publication of the amendments. No comments were received. The factual situation which was set forth in the document of January 16, 1984, still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that fresh, chilled, or frozen pork offered for importation into the United States from Denmark will be no more than approximately 14 percent of all such pork products imported into the United States annually and less than 1 percent of the pork produced in the United States annually. It is also anticipated that fresh, chilled, or frozen beef offered for importation into the United States annually from Denmark will comprise no more than approximately 1 percent of total United States imports of this type and considerably less than 1 percent of the beef produced in the United States annually. It is also anticipated that casein offered for importation from Denmark annually will comprise less than approximately 4 percent of all United States casein imports and less than 1 percent of the casein used in the United States annually. These determinations were based on statistics compiled for 1981, the most recent full year during which Denmark exported meat and meat products into the United States.

Under the circumstances referred to above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Foot-and-mouth disease.

Accordingly, the interim rule concerning the change in disease status of Denmark because of foot-and-mouth disease which was published at 49 FR 1886-1887 on January 16, 1984, is adopted as a final rule.

Authority: Sec. 2, 32 Stat. 792, as amended; sec. 306, 46 Stat. 689, as amended; secs. 4 and 11, 76 Stat. 130, 132; 19 U.S.C. 1306, 21 U.S.C. 111, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 1st day of May 1984.

D. F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-12140 Filed 5-3-84; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 317, 318 and 381

[Docket No. 83-022]

Potassium Chloride, Calcium Chloride and Magnesium Chloride as Tenderizers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) amends the Federal meat and poultry products inspection regulations to permit the use of potassium chloride, calcium chloride and magnesium chloride as tenderizing agents. The Food and Drug Administration (FDA) has determined these substances to be generally recognized as safe (GRAS) for use in foods. The petitioner has supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2) and 9 CFR 381.147(f)(2), for amending the Federal meat and poultry products inspection regulations to permit the requested use.

EFFECTIVE DATE: July 3, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the use of potassium chloride, calcium chloride and magnesium chloride as meat and/or poultry tenderizers. The current regulations only allow enzyme tenderizers in meat and poultry products. Industry will benefit from this action through the ability to use a wider variety of tenderizing agents.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because this will impose no new requirements on industry. The implementation of this proposed rule will merely allow meat and poultry processors to use a new class of tenderizing agents.

Comments

This is a final rule consistent with the provision of Section 318.7 of the Federal meat inspection regulations and Section 381.147 of the poultry products inspection regulations. As such, no specific request for comments is being made. However, interested parties may inform the Department if there is any available information which raises questions about this action during the 60 day period between publication of this rule and its effective date.

Background

Gooch Blue Ribbon Meats, Inc., Abilene, Texas, has submitted a petition requesting that the definition of tenderizing agents contained in the Federal meat and poultry products inspection regulations be amended to include calcium chloride, potassium chloride, and magnesium chloride and mixtures of these chlorides as tenderizing agents in meat and poultry products.

The petitioner maintains that these inorganic chloride salts cause a change in the physiochemical state of the muscle, or the ionic environment, which increases protein hydration, decreases contracture of the sarcomeres, and lessens overlap and cross-binding of the myosin and actin filaments of muscle fibers. This results in a more relaxed physical state in the muscle tissue. The petitioner claims that the combination of the above factors results in increased tenderness of the muscle.

The petitioner has supplied analytical data supporting these claims and indicating that wholesomeness is not affected when treated with inorganic chlorides. These data are available upon request from the Standards and Labeling Division at the address given.

In the **Federal Register** of July 19, 1983 (48 FR 32749) the Department published a final rule on new procedures for the routine approval of added substances in meat and poultry products. Under that rule, applicants are required to show (1) that a proposed added substance has been previously approved by FDA as GRAS or as a food additive or color additive in meat or poultry food products and (2) that the substance is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184. Once this is established, the use of the added substance will be permitted upon a further determination by USDA that the requested use in meat or poultry products is compatible with recognized or regulated uses and is suitable for that particular product or class of product.

In the instant case, these substances have been listed or affirmed as GRAS in 21 CFR Part 182 or 184, respectively. Those not currently affirmed as GRAS are the subject of rulemaking to have them so listed. Calcium chloride was affirmed as GRAS in the **Federal Register** of June 25, 1982 (47 FR 27806) and is listed in 21 CFR Part 184. Potassium chloride is listed in 21 CFR Part 182 and was proposed for GRAS affirmation in the **Federal Register** of August 20, 1982 (47 FR 36440). Magnesium chloride is listed in 21 CFR Part 182 and was proposed for GRAS affirmation in the **Federal Register** of January 21, 1983 (48 FR 2782). Furthermore, FDA has informed the Department in a letter dated January 27, 1983 that it has no objection to the proposed use of calcium chloride, potassium chloride and magnesium chloride in meat and poultry products.

The administrator concurs with FDA's conclusions regarding the safety of calcium chloride, potassium chloride and magnesium chloride. He further finds that information provided by the petitioner and the available data indicate that (a) the proposed use of these substances would have an appropriate technical effect on the product and (b) the substances would be used at the lowest amount reasonably required to accomplish their intended technical effect.

Therefore, the Department is amending the Federal meat and poultry products inspection regulations to include potassium chloride, calcium chloride, and magnesium chloride in the table of approved substances in Parts 318 and 381 (9 CFR Parts 318 and 381). The Department is also defining a new general class of substances called "tenderizing agents" under which will be listed the approved inorganic chlorides as well as the substances currently listed under "proteolytic enzymes." The latter will no longer appear as a separate heading. Finally, the Department is clarifying the labeling provisions in Parts 317 and 381 (9 CFR Parts 317 and 381) to encompass the approved inorganic chlorides by requiring a qualifying statement contiguous to the product name identifying these substances when they are used.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, and Meat and meat food products.

9 CFR Part 318

Food additives, and Meat inspection.

9 CFR Part 381

Poultry and poultry products, Poultry inspection, Food labeling, and Food additives.

PART 317—[AMENDED]

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Parts 317 and 318 (9 CFR Parts 317 and 318) reads as follows:

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

2. Section 317.8 is amended by adding two new sentences to the end of paragraph (b)(25) to read as follows (9 CFR 317.8(b)(25)):

§ 317.8 False or misleading labeling or practices generally; specific prohibition and requirements for labels and containers.

* * * * *

(b) * * *

(25) * * *

When approved inorganic chlorides as permitted in Part 318 of this subchapter

are used on steaks or other raw meat cuts there shall appear on the label in a prominent manner, contiguous to the product name, the statement, "Tenderized with (names of approved inorganic chloride(s))" to indicate the use of such inorganic chlorides. Any other approved substance which may be in the solution shall also be included in the statement.

* * * * *

3. In § 318.7(c)(4) (9 CFR 318.7(c)(4)), a new class of substances entitled "Tenderizing Agents" is added to the chart and placed in alphabetical order. The descriptions of substance, purpose, products and amount for "Tenderizing Agents" are also added to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Among
Tenderizing agents	Aspergillus oryzae	To soften tissue	Raw meat cuts	Solutions consisting of water and approved proteolytic enzymes applied or injected into raw meat cuts shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Aspergillus flavus oryzae group.	do	do	Do.
	Bromelin	do	do	Do.
	Ficin	do	do	Do.
	Papain	do	do	Do.
	Potassium chloride	do	do	Not more than 3 percent of a 2.0 molar solution.
	Magnesium chloride	do	do	Not more than 3 percent of a 0.8 molar solution.
	Calcium chloride	do	do	Not more than 3 percent of a 0.8 molar solution.
	Potassium, magnesium or calcium chloride.	do	do	A solution of approved inorganic chlorides injected into or applied to raw meat cuts shall not result in a gain of more than 3 percent above the weight of the untreated product.

Further the poultry products inspection regulations are amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 (9 CFR 381) reads as follows:

Authority: Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 481 *et seq.*); the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450), and subsection 21(b) of the Water Pollution Control Act, as amended by Pub. L. 91–224 and by other laws (33 U.S.C. 1254).

2. Section 381.120 is revised by adding two new sentences to the end thereof to read as follows (9 CFR 381.120):

§ 381.120 Antioxidants; chemical preservatives; and other additives.

* * * When approved inorganic chlorides as permitted in § 381.147 of this subchapter are used in mature poultry muscle tissue, there shall appear on the label, in a prominent manner, contiguous to the product name, the statement, "Tenderized with (name of approved inorganic chloride(s))" to indicate the use of such inorganic chlorides. Any other approved substance which may be used in the solution shall also be included in the statement.

3. In § 381.147(f)(3) (9 CFR 381.147(f)(3)) a new class of substances entitled "Tenderizing Agents" is added to the chart and placed in alphabetical order. The descriptions of substance, purpose, products and amount for "Tenderizing Agents" are also added to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(3) * * *

Class of substance	Substance	Purpose	Products	Amount
Tenderizing agents	Aspergillus oryzae	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea.	Solutions consisting of water and approved proteolytic enzymes applied or injected into raw poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Aspergillus flavusoryzae group.	do	do	Do.
	Bromelin	do	do	Do.
	Ficin	do	do	Do.
	Papain	do	do	Do.
	Potassium chloride	do	do	Not more than 3 percent of a 2.0 molar solution.
	Magnesium chloride	do	do	Not more than 3 percent of a 0.8 molar solution.
	Calcium chloride	do	do	Not more than 3 percent of a 0.8. molar solution.
	Potassium, magnesium or calcium chloride.	do	do	A solution of approved inorganic chlorides alone or in combination, applied or injected into raw poultry muscle tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.

Done at Washington, D.C., on: April 13, 1984.

L. L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 84-12054 Filed 5-3-84; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563b and 565

[No. 84-202]

Conversion to Stock Form; Liquidation Accounts

Dated: April 26, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Temporary final rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board is clarifying the applicability of the regulations governing the conversion to stock form of mutual insured institutions that leave the Federal Savings and Loan Insurance Corporation's insurance system. The rules are necessary to prevent evasions of the Board's conversion regulations and take effect immediately.

DATES: Effective April 26, 1984. Comments must be received by June 25, 1984.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Attorney, Corporate and Securities Division (202-377-6457), J. Larry Fleck, Deputy Director, Corporate and Securities Division (202-377-6413) or Julie L. Williams, Director, Corporate and Securities Division, Office of General Counsel (202-377-6459).

SUPPLEMENTARY INFORMATION: Part 563b of the Rules and Regulations for Insurance of Accounts (the "Conversion Regulations") sets forth the requirements of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") for conversions from mutual to stock form of institutions whose accounts are insured by the Corporation ("insured institutions"). *See* 12 CFR Part 563b (1983). The Conversion Regulations were promulgated pursuant to the mandate of section 402(j) of the National Housing Act ("NHA"), 12 U.S.C. § 1725(j) (1982), and reflect an extended effort to develop a conversion procedure that is equitable to account holders and insured institutions in general and that still provides an effective capital-raising tool. Although the Federal Home Loan Bank Board ("Board"), as operating head of the Corporation, has continually refined the Conversion Regulations, their guiding principles have remained constant and insured institutions have been assured of a conversion procedure that can withstand judicial scrutiny. *See York* v. *Federal Home Loan Bank Board*, 624 F.2d 495 (4th Cir.), *cert. denied*, 449 U.S. 1043 (1980).

The Board has always considered the mutual-to-stock conversion program one of its most important responsibilities. The Board looks to the infusions of capital through conversions to stock form as a major means of building the net worth needed to protect the thrift industry from future adversity. The record number of conversions completed in the past year was one of the Board's most significant achievements, and the continued filing of conversion applications ensures that the conversion program will remain a high priority with this agency.

The success of the conversion program is in large measure attributable to the availability of a conversion procedure which equitably balances the interests of all parties affected by the conversion process. The nearly routine nature of most conversions today masks the fact that the conversion regulations were developed in an atmosphere of litigation and acrimony which lasted several decades. The promulgation of fair and workable conversion rules was a milestone in the development of a modern thrift industry. It is and has been the Board's view that maintaining the balance of interests found in the Conversion Regulations is essential to the orderly functioning of the conversion program. For this reason, the Board has always acted swiftly and forcefully to prevent practices that jeopardize the conversion program.

The Board has recently become aware of developments that indicate a misunderstanding of the application of the Conversion Regulations, which, if unaddressed, could undermine the Board's ability to carry out its statutory duty to regulate conversions of insured institutions to stock form. Insured institutions in several states have expressed interest in leaving the FSLIC system solely to take advantage of state law conversion procedures that have fewer requirements that the Board's Conversion Regulations, and which, in particular, severely reduce the rights of mutual account holders.

The Board is concerned that state law conversion procedures may abridge rights or lack certain safeguards contained in the Board's Conversion Regulations. Although the state law procedures may be appropriate for institutions in which account holders have not historically had an equity interest (*e.g.*, some state-chartered mutual savings banks), the same is not true for an institution such as a federally/chartered mutual savings and loan association in which the equity interests of account holders have long been recognized.

In developing the equitable conversion procedures required by the

NHA,[1] the Board has been sensitive to the rights of account holders and considers the protection of those rights an essential element in its responsibilities regarding the conversion process. The protection of account holders' rights also reflects the expressed concerns of Congress in enacting NHA section 402(j). *See, e.g.*, S. Rep. No. 902, 93d Cong. 2d Sess. 3–5, 1974 U.S. Code Cong. & Ad. News 6119, 6122–23. Congressional concern for the rights of account holders in a federal mutual association is particularly evident in the Home Owner's Loan Act ("HOLA") which provides that, in any dissolution of a state-chartered mutual association after conversion from a federal association, mutual members must share in the assets on a mutual basis. *See* U.S.C. 1464(i)(3)(A)(iv). *See also id* at section 1464(i)(3)(B)(i). Evasions of the Conversion Regulations with the purpose of avoiding their safeguards for account holders' rights strike at the heart of the Conversion Regulations and ignore fundamental differences between mutual savings and loan associations and other institutions. Evasions of the Conversion Regulations for these purposes thus seriously threaten the achievement of long-established regulatory and statutory goals in the mutual-to-stock conversion process.

The abridgement of the ownership rights of mutual account holders in a non-supervisory setting may well prompt lawsuits against the converting association and its managing officers, and cast doubt upon whether conversion stock has been issued in compliance with applicable legal requirements. In particular, officials of a converting institution that chose to convert in a manner designed to deprive account holders of their rights are likely to be subject to charges of breach of their fiduciary duties. The likelihood of account holder success in and the potential liability from such lawsuits would not only endanger the financial stability of the institution but would also give the Board grounds to deem a conversion not conforming to the Conversion Regulations an unsafe or unsound practice under section 407 of the NHA. Because the Corporation may be obliged to continue its coverage of previously insured accounts for two years following the effective date of a termination of insurance,[2] NHA section 407(d), the Corporation has a continuing interest in practices that may threaten such an institution's safety or soundness.

The Board concludes that recent developments amply demonstrate that a clarification of the applicability of the Conversion Regulations is needed. Accordingly, the Board has determined to adopt temporary final regulations to inform insured institutions respecting the extent to which the Board's mutual-to-stock conversion regulations will continue to apply to institutions that surrender their FSLIC insurance and to provide safeguards in such conversions.

As a threshold matter, all terminating institutions will be required to establish, as of the effective date of the surrender of insurance, a liquidation account in an amount equal to the institution's net worth as of the latest practicable date prior to the termination date.[3] Each account holder in the institution as of that date shall have a proportionate interest in the liquidation account based on the ratio the account holder's deposit account bears to all account balances ("subaccount"). The liquidation account shall be maintained for the benefit of account holders who remain account holders following the termination date and, in the event of liquidation of the institution, such account holders would be entitled to receive a liquidation distribution from the liquidation account in the amount of their subaccount balance at that date, prior to any liquidation distributions to holders of common stock. The initial subaccount balance of an account holder would be adjusted downward to reflect reductions in the account holder's deposit balances. The subaccount balance could not be increased. The subaccount would be maintained for an individual account holder for as long as he or she maintains an account with the institution for which he or she uses the same Social Security number. Accordingly, rollovers and address changes would not extinguish the subaccount.

The purpose of the liquidation account is to maintain the equity interest of account holders in the net worth of the institution accumulated under FSLIC insurance notwithstanding the possible termination of their other ownership interests. The liquidation-account procedure has been a feature of the regulations governing conversions to stock form, a process by which the ownership rights of account holders are similarly altered. *See* 12 CFR 563b.3(f) (1983). The Board believes that the establishment of a liquidation account is necessary to achieve its traditional goals of respecting the rights of account holders while accommodating the needs of institutions for more capital.

Maintaining the liquidation account will impose a minimal burden on institutions. Annual computations of the liquidation account and subaccount balances are not required. The institution need only keep available the documentation necessary for making balance determinations in case of liquidation or when calculation of the balance of the liquidation account is otherwise required. The Board is taking this opportunity to amend the Conversion Regulations to clarify this aspect of liquidation accounts.

To further preserve the integrity of the conversion process, the Board will henceforth require that conversions by institutions that have surrendered their insurance comply with the Board's Conversion Regulations to an extent necessary to recognize the status of mutual account holders and prevent evasions of NHA section 402(j).

When surrender of FSLIC insurance is merely the first step in a plan of conversion to stock form, the entire process constitutes the conversion of an insured institution to stock form which, pursuant to section 402(j) of the NHA, must be in accordance with the Corporation's Conversion Regulations. It would be an unnatural construction of the Board's responsibilities under section 402(j) to require it to ignore practices that lead to violations of its regulations.

To prevent evasions of the Conversion Regulations, section 563b.1(a) is being amended to establish a presumption that a conversion to stock form undertaken within two years of a surrender of FSLIC insurance is part of a single plan of conversion and therefore subject to the requirements of Part 563b. In addition, conversion of an institution following termination of insurance will be required to fully comply with the Conversion Regulations for as long as the institution or its successor in interest continues to have insured accounts pursuant to NHA section 407(d). This requirement will be accomplished by clarifying the definition of "insured institution" for purposes of Part 563b to

[1] Although the requirement of equitability no longer appears in NHA section 402(j), the deletion of certain language does not read equitability out of the statute. The recent amendments rather indicate Congress entrusted the Board with responsibility for defining and ensuring equitability.

[2] Although not every surrender of FSLIC insurance is a termination of insured status within the meaning of NHA section 407, *see, e.g.*, 12 CFR 565.6 and 7, a charter conversion of a federal savings and loan association in which insurance of accounts is terminated must follow the law and regulations for termination of insurance of accounts. *See* 12 U.S.C. 1464(i)(3)(B)(iii) (1982).

[3] The liquidation account will be required in addition to whatever obligations may attach with respect to rights of mutual members of converting federal associations under HOLA section 5(i)(3)(A)(iv).

include institutions with insured accounts.

After this initial two-year period, a portion of the stock offered must be sold in accordance with the requirements of Part 563b for as long as the liquidation account remains outstanding. The stock so affected shall be a proportion of the total offering to be determined by multiplying the total number of shares of stock offered by a fraction whose numerator is the dollar balance of the liquidation account, and whose denominator is the institution's net worth as of the latest practicable date prior to the conversion to stock form. The remaining balance of such stock must be sold in a manner that is fair and equitable to holders of liquidation subaccounts.[4] Examples of unfairness might include limiting subaccount holders to a different class of stock with lesser ownership rights or sales of control blocks without premiums. The Board is of the view that the application of the Conversion Regulations to such situations is essential to the fulfillment of its statutory responsibilities respecting the conversion process and accomplishes this goal with the least burden to institutions. It is also the Board's intention that a private right of action exist for subaccount balance holders who are damaged by an attempt to evade the safeguards afforded by this rule with respect to institutions that have terminated their insured status.

The Board may consider requests for waivers of these requirements upon application and a satisfactory demonstration that (1) the plan of conversion is fair and equitable to holders of liquidation account subaccounts, and (2) the original surrender of insurance was not undertaken for the purpose of evading the Conversion Regulations. A conversion to stock form commenced within two years of a surrender of insurance, however, will be presumed, subject to rebuttal, to have been undertaken with intent to evade the Conversion Regulations. A waiver granted pursuant to these standards would be an absolute defense to a private right of action to enforce this rule.

The Board has determined for good cause to implement the above amendments immediately on a one-year temporary basis pursuant to 5 U.S.C. 553(b)(3)(B) and 12 CFR 508.11. It is the Board's view that good cause exists for immediate implementation in order to avert an immediate threat to the orderly conduct of the conversion program and the fairness of the system of FSLIC-insured institutions and for reasons stated elsewhere in this resolution. For these reasons, adoption of the amendments after notice would be contrary to the public interest. The Board also finds, for the same good cause, that the 30-day delay of effective date required by 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary. The Board is, however, soliciting comments for 60 days.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board certifies that these amendments will not have a significant economic impact on a substantial number of small entities since there are relatively few states where alternative stock conversion procedures are now available and the acquisition of non-FSLIC insurance of accounts in those states is primarily limited to institutions that would not be considered small.

List of Subjects

12 CFR Part 563b

Savings and loan associations, Securities.

12 CFR Part 565

Bank deposit insurance, Savings and loan associations.

Accordingly, the Board hereby amends Parts 563b and 565 of Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

Subpart A—Standard Conversions

1. Revise paragraph (a) of § 563b.1 as follows:

§ 563b.1 Scope of part.

(a) *General.* (1) Except as the Board, acting pursuant to its authority or as the operating head of the Corporation, may otherwise determine, the provisions of this Part shall exclusively govern the conversion of mutual insured institutions and institutions which have insured accounts to capital stock institutions, and no mutual insured institution shall convert to the capital stock form without the prior written consent of the Board. The Board may grant a waiver in writing from any requirement of this Part for good cause shown.

(2) For such period as the liquidation account established pursuant to § 565.10 of this Subchapter remains in existence, the conversion from mutual to stock form of an insured institution which has terminated its status as an insured institution or terminated its eligibility for insured status (including the successor in interest of such institution), shall continue to be governed by the provisions of this Part to the extent that a proportion of the capital stock to be sold in such conversion must be offered in accordance with this Part, such proportion being equivalent to the number of shares obtained by multiplying the total number of shares of capital stock offered by a fraction whose numerator is the amount contained in the liquidation account and whose denominator is such institution's (or its successor's) net worth calculated at the latest practicable date prior to the conversion. The remainder of the stock sold in such conversion shall be sold in a manner that is fair and equitable to holders of liquidation-account subaccounts. Any conversion of mutual institution to stock form undertaken within two years of a surrender of insurance of accounts shall be presumed to be part of a single plan of conversion initiated while the institution was an insured institution and such conversion shall be subject to the requirements of this part. Upon application, the Board may grant a waiver of this paragraph (a)(2) on a showing that—

(i) The conversion procedure is fair and equitable to holders of subaccounts in the liquidation account and;

(ii) The original termination of insured status was not undertaken for the purpose of evading the requirements of this Part.

A termination of an insured institution's status as an insured institution or eligibility for insured status shall be presumed, subject to rebuttal, to have been undertaken with the purpose of evading Part 563b and therefore subject to the requirements of Part 563b if a plan of conversion to stock is commenced within two years thereafter. This paragraph (a)(2) shall expire on April 26, 1985.

* * * * *

2. Revise paragraph (a)(18) of § 563b.2 as follows:

§ 563b.2 Definitions.

(a) * * *

(18) For purposes of this part, the term "insured institution" has the same meaning as in § 561.1 of this subchapter and until April 26, 1985, shall include any institution with accounts insured

[4] Where the surrender of insurance and the subsequent conversion to stock form are merely steps in a single plan, the Board may view the entire transaction as a whole, and regulate it as such. Under these circumstances, conversion of an insured institution would be subject to the full requirements of Part 563b regardless of the length of time elapsed.

pursuant to Section 407(d) of the National Housing Act.

* * * * *

3. Amend § 536b.3 by removing the last sentence of paragraph (f)(5) thereof and adding two new sentences at the end thereto, as follows:

§ 563b.3 General principles for conversions.

* * * * *

(f) *Liquidation accounts.* * * *

(5) * * * The converted institution shall not be required to recompute the liquidation account and subaccount balances provided the converted institution maintains records sufficient to make necessary computations in the event of a complete liquidation or such other events as may require a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall be maintained for as long as the account holder maintains an account with the same Social Security number.

* * * * *

PART 565—TERMINATION OF INSURANCE

4. Add a new § 565.10 as follows:

§ 565.10 Liquidation account.

In addition to any other provision of this Chapter, any insured institution, organized in the mutual form, that voluntarily or involuntarily terminates its insured status in accordance with this Part, or otherwise terminates its eligibility for insured status, shall establish and maintain a liquidation account for the benefit of all members or depositors existing on the effective date of such termination, as provided in § 563b.3 of this Subchapter, as if such termination constituted a conversion to the stock form. The foregoing requirement shall apply to any successor in interest of such insured institution. This section shall expire on April 26, 1985.

(Secs. 2 and 5, 48 Stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); Secs. 402, 403 and 407, 48 Stat. 1256, 1257, and 1260, as amended (12 U.S.C. 1725, 1726 and 1730); Reorg. Plan No. 3 of 1947; 12 FR 4891, 3 CFR 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–11929 Filed 5–3–84; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Part 563b

[84–151]

Sale-of-Control Conversions

Date: April 2, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Rescission of rule.

SUMMARY: The Federal Home Loan Bank Board as operating head of the Federal Savings and Loan Insurance Corporation is rescinding its regulations governing Sale-of-Control Conversions contained in Subpart B of 12 CFR Part 563b. The action is taken because the rules in their current form do not provide a workable method of capital formation. The rescission is effective as of January 4, 1984.

EFFECTIVE DATE: January 4, 1984.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Attorney, Corporate and Securities Division (202–377–6457), J. Larry Fleck, Deputy Director, Corporate and Securities Division (202–377–6413) or Julie L. Williams, Director, Corporate and Securities Division, Office of General Counsel (202–377–6459).

SUPPLEMENTARY INFORMATION: In Resolution No. 83–765, dated December 27, 1983, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed the rescission of Subpart B of Part 563b of the Conversion Regulations, 12 CFR 563b.11 through 563b.19, authorizing conversions of mutual insured institutions into stock form in transactions in which a person or persons could acquire control of the institution. 49 FR 415 (Jan. 4, 1984). Unlike standard mutual-to-stock conversions in which purchasers are generally limited to five percent of the offering, these "sale-of-control" conversion regulations would allow an individual to buy more than ten percent of the institution's conversion stock, provided that a control premium is paid in connection with their purchase. During the sale-of-control conversion process, the regulations require that other persons be allowed the opportunity to make competing bids for the institution. The mutual members determine the successful bid—if any—at a special meeting held for consideration of the competing proposals.

The Board proposed to rescind the sale-of-control conversion regulations because their complexity and certain important features had apparently deterred associations from taking advantage of the procedure. Discussions with associations and their counsel demonstrated that the bidding process had made prospective converting associations and potential acquirors wary of committing to the expense of a sale-of-control conversion. It became additionally evident that the bidding process may pose significant obstacles to the successful completion of a sale-of-control conversion. To prevent insured institutions from undertaking a potentially unworkable conversion, the Board proposed the rescission of the regulations. Moreover to prevent precipitous filings of applications for sale-of-control conversion while the rescission was under consideration, the proposal specified that, if adopted, the rescission would be effective as of the date of the proposal.

Six comment letters were received from the public. Although commenters generally opposed rescission of the regulations, most acknowledged that the present sale-of-control procedure is substantially flawed. Nonetheless, the Board was urged either to retain the sale-of-control option while alternatives to the bidding process were studied or to replace the bidding procedure. The most often-mentioned bidding substitute was a fairness opinion as to the price offered for the converting institution coupled with a minimum acquisition premium. Commenters contended that the sale-of-control conversion option was needed for smaller associations that would not find a ready market for their stock among the general investing public. It was further contended that more institutions currently would be considering sale-of-control conversion if the markets were not so unusually receptive to thrift stocks.

The Board does not disagree that at some point a procedure like the sale-of-control conversion may be needed to stimulate sales of initial thrift offerings. However, the Board's reservations about the current procedure are such that it views retention of the sale-of-control regulations as an invitation for institutions to undertake unworkable conversions. The current bidding procedure only invites the speculative and manipulative practices that have disrupted the operations of many recently-converted insured institutions. Although additional safeguards or a substituted procedure could ameliorate some of these difficulties, such modifications should only be adopted after careful study. Moreover, none of the commenters offered any detailed discussion and analysis of the potential

alternatives to the bidding process. Finally, because of its inherent complexity, the sale-of-control process should only be made available when there is a demonstrated need for it. The Board has therefore determined to rescind Subpart B while alternatives and refinements are considered.

The Board finds that observance of the 30-day delay of the effective date pursuant to 5 U.S.C. 552(d) and 12 CFR 508.14 would be impracticable and contrary to the public interest and, as set forth in the proposal, in order to avoid precipitate filings, the rescission shall be effective as of January 4, 1984.

Final Regulatory Flexibility Analysis

1. *Succinct statements of the need for, and the objectives of the action:* Discussed above.

2. *Summary of issues raised by public comments in response to initial regulatory flexibility analysis:* None raised.

3. *Description of significant alternatives to action, etc.:* Discussed above.

List of Subjects in 12 CFR Part 563b

Savings and loan associations; Securities.

Accordingly, the Board hereby amends Part 563b of Subchapter D, Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Subpart B—Sale-of-Control Conversion

1. Remove the table of contents and text of Subpart B of Part 563b, and substitute the following: [removed effective January 4, 1984].

Subpart D—Guidelines for Modified Conversions

§ 563b.37 [Amended]

2. In paragraph (a) of § 563b.37 remove the words "and Subpart B".

(Sec. 402(j) of the National Housing Act, 12 U.S.C. 1725(j) (1982))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-12112 Filed 5-3-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-173]

State Laws and Published Ordinances; Incorporation by Reference

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

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule incorporates by reference the compiled list of State laws and published ordinances, entitled "State Laws and Published Ordinances—Firearms" (ATF Publication 5300.5) 1983 ed. This compiled list is annually revised and is developed from State firearms laws obtained from Federal libraries, and from copies of firearms ordinances published by political subdivisions and furnished ATF. The published ordinances are those which the Director determines to be relevant to the enforcement of 18 U.S.C. Chapter 44—Firearms, as required by 18 U.S.C. 921(a)(19).

EFFECTIVE DATE: May 4, 1984.

Approval for Incorporation by Reference in this document by the Director of the Federal Register is effective May 4, 1984.

FOR FURTHER INFORMATION CONTACT: Gary D. Caplan, Firearms and Explosives Operations Branch, (202) 566-7591.

SUPPLEMENTARY INFORMATION:

Reason for Incorporation by Reference

By incorporating the list by reference under 5 U.S.C. 552(a)(1), ATF reduces its operating costs by no longer publishing the list in the **Federal Register** in its entirety. The list continues to be revised annually and furnished to Federal firearms licensees, in accordance with the law and regulations, as it has been since 1968.

Amendment

Section 178.24 is revised to reflect the incorporation by reference of the list of State laws and published ordinances.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act, relating to a regulatory flexibility analysis, are not applicable because neither 5 U.S.C. 553 nor any other law requires the publication of a general notice of proposed rulemaking for this final rule.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Drafting Information

The principal author of this final rule is Gary D. Caplan of the Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms. Other personnel of the Bureau of Alcohol, Tobacco and Firearms and offices of the Department of the Treasury participated in developing this final rule both as to matters of substance and style.

Authority and Issuance

Because this final rule merely makes procedural changes authorized by the Office of the Federal Register and editorial changes to improve the clarity of the regulations, it is unnecessary and impractical to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly, it is unnecessary and impractical to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Accordingly, this final rule is issued under the authority contained in 5 U.S.C. 552(a) (80 Stat. 383, as amended). As amended, 27 CFR Part 178 reads as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Section 178.24 is revised to read as follows:

§ 178.24 List of State laws and published ordinances.

(a) The Director is authorized to compile, annually revise, and furnish to Federal firearms licensees a list of State

laws and published ordinances which are relevant to the enforcement of this part. The Director annually revises the list and publishes it as "State Laws and Published Ordinances—Firearms" which is furnished free of charge to licensees under this part.

(b) "State Laws and Published Ordinances—Firearms" is incorporated by reference in this part. It is ATF Publication 5300.5, 1983 ed., and is for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register.

Signed: March 15, 1984.

Stephen E. Higgins,

Director.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-11133 Filed 5-3-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 902

Officer Training School, USAF (OTS)

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 902—Officer Training School, USAF (OTS), of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 53-27, has been determined to be for internal guidance and does not meet specified criteria for publication. This action is a result of departmental review in an effort to insure that only regulations having general applicability and legal effect are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: May 4, 1984.

FOR FURTHER INFORMATION CONTACT: Col. Cruger, Headquarters Air Force Manpower and Personnel Center/MPCM, Randolph AFB, TX 78150, telephone (512) 652-4744.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 902

Military personnel.

PART 902—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 902.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 84-12043 Filed 5-3-84; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-FRL 2581-3]

Ocean Dumping: Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is designating two disposal sites located within the previously interim-designated 106-Mile Ocean Waste Dump Site in the North Atlantic Ocean about 120–150 nautical miles southeast of the entrance to New York Harbor, as EPA—approved ocean dumping sites; one for the dumping of aqueous industrial wastes, and the other for the dumping of municipal sewage treatment sludges ("municipal sludges"). The terms "industrial wastes" and "sewage sludge" are used herein in their ordinary sense and not as defined by the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. This action is necessary to provide suitable ocean dumping sites for the current and future disposal of these materials. These site designations do not authorize ocean dumping. Permits to ocean dump at the sites must be acquired through separate proceedings.

EPA today also announces in a separate notice that it is proposing to deny petitions by several current municipal sludge dumpers to redesignate the 12-Mile Sewage Sludge Dump Site in the New York Bight Apex. Furthermore, EPA announces in that same notice its suspension of further consideration of the possible redesignation of the 60-Mile Alternate Sewage Sludge Dump Site in the New York Bight. The disignation of both the 12-Mile and 60-Mile Sites expired on December 31, 1981.

In making permitting decisions, the Agency's approach to ocean dumping may be summarized as follows:

(1) We will, as an overall principle, protect the oceans from significant adverse effects of waste disposal. We will particularly assure that they are not used for "cheap" waste disposal as a matter of short run economic considerations alone.

(2) In any specific case we will allow ocean disposal of a waste only if the applicant can show that no practicable alternatives are available that have less impact on the total environment. EPA will apply a rule of reason in determining practicability.

(3) For the long run, we will actively encourage environmentally beneficial approaches such as waste minimization, recycling or reuse.

DATE: These designations shall become effective June 4, 1984.

ADDRESSES: The record supporting this action may be examined at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Room 2904 (Rear), Washington, D.C. 20460

Environmental Protection Agency, Region II, Library, Room 1002, 26 Federal Plaza, New York, New York 10278

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0356.

SUPPLEMENTARY INFORMATION

I. Statute and Regulations

Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended (33 U.S.C. 1401 et seq.), authorizes EPA to grant permits for the ocean dumping of various materials. Under EPA's final ocean dumping regulations (40 CFR Parts 220–229), approval of ocean dumping activities has two primary aspects. Before ocean dumping activities can commence, EPA (or the Corps of Engineers in the case of dredged materials) must issue a permit in accordance with criteria found at 40 CFR Part 227. These criteria include specific limitations on the type and quantities of certain materials which may be dumped into ocean waters, an assessment of the need for and availability of alternatives to ocean dumping, and an assessment of the impact of the proposed dumping on aesthetic, recreational, and economic values and on other uses of the ocean.

Section 102(c) of the MPRSA provides that the EPA Administrator may, considering the criteria established pursuant to Section 102(a), designate recommended sites or times for dumping. The nine statutory factors listed in Section 102(a) which shall be considered by EPA in establishing

criteria to evaluate permit applications and site designations are:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical and chemical processes,

(ii) potential changes in marine ecosystem diversity, productivity, and stability and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and monliving resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

On the basis of these statutory factors, EPA has promulgated implementing regulations which provide criteria for the designation and management of approved sites for ocean dumping (40 CFR Part 228). Criteria for the selection of dumping sites are found at 40 CFR 228.4–228.6. Generally, these regulations provide procedures for designation (§ 228.4), general criteria for selection (§ 228.5), and specific criteria for selection (§ 228.6).

On September 19, 1980, the Administrator delegated authority to designate ocean dumping sites to the Administrator for Water and Waste Management, now the Assistant Administrator for Water.

In applying for such an ocean dumping permit, an applicant must indicate the site at which the dumping activity is proposed to take place. The applicant may propose to conduct dumping at a site already designated by EPA or at another site. In either case, the site must be designated by EPA as an approved site according to procedures and criteria found at 40 CFR Part 228 before or at the same time that a permit is issued.

The 106–Mile Site has been used since 1961 for the ocean dumping of industrial wastes. In 1973 (subsequent to enactment of the MPRSA), EPA designated (38 FR 12875) this area as an "interim" site to be used primarily for the dumping of industrial wastes. A site is designated as "interim" when environmental studies necessary to support its designation for continuing use have not been completed. However, small amounts of municipal sludges also have been dumped at the site. The City of Camden dumped raw sludges at the site during 1977–78, and digester cleanout sludges from New York/New Jersey sewage treatment plants have been dumped there since 1974. While more than 100 industries previously dumped their wastes at the site, as of December 31, 1983, all but one entity has ceased ocean disposal. The interim designation of the 106–Mile Site expired on December 31, 1982 (48 FR 5557). Since the end of 1981, court orders entered in litigation between EPA and nine municipal sewerage authorities have authorized the ocean dumping of municipal sludge at the 12–Mile Site and digester cleanout sludges at the 106-Mile Site. The designation of the 106-Mile Site, in conjunction with EPA's final decision on the redesignation of the 12-Mile Site, will effect the right and obligations of the parties to the litigation. The court actions are discussed below.

II. Court Actions

In 1981, New York City and several other municipalities brought suits against EPA, challenging EPA's refusal to renew their permits to ocean dump nunicipal sludge at the 12-Mile Site after December 31, 1981. "City of New York v. EPA," 543 F. Supp. 1084 (S.D.N.Y. 1981). In the "City of New York" case, Judge Sofaer held that EPA could not deny ocean dumping permit applications without considering the availability and impact of land-based alternatives. The Judge's order bars EPA from taking any action to prohibit New York City from dumping municipal sludge at the 12-Mile Site (as long as certain conditions of previously issued EPA permits are met) until the Agency rules on the City's petition to redesignate that site.

If the Agency's final action is to deny the petition, New York City will take all steps necessary for a rapid and orderly shift of its dumping operations to such sites as are designated by EPA. Because the 106-Mile Site is being designated today, a shift to that site would be necessary. Dumping at the new (106-Mile) site could then continue until EPA takes final action on New York City's pending permit application. Orders similar to that issued in the "City of New York" litigation were entered on the consent of the parties in cases involving EPA and eight other municipal sewerage authorities in the New York/New Jersey metropolitan area.

Thus, in light of these court orders and today's designation of the "106-Mile Site", final denial of the petitions to designate the 12-Mile Site would result in the transfer of municipal sludge dumping operations from the 12-Mile to the 106-Mile Site. Dumping at the 106-Mile Site would continue, pending a final determination by EPA on the municipalities' permit applications.

III. Environmental Impact Statement

The EPA prepared an Environmental Impact Statement (EIS) pursuant to EPA's Policy for Voluntary Preparation of EIS's (39 FR 16186). Notice of the availability of the draft EIS was published in June 1979 (44 FR 37971), and of the final EIS, in April 1980 (45 FR 24915). A public hearing was held at Mercer County Community College, New Jersey, on August 21, 1979, to receive comments on the draft EIS. The EIS evaluated a number of alternative sites for ocean dumping of industrial wastes in the North Atlantic. It also described the waste disposal activities, characterized the waste previously disposed of at the site, and provided summaries of monitoring/research studies conducted at the site.

On May 31 and June 1, 1977, EPA conducted a public hearing in Toms River, New Jersey, to gather information and obtain public comment on the possible relocation of municipal sludge dumping farther offshore (42 FR 23163). The findings and conclusions of the Toms River Hearing Officer were issued on March 1, 1978. The Hearing Officer determined that "* * * The EIS on the 106-Mile Site, which is now designed to cover only the disposal of industrial waste, be expanded to include the dumping of sewage sludge." Accordingly, the EIS contains a detailed evaluation of the feasibility of dumping municipal sludges at the 106-Mile Site.

The final EIS, comments received in response to the notice of availability, public hearing transcripts and all other data considered by EPA in this rulemaking, are available for public inspection at the locations listed above under **ADDRESSES.**

IV. Proposed Site Designation

On December 20, 1982 (47 FR 56663), EPA proposed to designate the 106-Mile Ocean Waste Dump Site as an approved ocean dumping site for the authorized disposal of aqueous industrial wastes and municipal sludges. EPA proposed to restrict the disposal of municipal sludges to a period of five years during which time further studies on the environmental effect of such dumping would be conducted. The public comment period ended on February 18, 1983. On May 25, 1983, a public hearing was held on Rehoboth Beach, Delaware, to receive comments concerning the proposed action. Transcripts of the public hearing and comments are available for public inspection at the location listed above under **ADDRESSES.**

V. Final Site Designation

This notice designates two sites—one for miuicipal sludge disposal, and a second for aqueous industrial waste disposal. Both sites are located within the former interim designated 106-Mile Site. The easterly Deepwater Municipal Sludge Site, bounded by coordinates of 38°40' to 39°00'N Latitudes and 72°00' to 72°05'W Longitudes, occupies an area of approximately 100 square nautical miles. The Deepwater Municipal Sludge Site is located approximately 120 nautical miles southeast of Ambrose Light, New York, and 115 nautical miles from Atlantic City, New Jersey, the nearest coastline. The site is located in water depths ranging from 2,250 to 2,750 meters. EPA, in conjunction with NOAA, will conduct a review of this site designation to determine its continuing ability to meet the site designation criteria found at 40 CFR 228.5 and 228.6. This will be accomplished by periodically monitoring the effects of disposal, measuring the rates of disposal and estimating the extent of continued disposal at the site. The results of this review will be available to the public. Should monitoring indicate significant adverse effects, appropriate measures to mitigate those effects or to modify or withdraw the site designation will be taken by the Agency. In addition, this review will be an important factor in whether the site designation is renewed after five years.

The westerly Deepwater Industrial Waste Site, a circular site with a radius of 3.0 nautical miles and center coordinates of 38°45'N Latitude and 72°20'W Longitude, occupies an area of approximately 30 square nautical miles. The Deepwater Industrial Waste Site is located approximately 125 nautical miles southeast of Ambrose Light, New York and 105 nautical miles from Atlantic City, New Jersey, the nearest coastline. The site is located in water depths also ranging from 2,250 to 2,750 meters. There are significant dispersive forces and a deep permanent stratification at both of these sites.

VI. Findings Upon Which Designation is Based

EPA's decision to designate these sites is based upon a finding that the sites are consistent with the criteria set forth in Section 102(a) of the MPRSA and in 40 CFR Part 228.

The sites have been significantly reduced in area (as compared to the previously designated interim site) to minimize possible interference of disposal activities with other uses of the ocean in the vicinity. The sites are not located in major shipping lanes. While there is a potential for oil and gas exploitation in the area, no serious conflict with such activities is expected. Coordination with future lessees should effectively avoid potential conflicts (§ 228.5(a)). Previous monitoring activities at the 106-Mile Site have indicated that ocean dumped wastes undergo rapid initial dilution followed by extensive dispersion. Thus, temporary perturbations in water quality can be expected to return to ambient levels before reaching any beach, shoreline, or known geographically limited fishery or shellfishery (§ 228.5(b)). The two sites are separated and reduced in size in order to localize, for identification and control, any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long-range impacts (§ 228.5(d)). The locations satisfy the statutory preference for sites located off the Continental Shelf, where feasible (228.5(e)). Specific criteria (§ 228.6) considered for site designation are briefly discussed below.

Factor 1—Geographical position, depth of water, bottom topography and distance from the coast.

- Sites are beyond the Continental Shelf.
- Water depths range from 2,250 to 2,750 meters.
- Bottom topography is relatively flat.
- Nearest point of land is Atlantic City, New Jersey, located approximately 115 nautical miles (nmi) from the Deepwater Municipal Sludge Site and 105 nmi from the Deepwater Industrial Waste Site.

Factor 2—Location in relation to breeding, spawning, nursery, feeding, or passage or living resources in adult or juvenile phases.

- Although all of these biological activities occur in and near the 106-Mile Site, no feature of the life history of valuable organisms is known to be unique to the area.
- The Shelf/Slope break area west of the sites is more biologically productive than that at the designated sites.
- Whales, dolphins and turtles are believed to transit the dump site areas in the course of migration. Six species of these whales (right, blue, sei, finback, humpback, and sperm) are classified as endangered, as are three species of the turtles (hawksbill, leatherback, and Altantic ridley). The loggerhead and green sea are classified as threatened in the North Altantic.
- Several pelagic species of birds are regular inhabitants of the oceanic region containing the sites. Other species are only occasionally observed. Summer months produce the greatest number of pelagic bird sightings. While birds migrate through the entire region, the actual number of species using routes through the sites is uncertain.
- Rare or endangered species may be present occasionally at the 106-Mile Site. However, the site is not a concentration point for these animals, which are migratory and would be present for only a few hours. Endangered and threatened species will not be adversely effected by waste disposal operations.

Factor 3—Location in relation to beaches and other amenity areas.

- The sites are not near beaches or amenity areas. The nearest coastline (New Jersey) is over 105 nmi away.
- The distance from shore and depth (over 2,000 meters) are adequate to provide for extensive dilution and dispersion of liquid/sludge wastes prior to reaching coastal areas.

Factor 4—Types and quantities of wastes proposed to be disposed of, and proposed methods of release.

- All wastes to be dumped at the sites must meet EPA's ocean dumping regulations and criteria.
- All authorized industrial wastes will be restricted to aqueous wastes transported by vessels with subsurface release mechanisms.
- All authorized municipal sludges would be transported by vessels with subsurface release mechanisms.
- None of the authorized wastes are expected to be packaged in any manner.
- Authorized wastes will be limited to those quantities which will not contravene the dump-site management criteria found at 40 CFR 228.10.

Factor 5—Feasibility of surveillance and monitoring.

- Both activities are feasible.
- Surveillance activities will be accomplished by shipriders, provided by

either the Coast Guard or the permittee; or remote observation, such as by airplane or satellite.

• The sites can be monitored by ocean going vessels. EPA and NOAA have jointly developed a monitoring strategy involving a hierarchy of monitoring activities: compliance, near-field, far-field, marine resource, and oceanic process monitoring. Such activities, as indicated in the plan, will be conducted by permittees, EPA, and NOAA.

Factor 6—Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevalent current direction and velocity.

• The mixing of waters at the site is quite complex, influenced by predictable seasonal factors, and other highly unpredictable factors. Surface water may be derived from three different water masses: Shelf water, Slope water, and Gulf Stream water, each with distinctive physical, chemical, and biological characteristics. Slope water normally occupies the site. Warm-core rings of water (eddies) occasionally (about 70 days per year) break off the Gulf Stream and migrate through the region.

• Areas of stratification exist at the sites. Both a permanent density stratification layer around 200 meters and a seasonal thermal layer at 10–50 meters act to restrict vertical mixing of dissolved and fine suspended portions of dumped wastes.

• The prevailing currents flow to the southwest at velocities of roughly 11 cm/sec in the upper water column and 2.5–5.0 cm/sec at greater depths.

• Currently authorized aqueous industrial wastes are dispersed within the upper water column bounded by either the seasonal or permanent pycnocline (a vertical density gradient). These industrial wastes when dumped form a floc when mixed with seawater. This suspended phase is concentrated immediately above the pycnocline.

• Municipal sludges have four components of environmental concern: a surface film generally transported by prevailing winds; an aqueous phase (sludge is approximately 95% water) which is dispersed in a manner similar to aqueous industrial wastes; a suspended-particulte phase (similar to industrial flocs) which entrains above the pycnocline); and a solid phase (comprising less than 2%), the dispersion and transport of which can result in benthic deposition.

Factor 7—Existence and effects of current and previous discharge and dumping in the area (including cumulative effects).

• Inactive munitions and low-level radioactive waste dump sites are located in the area.

• Quantities of industrial wastes dumped at the interim designated 106-Mile Site have decreased from 329 thousand wet tons in 1973 to 192 thousand wet tons in 1982, due to implementation of alternative disposal methods.

• Small quantities (less than 100 thousand wet tons annually) of municipal sludges have been dumped at the 106-Mile Site since 1974.

• Previous monitoring studies of the fate and effects of dumping at the 106-Mile Site did not detect any long-term ecological effects resulting from previous or current dumping activities.

• NOAA and permittee studies indicate that impacts of current industrial waste dumping are limited to short-term water quality impacts and plankton mortality, both restricted to the upper water column due to the presence of stratification layers.

• The potential for the interaction of industrial wastes with municipal sludges (synergistic effects) is slight, particularly since such dumping activities will be physically separated. The two sites are, at a minimum, ten nautical miles apart.

Factor 8—Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.

• Previous and current levels of use of the 106-Mile Site interfere with none of the above listed activities.

• The site does not lie in major shipping lanes.

• NOAA studies indicate that recreational, and foreign and domestic commercial fisheries exist at and near the sites, but are of limited scope when compared to nearshore fisheries.

• While there is a potential for oil and gas exploitation in the area, no serious conflict with such activities is expected. Should exploitation occur, dumping activities can be relocated to minimize conflicts.

Factor 9—The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

• No known predisposal (i.e., prior to initiation of waste disposal in 1961) baseline data exist at or near the 106-Mile Site; however, several trend assessment surveys were conducted mainly after 1973.

• Although existing studies of municipal sludge dumping in deep water are limited in scope, they present no observations indicating that such dumping is harmful. Monitoring to confirm the lack of unreasonable degradation in the marine environment resulting from municipal sludge dumping will be required of future users of the Municipal Sludge Site.

• Extensive monitoring studies by NOAA and industrial permittees present no observations indicating that previous industrial dumping has been harmful. Such monitoring will continue.

Factor 10—Potential for the development or recruitment of nuisance species in the disposal site.

• No development or recruitment of nuisance species has been observed at the sites.

• Municipal sludge contains viruses, bacteria, and other microorganisms which if ocean dumped at the Deepwater Site would be introduced into the marine environment where these organisms are not present. However, it is unlikely that such organisms would be able to survive or develop in a viable form due to the following factors: (1) high salinity levels; (2) low water temperatures; (3) solar radiation; (4) lack of nutrients; and (5) predation.

• Organic carbon and nutrients (particularly phosphorus) could be introduced by dumping; however, due to the great dilution and dispersion of such wastes, it is unlikely that planktonic blooms or areas or anaerobiasis will result under controlled dumping practices.

Factor 11—Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

• No such features are known to exist at or near the site.

• The sites are sufficiently distant from shore, so that wastes will not affect national or state parks or beaches.

Conclusion—Based on its analysis of the EIS and comments thereon, public hearing records, comments on the proposed rulemaking, EPA/NOAA documents containing the results of scientific studies of dumping activities at the 106-Mile Site, and other documentation contained in the public record, EPA concludes that the two sites—one for municipal sludges and the other for aqueous industrial wastes—are in compliance with all statutory and regulatory criteria for site designation.

In compliance with its obligation to protect the marine environment, EPA, in conjunction with NOAA, will periodically monitor the effects of disposal at the sites, measuring the rates of disposal and estimating the extent of continued disposal at the sites. The results of this review will be available to the public. Should monitoring indicate significant adverse effects, appropriate

measures to mitigate those effects or to modify or withdraw the site designation will be taken by the Agency. Management control is delegated to EPA Region II.

VII. Response to Comments

EPA received a substantial number of comments (both in response to the Federal Register notice and at the public hearing) on the proposed designation of the 106-Mile Site as an approved site for the disposal of aqueous industrial wastes and municipal sludges. The Agency has identified major areas of concern raised by the commenters. One or more representative comments were synthesized on each area of concern. These comments are summarized below, along with EPA's responses.

Comment: Did not Congress explicitly require the cessation of all dumping of sewage sludges and industrial wastes by the end of 1981?

Response—Amendments to the MPRSA do require the cessation of the dumping of sewage sludge (Pub. L. 95–153) and industrial wastes (Pub. L. 96–572) by December 31, 1981. However, "sewage sludge" and "industrial wastes" are defined in the Act as materials "* * * the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities." Nowhere does the Act ban the ocean dumping of all municipal sludges or industrial wastes, only those which "unreasonably degrade".

Comment: On what basis does the Agency determine that a waste does not cause "unreasonable degradation" and is therefore considered safe for ocean disposal? Doesn't sewage sludge dumping always "unreasonably degrade" the marine environment?

Response—The determination of whether the disposal of a waste will "unreasonably degrade" the marine environment is made in determining whether to issue a permit for the disposal of that waste. This determination includes assessment of an acceptable discharge rate for the waste, which may be site specific depending on the characteristics of the site. Thus, a waste may be found acceptable for disposal at one site and not acceptable at another. While the designation of sites is made with the view of minimizing potential impacts to the marine environment, the determination of "unreasonable degradation" is not made in the site designation context. In issuing permits, EPA must consider all relevant statutory factors found in Section 102(a) of the Act and EPA's ocean dumping regulations, including an evaluation of impacts on the marine environment, the need for dumping, the availability and impact of alternate disposal methods.

Comment: Have adequate baseline studies been performed at the 106-Mile Site? Will an extensive monitoring program be required at the 106-Mile Site, if it is designated for receipt of municipal sludges?

Response—Environmental studies on the effects of the ocean dumping at the 106-Mile Site have been conducted by EPA, NOAA, and permittees since 1974. While all studies were conducted after dumping had been initiated in 1961, they do provide a significant baseline upon which to assess future trends.

EPA and NOAA have jointly developed a monitoring strategy involving a hierarchy of monitoring activities: compliance, near field, far-field, marine resource, and oceanic process monitoring. This program will begin concurrently with the first sludge dumping at the site and will include as appropriate, modelling of sludge dispersal and risk assessment considerations. In accord with § 228.10, EPA will periodically evaluate the impact of disposal based on the monitoring data and various trend-assessment surveys. EPA, by this notice, designates the 106-Mile Site for 5 years. Redesignation of the site will depend upon the monitoring results. In addition, an advisory committee (comprised of representatives of NOAA, EPA, State government, and other interested parties) will be formed to review this monitoring data on a continuing basis and make periodic recommendations to the dump site management authority (the Regional Administrator). If necessary, modifications in or termination of disposal site usage can be made.

Comment: Has a fee system based on estimated cost savings realized from ocean dumping been considered to set funds aside for research into land-based alternatives, supplement surveillance and monitoring costs, or provide assistance for implementation of long-term sludge management plans?

Response—In March 1983, the Administration submitted to Congress a proposed user fee system for the ocean dumping program. These fees would be used to cover costs incurred in such activities as processing applications, Coast Guard surveillance, site designation and management, and environmental monitoring, among others. The MPRSA currently limits EPA to collecting fees relating to permit processing. Until the Act is amended, the Agency is unable to charge applicants for other activities. While no fee is involved, the Clean Water Act (§ 201) provides construction grant funds to publicly-owned treatment plants to develop, design, and construct alternative sludge disposal facilities.

Comment: Have the potential impacts of mixing sludge with industrial wastes at the 106-Mile Site been determined? Won't this complicate monitoring efforts?

Response—The comments recommending the generic separation of waste types (i.e., municipal sludges from industrial wastes) dumped at the 106-Mile Site have been reviewed. EPA recognizes that a comprehensive monitoring program could be complicated by a mixture of wastes, particularly with regard to near-field monitoring. Therefore, EPA has separated industrial and municipal dumping activities into smaller areas within the previously interim designated 106-Mile Site. This will facilitate monitoring activities, while minimizing the potential for synergistic effects.

Comment: How is it determined that barges are in fact reaching the disposal site before dumping their wastes?

Response—Under Section 107(c) of the MPRSA, the U.S. Coast Guard is responsible for surveillance activities (i.e., "policing") to ensure that dumping is conducted in compliance with the statute. To accomplish this, various strategies are employed. As of November 1983, the Coast Guard had established a goal for observation of 75 percent of industrial waste disposal at the 106-Mile Site and 10 percent of all other ocean disposal activities. Present surveillance techniques used by the Coast Guard at the 106-Mile Site include: stationing a shiprider onboard the vessel to observe the disposal operations, conducting random spot checks before the barge leaves port, checking vessel logs for departure and arrival times, and random use of satellites, aircraft, or patrol vessels. In addition, EPA, at the request of the Coast Guard, imposes as a permit requirement for use of the 106-Mile Site that the master of the vessel submit a certified navigational map overlay noting time and location of the vessels during the entire trip.

Furthermore, the Coast Guard is considering use of an automated Ocean Dumping Surveillance System which may eventually replace shipriders. Also, EPA is considering requiring the use of independent shipriders, funded by the permittee, but reporting to the Coast Guard. This information can then be utilized by the Coast Guard in determining compliance with permit conditions.

Comment: Has the impact of potential sludge dumping at the 106-Mile Site been assessed for any endangered species in the area (i.e., sea turtles, whales, etc.)?

Response—The EIS for the 106-Mile Site designation indicates that rare or endangered species are occasionally present at the site; however, these species are migratory and unlikely to concentrate at the sites. It is unlikely that these animals would be affected by disposal activities.

Comment: Have the various site selection studies considered the potentially increased amounts of municipal sludge needing disposal in the future and impacts from this increase beyond current levels?

Response—The quantity of municipal sludge to be disposed of at the Deepwater Site has been estimated based on current and projected dumping activities in the NY–NJ metropolitan area. It is true that the amount of sludge being disposed of in the ocean has increased over the past 10 years as a result of the upgrading of sewage treatment in the metropolitan area. Both the EIS on the 106-Mile Site designation and the EIS on the Ocean Dumping of Sewage Sludge in the New York Bight included estimates through 1981 of increased quantities of sludge to be dumped. Potential impacts of these increased quantities were assessed. Based on recent (1982) projections provided by sewerage authorities currently ocean dumping, their combined sludge quantities will increase slightly by 1987. At that time, two additional New York City treatment plants (Red Hook and North River), generating about 175 thousand wet tons annually, should be operational. Also, it must be noted that site designation does not mean that issuance of ocean dumping permits for use of the site is automatic. Authorization to use the site is given only after a case-by-case evaluation of need, availability and environmental impact of alternative methods of disposal, and marine environmental impact based on information supplied by an applicant.

Comment: What is the justification for moving the municipal sludge disposal site from New York Bight Apex to the 106-Mile Site? Should not EPA defer site designation for municipal sludges pending resolution of uncertainties, such as proposed regulation revisions, litigation, etc.?

Response—The MPRSA specifically states that "in designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf." The Deepwater Municipal Sludge Site complies with this statutory criterion. Furthermore, in selecting a site beyond the Continental Shelf, because of both its distance from shore and high dispersion characteristics, it is doubtful that any adverse effects on shorelines or beaches of coastal states will result. The designation of the 106-Mile Site is an option contemplated by all the orders entered in relevant litigation and has specific consequences under those orders.

Comment: Will a comprehensive, multi-media assessment analyzing land-based versus ocean disposal options be developed by EPA prior to the final decision on ocean dumping of municipal sludges?

Response—EPA is obligated by statute to assess the need for ocean dumping and to consider alternative methods (multi-media) of sludge disposal and the environmental impact of such disposal in the review of individual permit applications. Thus, the multi-media assessment is made on a case-by-case basis.

Comment: How does the cost of ocean dumping of municipal sludge at the Deepwater Municipal Sludge Site compare with that of the currently used 12-Mile Site in the Bight Apex? Also, how does ocean dumping in general compare with land-based alternatives?

Response—In 1980, actual sludge disposal costs at the 12-Mile Site ranged from $1.11 to $5.38 per wet ton. The existing disposal fleet currently operates at a low capacity utilization (25–30 percent). An EPA analysis of transportation costs to the Deepwater Site indicates an estimate of $3.82 to $8.21 per wet ton, assuming a 50-percent capacity utilization and excluding contractor profits. Other costs associated with ocean disposal (i.e., monitoring and surveillance) also are expected to be predictably higher at the Deepwater Site due to its increased distance from shore.

In general, ocean dumping of sludges is the least expensive disposal option. However, cost of dumping is not the prime factor to be considered in selecting a disposal technique; environmental factors are most important. Costs associated with land-based alternatives range as follows, assuming a 5% solids content:

Thermal reduction, $4–12/wet ton
Landfill/lagoon, 1.25–4
Landspread, 4–3.50
Ocean disposal, 1–8

Comment: The Agency received comments from municipalities currently dumping at the 12-Mile Site. They expressed concern that if they were required to dump at the 106 site, increased sewer use fees will place an economic burden on residents and industries.

Response—The designation of the 106-Mile Site will not by itself force the municipalities to move their dumping operations to that site. Under the court orders, this will happen only if and when the Agency denies the petitions to designate the 12-Mile Site. However, EPA's "Economic Analysis of Ocean Disposal at the 106-Mile Site" found the average increase in costs for the New York and New Jersey sewerage authorities is estimated to be 15 percent. The weighted average household sewerage cost is expected to rise from $60 per year to $70 per year. This is not a significant effect when compared to the $200 threshold indicator of impacts developed by EPA's "Financial Capability Handbook." Moreover, the sewerage cost as a percentage of median household income in the affected New York and New Jersey area communities averages 0.5 percent. This measure is below the one percent threshold of impacts developed by EPA.

Comment: If all municipal sludges currently dumped at the 12-Mile Site were dumped at the Deepwater Site, would the States of New York, New Jersey, Delaware, Maryland, and Virginia be more impacted by new dumping at the Deepwater Site or continued dumping at the 12-Mile Site?

Response—In general, there are two potential impacts of concern to coastal states as a result of ocean dumping of municipal sludge. The first would be potential impacts to a state's resort industry, such as degradation of beach quality. The second potential impact would be to marine resources, particularly fisheries and shellfisheries. Such impacts include ocean closure of shellfish beds, changes in species diversity, and stress-related impacts and bioaccumulation in species of recreational or commercial importance (e.g., finrot in flounder, elevated body burdens of PCB's in bluefish and striped bass).

The potential for adverse impacts on a coastal State's resort industry from dumping at the Deepwater Sites, given its great depth and distance from shore which allow for significant dilution and dispersion of wastes, is extremely remote. Based on NOAA analyses of physical oceanographic characteristics of the area, it has been determined the general transport mechanisms for water movement at the Deepwater Site are parallel to or away from coastal areas. In addition, the conditions at the site are not favorable for survival or development of many pathogens.

including viruses. The potential for impacts to the shore from continued or increased dumping of sludge at the 12-Mile Site is of more concern. Although monitoring by EPA and others of water quality at beaches has not shown any degradation directly attributable to sludge dumping, as long as there are shoreward transport mechanisms from the 12-Mile Site, the concern for potential future impacts remain.

The potential for fisheries and shellfisheries impacts from dumping is also greater at the 12-Mile Site than at the Deepwater Site, primarily due to the nature of the fisheries and shellfisheries at these sites. As indicated by NOAA, productive shellfish beds do not exist in the vicinity of the Deepwater Site, but do occur throughout the Continental Shelf. Also, much more extensive recreational and commercial fisheries exist nearshore than off the shelf.

Physical oceanographic conditions make the Deepwater Site a significantly more dispersive area than the 12-Mile Site. As a result, a community of stress-tolerant benthos have developed in the vicinity of the 12-Mile Site providing an abundant food source for demersal (bottom dwelling) fish, and thus increasing the potential for bioaccumulation in species utilized for human consumption. The highly dispersive nature of the Deepwater Site and the lack of a bottom fishery of commercial importance significantly decrease the potential for bioaccumulation.

Comment: What alternatives to ocean dumping have been considered by municipal sludge dumpers in the New York/New Jersey metropolitan area and why have they not been implemented? Why has EPA not enforced a rapid phase-out schedule for sludge dumping?

Response—Most viable alternatives to ocean disposal of municipal sludge generated in the metropolitan area include direct land application of composted sludges, incineration, pyrolysis, and use of stabilized sludges as a soil conditioner. Several less popular alternatives (i.e., methane production) still pose a problem of end product ("sludge") disposal. These options were thoroughly researched by the Interstate Sanitation Commission (ISC), whose findings were published in 1976 and summarized in EPA's EIS on Ocean Dumping of Sewage Sludge in the New York Bight (September 1978). EPA cannot require municipalities to cease ocean dunping without considering the availability and impact of alternative disposal methods "City of New York v EPA," 543 F. Supp. 1084 (S.D.N.Y. 1981)). After making its final determination on the petitions to designate the 12-Mile Site (a tentative determination to deny the petitions is announced today), EPA will evaluate individual permit applications and determine whether, and under what conditions, further ocean dumping may be allowed. EPA will continue to encourage all applicants to phase-out ocean disposal. Any permits issued will require that the permittee continue to research all feasible alternatives, including alternative locations or methods of disposal or recycling (including storage until completion of treatment facilities) and practicable improvements in process technology to reduce adverse sludge characteristics (i.e., implementation of pretreatment standards required by the Clean Water Act), and implement such alternatives as deemed appropriate.

Comment: Should the site for waste disposal be located even farther (i.e., 500–2000 miles) to sea in order to guarantee that no shoreline impacts result?

Response—The 106-Mile Site, being located beyond the edge of the Continental Shelf, possesses many of the same characteristics as a site located farther offshore. Location of a waste disposal site farther offshore would not offer any additional environmental benefits.

Comment: Would not the designation of the 106-Mile Site result in the wastes being "out of sight-out of mind" and therefore delay the development of land-based alternatives?

Response—Ocean dumping is allowed only if applicants can demonstrate that no practicable alternatives are available that have less impact on the total environment. Of the roughly 100 industries which previously ocean dumped their wastes at the 106-Mile Site, all but one entity has ceased ocean disposal. Therefore, although the 106-Mile Site has been available, alternative methods of disposal were eventually implemented.

Comment: Will the dumping of municipal sludges at the 106-Mile Site cause depletion of oxygen, as at the 12-Mile Site, thereby slowing the rate of biodegradation?

Response—Due to the permanent pycnocline at the 106-Mile Site, sludges dumped at the site are usually dispersed in the upper water layer. Only the heaviest of the particulates associated with the wastes will penetrate to the bottom layers. Most biodegradation will occur in the upper layer which, being in constant exchange with the atmosphere, is sufficiently oxygenated to support an adequate population of biologically active organisms. Oxygen depletion, evident in lower waters of the 12-Mile Site, is not expected to occur at the 106-Mile Site. However, the monitoring plan includes assessment of oxygen levels.

Comment: Is not dumping of wastes at the 106-Mile Site a violation of the London Dumping Convention (LDC); specifically the prohibition of Annex I materials as other than trace contaminants?

Response—The Marine Protection, Research, and Sanctuaries Act specifically states that in establishing the criteria for review and evaluation of permit applications, EPA shall apply the standards and criteria binding upon the United States under the Convention including its Annexes (Section 102(a)(I)). In the case of the Annex I materials, the Ocean Dumping Regulations (specifically § 227.6) are consistent with the Convention in prohibiting the dumping of those materials (i.e., organohalogen compounds, mercury, cadmium, oil) as other than trace contaminants, unless they are rapidly rendered harmless.

Comment: Were there not incidents of "shortdumping"on record which resulted in serious environmental damage to the marine environment?

Response—"Shortdumping", in the event of an emergency, is allowed by the ocean dumping regulations only in order to safeguard life at sea during a life threatening situation. Equipment breakdown, severe weather, or collision at sea could be the cause of such an emergency. The National Oil and Hazardous Substances Contingency Plan is in effect for accidents occurring in navigable waters of the U.S. Records maintained by the Coast Guard indicate that collisions are more likely to occur in harbor areas than at sea. Therefore, potential for collisions of this type should be similar at the 106-Mile Site and 12-Mile Site. Potential does exist, however, for adverse weather conditions on the open ocean. Only one such collision has been recorded en route to the 106-Mile Site. Fortunately, this dumping short of the designated waste site was monitored by EPA, NOAA, and the Coast Guard and turned up no evidence of environmental damage. Permittees have reported three to four other incidents of discharge, also as a result of adverse weather, within the designated site but at a quicker rate than the allowed discharge rates (specific permit conditions).

The potential for illegal shortdumping does exist. However, the Coast Guard's surveillance plan and EPA permit provisions are intended to discourage such incidents.

The effects of individual shortdumping occurrences in proximity

to the 106- Mile Site would; not be expected to result in any significant or long-term adverse impacts to the ecosystem because of rapid initial dilution followed by extensive dispersion. Thus, temporary perturbations in water quality can be expected to return to ambient levels before reaching any shoreline or beach.

Comment: The limiting permissible concentration (LPC) for suspended particulates and solid phases is not influenced by the choice of disposal site; can the LPC be met at the 106-Mile Site?

Response—EPA believes that the LPC can be met at the 106-Mile Site. The 106-Mile Site allows for rapid dispersion of municipal sludge. This rate of dispersion affects whether disposal of the sludge will comply with the LPC, since that measurement applies within the disposal site only after four hours have elapsed from the dumping (40 CFR 227.29). In addition, EPA does not believe that the municipal sludge contains a solid phase. However, even if it did, the zone of impact at the 106-Mile Site would differ from that at the 12-Mile Site, resulting in different concentrations of pollutants in the sediment. Moreover, EPA will not issue a permit for the disposal of municipal sludge which would fail the LPC unless the permit application can make a clear showing that ocean disposal is environmentally preferable to all other practicable waste management alternatives.

Comment: Before full-scale dumping is authorized at the site; an experimental test dumping program should be implemented, a model of sludge dumping at the site should be completed and a risk assessment undertaken.

Response—EPA believes that it has adequate data and analysis to conclude that municipal sewage sludge disposal at the 106-Mile Site will not adversely affect the marine environment. Predictive models of sludge disposal at a Deepwater Site have been analyzed. EPA and NOAA will closely monitor sludge disposal at the site to ensure that no unreasonable degradation of the marine environment will occur.

VIII. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation only provides sites for the disposal of municipal and industrial wastes. It does not permit the use of the site. Use of the site is controlled under a separate regulatory process. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: April 26, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by removing the Region II Industrial Waste Dump Site located at 38°40'00"N to 39°00'00"N, 72°00'00"W to 72°30'00"W from § 228.12(a) and adding to §228.12(b) two ocean dumping sites for Region II as follows:

§ 228.12 Delegation of Management authority for ocean dumping sites.

* * * * *

(b) * * *

(17) Deepwater Industrial Wastes Dump Site—Region II

Location (center point): Latitude—38°45'00"N. Longitude—72°20'00"W.

Size: Circular with a radius of 3.0 nautical miles—28.3 square nautical miles.

Depth: Ranges from 2,250 to 2,750 meters.

Use Restricted To: Aqueous industrial materials.

Period of Use: Continuing use.

Definition: Aqueous industrial materials are defined as those wastes generated by a manufacturing or processing plant (i) with solid concentrations sufficiently low so that waste material is dispersed within the upper water column; or (ii) neutrally buoyant or slightly denser than seawater, such that, upon mixing with seawater, the material does not float.

(18) Deepwater Municipal Sludge Dump Site—Region II

Location:

Latitude—38°40'00" to 39°00'00"N;

Longitude—72°00'00" to 72°05'00"W.

Size: 100 square nautical miles.

Depth: Ranges from 2,250 to 2,750 meters.

Use Restricted To: Municipal sewage treatment sludge.

Period of Use: Five years after commencement of dumping of municipal sewage treatment sludge at the site.

Restriction: Municipal sludges generated at Publicly Owned or Operated Treatment Works (POTW's). Biologically treated industrial waste sludges are to be excluded.

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BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-FRL 2581-4]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the New York Bight Dredged Material Disposal Site (Mud Dump Site) in the New York Bight Apex, North Atlantic Ocean, for the disposal of dredged materials generated within the Port of New York and New Jersey. This action is necessary to provide a suitable ocean dumping site for the current and future disposal of these materials. This site designation does not authorize any actual dumping of dredged material. Authorization to ocean dump dredged material at the site is granted only by permit and other administrative proceedings conducted by the U.S. Army Corps of Engineers.

DATE: This designation shall become effective June 4, 1984.

ADDRESSES: The record supporting this action may be examined at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region II Library, Room 1002, 26 Federal Plaza, New York, NY.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, DC 20460, 202/755-0356.

SUPPLEMENTARY INFORMATION:

I. Background

The Port of New York and New Jersey is the leading port in the United States. In 1978, approximately 187 million short tons of cargo passed through the Port, including 37.3 percent of the nation's general cargo export commodities and 46.3 percent of the import commodities. The Port of New York and New Jersey is important-as a prime generator of jobs, and serves as a commercial lifeline for the region. The Port is responsible for over 15,000 waterfront jobs, over 100,000

maritime commerce dependent jobs, and over 400,000 indirectly related jobs.

The economic viability of the Port depends on the maintenance dredging of Federal and non-Federal navigation channels and berthing areas. Many shipping channels in New York Harbor are in areas where the natural water depth would prevent passage of modern, deep-draft vessels. Dredging is required to maintain sufficient operating depths for the traffic. At present, navigational channels for ocean-going vessels are maintained at depths of 35–48 feet. In addition, new-work dredging may be necessary to maintain the Port's future economic viability.

Approximately 8–10 million cubic yards of material are dredged annually in the Port of New York and New Jersey and ocean dumped at the Mud Dump Site. It received an annual average of 8.1 million cubic yards from 1973 to 1982.

II. Statute and Regulations

Title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA), authorizes the Administrator of EPA (Section 102) and the Secretary of the Army, acting through the Corps of Engineers (Section 103), to establish ocean disposal permit programs for non-dredged and dredged materials, respectively. Title I also requires EPA to establish criteria, based on factors listed in Section 102(a), for the review and evaluation of permits under the EPA and the Corps permit programs. In addition, Section 102(c) authorizes EPA, considering criteria established pursuant to Section 102(a), to designate recommended ocean disposal sites or times for dumping.

Section 103 requires the Corps to consider in its evaluation of Federal projects and non-Federal permit applications, the effects of the ocean disposal of dredged materials on human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. In authorizing the disposal of dredged material, the Corps must utilize, to the extent feasible, ocean disposal sites designated by EPA pursuant to Section 102(c).

On September 19, 1980, the Administrator delegated authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

Pursuant to provisions of the MPRSA, EPA promulgated implementing regulations which provide for the designation and management of approved sites for ocean dumping (40 CFR Part 228). The criteria for the selection of dumping sites are set out in 40 CFR 228.5 and 228.6. Generally, these criteria provide that disposal sites will be selected so as to minimize interference with other activities in the marine environment, particularly commercial and recreational fishing and navigation.

The Mud Dump Site has been used since 1914 for the ocean dumping of dredged materials. The location of the site is approximately 5.3 nautical miles east of Highlands, New Jersey, and 9.6 nautical miles south of Rockaway, Long Island, positioned in a rectangle bounded by Latitudes 40°21'48" to 40°23'48" N. and Longitudes 73°50'00" to 73°51'28" W. The site occupies an area of 2.2 square nautical miles with water depths ranging between 15.8 and 28.8 meters. In 1973 (subsequent to enactment of the MPRSA), EPA designated this area as an "interim site" (38 FR 12875). The interim designation was last extended on February 7, 1983 (48 FR 5557). A site is designated as "interim" when environmental studies necessary to determine whether it should be designated for continuing use have not been completed.

Interim dredged material sites are used by the Corps or Corps permittees after a case-by-case review of each project has established that the proposed ocean disposal of dredged material is in compliance with the criteria and requirements of EPA and Corps regulations (40 CFR Parts 220–229 and 33 CFR Parts 320–327).

The interim designation of the Mud Dump Site expired on January 31, 1984 (48 FR 5557).

III. Environmental Impact Statements

EPA has prepared an Environmental Impact Statement (EIS) in accordance with EPA's Statement of Policy for Voluntary Preparation of EIS's (39 FR 16186, May 7, 1974; 39 FR 37119, October 21, 1974). Notice of availability of a draft EIS was published February 19, 1982 (47 FR 7488), and notice of availability of the final EIS was published on September 3, 1982 (47 FR 38983). The final EIS includes the Agency's assessment of the comments received on the draft EIS. Comments correcting facts were incorporated in the text, and specific comments which could not be appropriately treated as text changes were responded to in Appendix E of the final EIS.

The Corps prepared an EIS titled "Disposal of Dredged Material From the Port of New York and New Jersey." The draft EIS and the final EIS were published in June 1982 and March 1983, respectively. This EIS reviews current practices regarding disposal of dredged materials from the Port of New York and New Jersey and alternative disposal options. These alternatives are analyzed to determine their feasibility, probable environmental impacts, and ability to fulfill the dredging needs of the Port.

The EIS's are available for inspection at the addresses given above.

IV. Proposed Site Designation

On August 3, 1983 (48 FR 35147), EPA proposed to designate the Mud Dump Site as an approved ocean dumping site for the authorized disposal of dredged materials. The comment period ended on September 15, 1983. On August 23, 1983, a public hearing was held at Monmouth College in West Long Branch, New Jersey, to receive comments concerning the proposed action. On August 25, 1983, a second public hearing was held at the College of Staten Island on Staten Island, New York. Transcripts of the public hearings and comments received on the proposed site designation are available for public inspection at the address given above.

V. Final Site Designation

This notice announces the designation of the Mud Dump Site as an approved site for the authorized disposal of dredged material generated from the Port of New York and New Jersey. Use of the site is restricted to the authorized disposal of dredged material from projects originating within the Port of New York and New Jersey and nearby harbors; use of the northwest quadrant of the site is limited due to mounding, and use of the southeast quadrant is limited to special studies necessary for evaluating new technologies for disposal.

At current rates of disposal, the remaining capacity of the site is approximately 100 million cubic yards. After receiving that volume, there is a potential for future mounding at the site, posing a hazard to navigation. In addition, because of the site's relatively small size in relation to the expected volume of material dumped, the leading edge of the dredged material mound may threaten to exceed the site boundaries. A mound already has built up in the northwest quadrant of the site due to previous dumping activities and has resulted in the closure of this area to dumping. Also, the southeast quadrant is utilized for research purposes and is not available for routine dumping. Because of these factors, EPA is restricting the amount of dredged materials which may be dumped at the site in the future to 100 million cubic yards. Should monitoring indicate significant adverse effects, appropriate measures to mitigate those effects or to

modify or withdraw the site designation will be taken by the Agency. Also, during this time, EPA and the Corps will evaluate alternative ocean sites for possible future use.

VI. Evaluation of Site Selection Criteria

Pursuant to provisions of the MPRSA, EPA has promulgated implementing regulations which provide criteria both for the designation and management of approved sites for the ocean disposal of wastes. These criteria are found at 40 CFR Part 228. Section 228.5 includes the general criteria. Section 228.6 includes 11 specific factors to be considered for use in site designation. The evaluation of the Mud Dump Site in terms of the five general criteria is summarized in the following paragraphs and treated in greater detail in the discussion of the 11 specific factors in this notice and in the EIS.

General Criteria

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site can be restricted or terminated.

The existing Mud Dump Site satisfies the five general criteria for continuing use at the present time, even though it is clear that the capacity of the site will be reached in the foreseeable future and that an alternate site will have to be found if ocean disposal of dredged material from the New York Harbor area is to continue.

The Mud Dump Site is located in an area of heavy commercial and recreational navigation. However, there have been no documented instances over the past 70 years in which its use for waste disposal has interfered with such navigation. The site is located in existing fishery and shellfishery areas. However, the EIS's conclude that the dredged materials dumped at the site have largely remained within the site itself, and thus have not affected shorelines, beaches, or other uses of the ocean outside the disposal site.

The site is close to shore and is readily amenable to surveillance of dumping operations and monitoring of effects on the marine environment at and near the site.

The site is not located off the Continental Shelf; however, it is an historically used site, and data have shown that the site contains approximately 85 percent of the dredged material dumped there. It is not feasible or desirable to use a site off the Continental Shelf at the present time because of (1) uncertainty as to the environmental effects of dumping dredged materials at the site, (2) difficulty of monitoring the impacts of such disposal, (3) present limitations of the dredging fleet, and (4) economic costs of using such a site.

Monitoring data collected in the New York Bight Apex, as discussed in the EIS, show that the benthic impact of dredged material dumping is primarily restricted to the Mud Dump Site itself. As the site continues to be used for this purpose, its capacity to receive dredged material without significant adverse impacts outside the site boundaries will be reached and, at some point, its use will have to be terminated. During the period of its designation under this rulemaking, conditions at and near the site will be monitored by EPA and the Corps of Engineers and a new disposal site will be selected for use when the Mud Dump Site becomes unacceptable either because of adverse environmental impacts associated with disposal at the site or because the volumetric capacity of the site has been reached.

The specific criteria considered in site designation are discussed below.

Factor 1—Geographical position, depth of water, bottom topography and distance from coast.

- The site is located on the Continental Shelf in the New York Bight Apex.
- The nearest point of land in New Jersey is approximately 5.3 nautical miles from the site and on Long Island, 9.6 nautical miles.
- The site occupies an area of about 2.2 square nautical miles with coordinates of 40°21'48" to 40°23'48" N latitude and 73°50'00" to 73°51'28" W longitude.
- Water depths within this area range from 15.8 to 28.8 meters.
- Bottom topography is relatively flat, except that the accumulation of dredged material from previous dumping has caused shoaling within the northwest corner of the site which may become a potential hazard to navigation.
- Disposal operations at the site began in 1914. Other ocean sites closer to New York Harbor were used between 1888 and 1914.

Factor 2—Location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases.

- There are substantial living marine resources associated with the site and areas adjacent to the site. These resources are heavily utilized by commercial and recreational fishermen.
- The adjacent Hudson Shelf Valley is an important passage area for crustaceans and finfish entering the Apex from offshore.
- The site is located within an area in which shell-fishing is prohibited by the Food and Drug Administration due to bacterial contamination.
- The area is utilized by fish and shellfish for breeding, spawning, nursery, feeding, and passage in both juvenile and adult phases.
- Approximately 30 species of whales, seals, and dolphins are observed in the mid-Atlantic area in the course of their migration, although infrequently in the dump site area.
- Three endangered and two threatened species of sea turtles are found in the mid-Atlantic. Two of the five, Atlantic ridley and loggerhead turtles, are known to occur nearshore.
- Fin and right whales occur in both nearshore and offshore waters. The humpback whale prefers shallow (less than 200 meters) coastal waters.
- Several species of seabirds breed in the middle Atlantic states, with New Jersey and Long Island harboring the largest nesting areas. Of particular concern are the least tern, roseate tern, and the black skimmer, as the present populations of these species are greatly reduced over historic population sizes.
- The site lies within the Atlantic Flyway through which over three million migratory waterfowl travel annually.
- Although all of these biological activities occur in and near the site, no feature of the life history of valuable organisms is known to be unique to the area. While the disposal of dredged material at the site will restrict use of the site by these organisms, they are generally of such wide-ranging nature that the small geographic area which they may avoid because of dredged material disposal will have no significant impact on the life patterns of these organisms.
- Endangered and threatened species will not be adversely affected by dredged material disposal operations.

Factor 3—Location in relation to beaches and other amenity areas.

- The site is near coastal beaches, resorts, state and Federal parks, and other amenity areas in New Jersey and Long Island. The nearest point of land is approximately 5.3 nautical miles in New Jersey and 9.6 nautical miles on Long Island.

• Since virtually all dredged materials settle to the bottom near the release point, it is not anticipated that any released material would adversely affect the nearby shoreline.

Factor 4—Types and quantities of wastes proposed to be disposed of, and proposed methods of release.

• The expected volume of dredged material to be dumped at the site is 8–10 million cubic yards per year.

• The material is generated in the maintenance and development of navigation channels and berthing areas in the Port of New York and New Jersey.

• All dredged materials would be transported by dump scow or hopper dredge.

• None of the materials will be containerized or packaged in any manner.

• All dredged material permitted to be disposed of at the site must satisfy the criteria specified in EPA's ocean dumping regulations (40 CFR Part 227). In all cases, a need for ocean disposal must be established before issuance of a disposal permit.

• Sediments dredged from the Port of New York and New Jersey are predominantly sand, silt, and clays.

Factor 5—Feasibility of surveillance and monitoring.

• Surveillance of the site can be easily accomplished by patrol boat, aircraft, or shiprider, or by remote observation such as radar or satellite.

• The site can be monitored by ocean-going vessels.

• EPA, the Corps, NOAA, and others have conducted extensive monitoring/research activities in and near the site.

Factor 6—Dispersal, horizonal transport and vertical mixing characteristics of the area, including prevalent current direction and velocity.

• The mixing of waters at the Mud Dump Site is quite complex. Surface waters are derived from two different water masses: Shelf water and Hudson estuary water, each with distinctive physical, chemical, and biological characteristics. Estuarine water normally occupies the site.

• A thermal stratification exists in the Apex between depths of 5 and 23 meters during June through September. In winter, the Apex is characterized by well mixed conditions; however, a weak residual stratification may exist. Spring and fall are transitional periods.

• Circulation patterns at the site are variable and complex. The average surface currents at the site are south-southwesterly, roughly paralleling the New Jersey coastline. Net bottom currents in the Apex, including the dump site area, are to the west. Mean surface currents at the site are 5 centimeters per second; mean bottom currents are 2 centimeters per second. The greatest net movement of water and sediment takes place during storm periods.

• The dispersal, horizontal transport, and vertical mixing characteristics of the site are such that dredged material of the type dredged from the New York Harbor is nearly all confined at the site. Studies show that about 85 percent of the dredged material dumped at the site since 1914 is still there.

• When dumped at the site, most dredged materials form clods which descend through the water column and reach the bottom in 20–35 seconds in the water depths at the site. There is little horizontal deflection or separation of various grain size of the dumped materials due to ocean currents at the site because of the shallow depths. A bottom surge is created when this material is deflected by the bottom. The material associated with this surge travels outward about 300 meters from the impact zone. Some fine-grained materials are dispersed upward and travel along the bottom layer of the thermal stratification layer for up to 1000 meters. However, most particles in the bottom surge settle rapidly in a thin layer around the impact zone.

Factor 7—Existence and effects of current and previous discharge and dumping in the area (including cumulative effects).

• Active sewage sludge, cellar dirt, and acid waste dump sites are located in the Bight Apex; and inactive derelict vessel dump site also is located in the Apex.

• Quantities of municipal sludges dumped in the Bight have increased from about 4.6 million wet tons in 1973 to over 7.6 million wet tons in 1982. Quantities of dredged material dumped averaged 8.2 million tons from 1973 to 1982. Acid wastes dumped decreased from about 2.7 million wet tons in 1973 to 0.8 million wet tons in 1982. Cellar dirt decreased from 900 thousand tons in 1973 to 89 thousand tons in 1980; no cellar dirt was dumped in 1981 and 1982.

• Ecological effects attributed, wholly or in part, to the ocean dumping of waste materials into the Bight Apex include: closure of shellfish beds; introduction of viral, bacterial, fungal and protozoan pathogens into the Apex; elevated levels of heavy metals and toxic organic compounds (e.g., PCB's) in bottom sediments; reduced bottom dissolved oxygen levels; reduced catches of bony fishes; alternations in the benthic biological community, particularly the proliferation of stress-tolerant polychaete worms; observed sublethal effects in organisms, including reduction of reproductive functions, increased incidences of fin rot and black gill, mutation of fish larvae, and decreased survival of offspring; and introduction of carbon and nutrients, which contribute to planktonic blooms and anaerobiosis.

• Immediate, short-term impacts of dumping activities of dredged materials include burial of the benthic organisms and physical accumulation of dredged material on the bottom.

• Impacts of dredged material dumping are generally restricted to the bottom.

• Long-term impacts of dredge material disposal are difficult to quantify due to the other major sources of contaminants to the Apex.

• Historically, dumping activity has been concentrated in the northwestern quadrant of the site where shoaling has been found to occur.

• Since 1978, dumpers have been directed to use the northeastern quadrant of the site.

• The site itself is nearly devoid of benthic infauna, probably due to repeated dumping operations.

• Currently, 200 million gallons of raw, 133 million gallons of primary treated, and 1,833 million gallons of secondary treated wastes are discharged daily to the Hudson estuary from municipal treatment plants and ultimately enter the Bight Apex. Approximately 275 million gallons per day of industrial wastes (excluding cooling waters) also are discharged directly to the estuary.

• Monitoring by EPAS, NOAA, and others has indicated that the Bight Apex is significantly degraded.

• The relative mass loading of the different contaminant inputs to the Apex varies considerably. The largest contributions, by weight, are those associated with discharges in the Hudson estuary (including municipal and industrial discharges); the next largest are those associated with the ocean dumping of municipal sludges, dredged materials, and industrial wastes. The relative environmental impact of these contaminant inputs varies considerably, independent of mass load contribution. For example, while sewage sludge is only two to ten percent of the total contaminant input to the Bight Apex, its widespread dispersion enhances its bioavailability. In contrast, as discussed in EPA's EIS on the Mud Dump Site, when dredged material is ocean dumped, much of the mass load of contaminants is sequestered in a mound where it is dumped and thus is not readily available to the biota.

Factor 8—Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.

• The site is located in the heavily trafficked entrance to New York Harbor. It is within the precautionary zone established by the U.S. Coast Guard for commercial and recreational ship traffic. However, there are no reported incidents of interference with navigational traffic related to the actual dumping activities, which generally take place in less than half an hour.

• Valuable living marine resources associated with the site and adjacent areas are substantial and heavily utilized by commercial and recreational fishing industries and the public. The ability by the Bight Apex to sustain living resources harvested by man has been generally impaired by the total waste inputs it receives. Many fish avoid unfavorable conditions, such as turbidity plumes. However, continued use of this particular site is not expected to affect commercial or recreational fishing adversely outside the site boundaries since the bulk of the dredged material remains at the site. Most fishing activity occurs outside the boundaries of the Mud Dump Site, and studies of the fishery resources of the Bight have not shown that dredged material disposal at the Mud Dump Site has had an adverse effect on these resources.

• The site is within the shellfish closure zone and away from concentrations of commercially important shellfishing areas.

• Sizeable numbers of crabs and lobsters are found at and near the site. Shellfishing has been closed due to bacteriological contamination. However, terminating use of this site would not result in the area being reopened to shellfishing, since most of the bacterial contamination in the vicinity of the site is brought in through the Hudson-Raritan River discharge plume.

• Neither desalination nor fish and shellfish culture occurs near the Mud Dump Site.

• Mineral extraction (i.e., sand) is technically feasible in coastal waters, but is presently restricted to the lower Hudson estuary bay.

• Sand mining in the vicinity of the Mud Dump Site is impractical due to past dumping activities which have changed the characteristics of the bottom.

• The Mud Dump Site does not represent a uniquely important area for scientific study although the southeast quadrant lends itself to research on the release of trace contaminants. This quadrant of the site has been used since 1980 to conduct capping experiments by the Corps. Capping involves the covering of dredged material contaminated with one or more pollutants with other sediments that are judged to be relatively harmless to the totality of the marine environment.

Factor 9—The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

• Ecological effects attributed at least in part to the ocean dumping of dredged materials include closure of shellfish beds due to elevated bacteria levels partly attributable to dredged material; elevated levels of heavy metals and toxic organic compounds (e.g., PCB's) in bottom sediments; alterations in the benthic community; and introduction of carbon and nutrients which contribute to planktonic blooms and anaerobiosis.

• The Mud Dump Site itself has been extensively modified by previous disposal activities.

• Density of benthic organisms is low, probably resulting from the effects of repeated burial.

• Apex waters are stressed by various sources of contaminants, including raw and treated sewage effluents, contaminants transported by the Hudson-Raritan estuary discharge, and dumping activities.

• Elevated levels of heavy metals, including cadmium, mercury, lead, copper, and chromium, have been found in and adjacent to the site and in the Christiaensen Basin and the Hudson Shelf Valley. Coprostanol, a fecal steroid, and *Clostridium perfringens*, a spore-forming bacteria species, which are associated with human wastes are found in the same areas.

• Depressed bottom dissolved oxygen levels are found in the Bight Apex, particularly in the late summer. This represents an additional stress on the benthic fauna.

Factor 10—Potentiality for the development or recruitment of nuisance species in the disposal site.

• Dredged material contains a number of contaminants including bacteria which potentially may contribute to the recruitment or development of nuisance species.

• Dredged material also contains nutrients such as nitrogen and phosphorus, and organic material which could contribute to development of nuisance species; however, other sources represent greater inputs of these materials.

Factor 11—Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

• The site is located in close proximity to Gateway National Recreational Area and a number of important Federal, state, and local parks, including Fire Island National Seashore and Jones Beach State Park on Long Island, and Island Beach State Park in New Jersey.

• Due to its proximity to the metropolitan area, the site is in close proximity to various features of historical importance, including the Marconi Twin Lights, various forts, and Liberty Island.

• However, dredged material dumped at the Mud Dump Site has not been found to affect state or national parks, beaches, or features of historical importance.

Conclusion—Based on EPA's analysis of the EPA and Corps EIS's and comments thereon, public hearing records, and public comments on the proposed site designation, EPA has come to the following conclusions:

The major advantage of using the Mud Dump Site is that dredged material from the New York-New Jersey area historically dumped at the site is in large part contained at the site or in its immediate vicinity. When dredged materials are dumped at this site, approximately 85 percent of the sediment is transferred to the bottom as a cohesive unit as evidenced by the mound that has developed from previous dumping activities in the northwest quadrant of the site. Dumping the material in this site will cause repeated burial and covering of the disposed dredged material to occur. This process of repeated covering will sequester most contaminants from becoming bioavailable to most marine organisms, thus limiting the further contamination of the New York Bight outside the disposal site. In addition, the Agency is reluctant to subject a site which has not been used for the disposal of dredged material to such disposal. The Mud Dump Site is both feasible and available for large volumes of material and involves lower transport costs than other potential disposal sites because of its close proximity to shore.

However, the Agency recognizes that use of the Mud Dump Site cannot continue indefinitely. Because of this, EPA plans, in cooperation with the Corps and others, to continue investigations into other suitable alternative sites for possible future dredged material disposal.

While the Agency has determined that the Mud Dump Site should be designated, we recognize that continued use of this site has the following negative aspects:

- Physical burial of benthic organisms, habitat destruction, and sediment type alteration;
- Short-term water quality perturbation following dumping;
- Possible long-term chemical contamination of the disposal site;
- The site is adjacent to recreational and commercial fishing and shellfishing grounds;
- Accumulation of dredged material from previous dumping activities precludes further use of the northwestern quadrant of the site for further dumping except for research and final capping;
- There is limited ability to assess the impact of dredged material dumping due to the impacts of other contaminant inputs; and
- The site is located within the Coast Guard precautionary zone.

However, moving to an alternate site on the Continental Shelf would not mitigate these aspects to any appreciable extent. Nor would designation of a deepwater dump site be preferable because of (1) uncertainty as to the environmental effects of dumping dredged materials at the site, (2) difficulty of monitoring the impacts of such disposal, (3) present limitations of the dredging fleet, and (4) economic costs of using such a site.

As noted by EPA in its submittal during the 1976 joint hearings before the House Committee on Merchant Marine and Fisheries:

> With regard to impact categories, since the dredged material * * * dump site is located within 12 nautical miles of the nearest shoreline * * * then under the proposed new regulations (228.10(c)(1)(i)) this site would be classified under Impact Category I. (Joint Hearings on Ocean Dumping, July 24, 1976, September 30, 1976, p. 132.)

The regulations specify that limitations on usage of a site must be made upon its classification as an Impact Category I site.

The Agency's decision to designate the Mud Dump Site is conditioned upon the following restrictions, limitations, and other factors:

Dumping activities in the northwest corner of the site will be restricted to specific projects, such as research or final capping. This limitation reflects the mounding presently existing in this area of the site and the potential for hazards to navigation if unrestricted use were continued.

Dumping activities in the southeast quadrant of the site cannot be authorized except as needed to support the present capping research project, or until such research is fully completed.

Future dumping activities at the site are restricted to an additional 100 million cubic yards. The Agency in conjunction with the Corps of Engineers will continue to monitor disposal at this site in order to determine its continuing ability to meet the site designation criteria found at 40 CFR 228.5 and 228.6. This will be accomplished by periodically monitoring the effects of dumping, measuring the rates of disposal, and estimating the extent of continued dumping at the site. Because the best approximation of the remaining capacity of the site indicates that at least an additional 100 million cubic yards of material can be safely disposed of there, the Corps' monitoring will become more frequent as that projected level is approached. A site management plan, which includes monitoring requirements and protocols, was developed by the Corps, EPA, NOAA, the U.S. Fish and Wildlife Service, and the States of New York and New Jersey. The plan, which was reviewed by a public advisory group, is available for public inspection at the addresses noted above. Information developed under this site management plan will be available to the public. Should monitoring show significant adverse effects, appropriate measures to mitigate such impact or to modify or withdraw the site designation will be taken by the Agency.

Management control is delegated to EPA Region II.

VII. Response to Comments

EPA received a substantial number of comments, both on the proposed designation of and at the public hearings on the Mud Dump Site as an approved site for the continued disposal of dredged materials. While it is impossible to answer each comment individually, major areas of concern were identified and one or more representative comments synthesized on each area of concern. These synthesized comments are summarized below, along with EPA's responses. Additional technical information can be found in the site designation EIS referenced above.

Comment—Short-term site use limitation is undesirable because the Mud Dump Site has an estimated capacity of 30 years (before interfering with navigation).

Response—EPA disagrees that the Mud Dump Site has an estimated life expectancy of 30 years. At current rates of disposal, the capacity of the site is approximately 100 million cubic yards (based on Corps estimates) and thereafter become a potential hazard to navigation and show significant impacts outside the site. Therefore, EPA is placing a volumetric limit on the future use of the site. During this time EPA and the Corps plan to evaluate alternative ocean disposal sites for possible future use.

In addition to restricting the amount of dredged material which may be dumped, dumping within the northwest and southeast quadrants of the site will be limited to specific projects, such as research or capping experiments.

Comment—The Corps wishes a role in dump site management. It should not solely be delegated to EPA Region II.

Response—EPA agrees that the Corps has considerable expertise regarding dredged material dump site management. EPA plans to request significant involvement by the Corps through development of a Memorandum of Agreement between Region II and the Corps' New York District. However, ultimate responsibility for site management must remain with EPA.

Comment—EPA should look into alternative disposal sites such as non-ocean disposal (including upland), dumping farther (20–70 miles) offshore, or dumping at the 106-Mile Site (off the Shelf).

Response—The Corps' New York District, with the cooperation of EPA, is actively investigating non-ocean alternatives to the disposal of dredged material through its "Incremental Implementation Plan for the Disposal of Dredged Material within New York District." The Plan includes the evaluation of such alternatives as sanitary landfill cover, upland disposal, wetlands creation, beach nourishment, disposal in sub-aqueous borrow pits, and containment islands.

Alternate ocean sites were evaluated in the EIS and not recommended for present use. Areas outside of the New York Bight Apex and areas off the Continental Shelf were considered as possible alternative sites. However, these areas were rejected because of possible conflicts with fish and shellfish resources on and off the Shelf, mineral resource exploitation such as oil and gas development, the unknown environmental effects of dumping dredged materials at deep-ocean sites, the difficulty of monitoring, and economic and logistical feasibility.

Three sites on the Shelf were evaluated in detail: the Mud Dump Site, the Christiaensen Basin Site, and the Outer Apex Site. The latter site was proposed by the New Jersey Department of Environmental Protection but was determined to be the least preferable of these three sites because it is outside the present shellfish closure zone, so an additional area might be affected if dumping were to occur there. The exact environmental consequences of dumping

there would require further research and consideration. The Christiaensen Basin Site is presently impacted by sewage sludge dumping at a nearby site. Use of this site for dredged material dumping would impact the area from two different types of wastes with unpredictable results. Therefore, the Christiaensen Basin Site was rejected in preference to the existing site.

However, recognizing the limitations associated with the long-term use of the Mud Dump Site, EPA plans to continue its evaluation of suitable dump sites farther offshore. A designated site should be available for future use, if non-ocean disposal alternatives are not found. However, EPA plans to focus its investigation of alternative dredged material disposal sites for the New York area on areas on the Continental Shelf. The primary reason for this is that present research and monitoring clearly show that, in most cases, establishment of ocean disposal sites on the Shelf for dredged materials is environmentally preferable to deeper water alternatives. Dredging operations essentially involve the transfer of naturally occurring sediments from areas where their deposition presents a hazard or obstacle to navigation, to another area. These sediments are similar to those naturally occurring in the nearshore area and usually represent only a small percentage of the total sediment addition into the nearshore zone from adjacent inland waters. Dredged materials are quite dense in relation to seawater and generally reach the bottom rapidly after disposal in contrast to highly organic and less dense material such as sewage sludge. Therefore, benthic impacts of dredged material disposal are of primary concern.

The nearshore benthic biota are highly adapted to periodic and often quite severe natural stresses from storm event, wind and wave action, longshore sediment transport, and flood runoff from rivers and estuaries. The nearshore biota are, in many cases, much more resilient through natural adaptations to periodic perturbations from dredged material disposal than are deep water biota, which are not adapted to periodic physical stress from outside influences.

Dredged material dumped at a deepwater location would affect a larger area in most case than material dumped at the Mud Dump Site. In addition, deepwater disposal of dredged material could disrupt the benthic ecosystem in such a way that it would take a very long time for the system to return to normal. Furthermore, effective monitoring of the impacts of such disposal would be difficult, even if technically feasible. EPA is concentrating its efforts on locating and designating ocean dredged material disposal sites on the Continental Shelf in areas that do not contain unique resources due to the above cited reasons. Finally, from an operational standpoint, it is important that distance to the disposal site be minimized to insure timely and economical removal of dredged material, in order to minimize disruptions to essential navigation.

Comment—The "Interim Guidance Matrices" (i.e., for PCB, Hg, Cd, and DDT) used by EPA and the Corps to evaluate bioaccumulation potential should be updated and put out for peer and public review.

Response—EPA, in cooperation with the Corps of Engineers and other Federal agencies, is committed to review and update the "'Interim Guidance Matrices" with the goal of developing values that will result in an improvement of the environmental quality of the New York Bight Apex, as opposed to the "anti-degradation" values now in use. Once developed, the proposed evaluation criteria will undergo both peer and public review. In addition, the Corps and EPA are engaged in ongoing research to develop improved testing procedures and site management techniques, as well as developing a monitoring strategy for implementation at individual disposal sites. These procedures and evaluation criteria will be published as part of the supplementary guidance for implementation of the revised ocean dumping regulations currently under development by EPA.

Comment—The dumping of "PCB-Laden" dredged materials is contaminating the area's fisheries.

Response—Before any dredged materials are authorized by the Corps to be ocean dumped, the applicant must demonstrate that the material complies with EPA's ocean dumping regulations found at 40 CFR Part 227. These criteria include an evaluation of the potential for bioaccumulation of toxic substances (including PCB's) in fish and shellfish. In addition, since EPA's regulations implementing the London Dumping Convention prohibit the dumping of PCB's unless present as a trace contaminant or if rapidly rendered harmless by physical, chemical, or biological processes in the sea (40 CFR 227.6), the applicant must demonstrate that this prohibition does not apply prior to permit issuance.

Comment—Amendments to the MPRSA require the cessation of all ocean dumping by the end of 1981.

Response—the MPRSA calls for the cessation of the ocean dumping of materials which may cause unreasonable degradation to the marine environment. It does not prohibit all dumping. Unreasonable degradation is defined in the statute in terms of nine factors. These include need for dumping, availability and environmental impact of alternative disposal methods and sites, and environmental impact of the proposed dumping. The evaluation criteria used in the determination of unreasonable degradation at a dumpsite are found in EPA's ocean dumping regulations (40 CFR Part 228).

Comment—The Port of New York and New Jersey needs to have a permanently designated dredged material dump site for planning purposes, so that Port interest groups can assure their customers that there will be uninterrupted safe navigation and safe berthing in the future.

Response—The Port's need is recognized. The EPA-approved designation of the Mud Dump Site reflects this need. However, there is also a need to plan for the future by considering both non-ocean alternatives and alternate ocean sites. EPA will continue to work closely with Corps and Port interests to meet these furture needs.

Question—What is the fate of dredged materials dumped at the Mud Dump Site? How does this prediction compare to that at alternative sites?

Response—The fate of dredged materials dumped at the Mud Dump Site is discussed in Section VI of this Preamble. Dredged material normally reaches the bottom as cohesive clods and is not initially dispersed over a wide area. The diffference in sizes of dredged material particles will cause the dredged material to fractionate on settling. However, all observations and predictions agree that most of the material will remain within 200 to 300 meters from the point of impact.

The fate at other sites would vary primarily on depth and currents. In general, sites located farther offshore in the New York Bight exhibit increased dispersive characteristics (i.e., the area influenced by dumping activities would increase in size). A predictive model can be used to estimate the actual area of influence.

Question—How long will the Mud Dump Site be available, assuming the current accumulation rate of heavy metals and chemical pollutants within dredged materials?

Response—As indicated in Section VI above, the historical dumping of materials at the Mud Dump Site has

resulted, at least in part, in certain ecological effects in and adjacent to the site. Continuation of monitoring of dumping impacts by the Corps, EPA and others is embodied in this decision, as well. Should this monitoring show significant adverse effects, appropriate measures to limit dumping and modify or withdraw site designation are available to the agency.

Question—What effect could bacterial pathogens have on shellfishing or nearby beaches? Have viral pathogens been considered in determining potential effects?

Response—Bacterial contamination due to dumping activities has resulted, at least in part, in the closure of certain areas of the Bight Apex to shellfishing. Cessation of dumping at the site is not expected to result in a reopening of the area of shellfishing because of other bacterial inputs to the area by other sources (e.g., Hudson Estuary plume). EPA and others have monitored bacteria and viral levels in water and sediments in the Apex. These studies do not indicate public health impacts on nearby beaches due to dredged material disposal activities. These monitoring activities are scheduled to continue.

VIII. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: April 26, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by removing paragraph (B), the New York Mud Dump site, from paragraph (a)(1)(i) of § 228.12 and adding to § 228.12(b) an ocean dumping site for Region II as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(15) New York Bight Dredged Material Disposal Site—Region II.

Location: 40°23'48" N., 73°51'28" W.; 40°21'48" N., 73°50'00" W.; 40°21'48" N., 73°51'28" W.; 40°23'48" N., 73°50'00" W.

Size: 2.2 square nautical miles.

Depth: Ranges from 16 to 29 meters.

Use Restricted to Disposal of: Dredged materials.

Period of Use: Continuing use, subject to volumetric restriction as noted below.

Restriction: Disposal shall be limited to 100 million cubic yards of dredged materials generated in the Port of New York and New Jersey and nearby harbors. Dumping within the area described by the following coordinates shall be limited to projects determined by the Corps and EPA to demonstrate a specific need, such as research or final capping. 40°23'48" N., 73°51'28" W.; 40°23'23" N., 73°51'28" W.; 40°23'23" N., 73°51'06" W.; 40°23'48" N., 73°51'06" W. Dumping in the southeast quadrant of the site shall not be authorized except as part of a research project on capping.

[FR Doc. 84-12063 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No.79-219; RM-3099; RM-3273; FCC 84-67]

Deregulation of Radio

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission resolved an issue raised in a *Further Notice of Proposed Rule Making* in BC Docket No. 79-219. It ruled that commercial radio licensees must prepare and make available to the public on a quarterly basis an issues/programs list exemplifying their issue-responsive programming. The Commission also removes the existing limitation on the number of issues that a licensee might document in any given issues/programs list. This approach will provide adequate documentation of licensees' issue-based programming and enable the public and the Commission to better evaluate a radio broadcaster's public service record than the former rule which required only an annual issues/programs list and included a 10 issue limitation. A quarterly requirement, with no issue limit, will greatly increase the quantity of program-related information available to the Commission and the public and should satisfy the court's concerns, expressed in its remand of this proceeding, over the adequacy of such data. In reviewing the issues/programs list requirement, the Commission also determines that requiring a radio licensee to describe in that list how it determined each issue to be one facing its community was unwarranted in view of our prior actions eliminating all ascertainment obligations. Accordingly, this aspect of the issues/programs list requirement is deleted.

EFFECTIVE DATE: June 4, 1984.

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

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Mass Media Bureau, (202) 632-7792.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Second Report and Order; Proceeding Terminated

In the matter of Deregulation of Radio; BC Docket No. 79-219, RM-3099, RM-3273.

Adopted: March 1, 1984.

Released: April 27, 1984.

By the Commission: Commissioner Rivera issuing a separate statement at a later date.

Introduction

1. Now before the Commission for consideration are comments filed in response to the *Further Notice of Proposed Rule Making* ("*Further Notice*") in the above-captioned proceeding.[1] The *Further Notice* was issued in response to the partial remand by the United States Court of Appeals for the District of Columbia Circuit of our initial decision in the radio deregulation proceeding and was strictly limited in its scope to the issues raised by the court.[2] Specifically, the *Further*

[1] *Further Notice of Proposed Rule Making* in BC Docket No. 79-219, 48 FR 33499, published July 22, 1983.

[2] *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

Notice sought to determine the appropriate nature and extent of information regarding nonentertainment programming that we should require radio broadcasters to keep and to make available to the public and the Commission in view of the new regulatory scheme for commercial radio ushered in by this proceeding.

Background

2. *The Report and Order.* In the *Report and Order* in this proceeding, the Commission deleted its guidelines regarding nonentertainment programming and commercial levels and eliminated both the ascertainment and program log keeping requirements for commercial radio stations.[3] In doing so, however, the Commission continued to recognize the obligation of commercial radio broadcasters to provide coverage concerning issues facing their communities. A station still is expected to address those issues that it believes are of importance to its community of license generally or, where programming serving many segments of the community is otherwise available, its own listenership. The method to be utilized in meeting this obligation is largely entrusted to the good faith discretion of each licensee. However, documentation is required as evidence of a licensee's compliance with its duty to provide issue-responsive programming. This takes the form of an issues/programs list that is intended to be exemplary in nature and is to be placed annually in each station's public inspection file. This list is to contain in narrative form a brief description of from five to ten issues to which the licensee gave particular attention with programming, together with a brief description of how the licensee determined each issue to be one facing its community and how each issue was treated. In addition, the list is to include information pertaining to the date and time of broadcast and the duration of listed programming.[4]

3. *The Court Decision.* On appeal, the court generally affirmed the Commission's radio deregulation decision, remanding for our further consideration only that part of our action eliminating the requirement that licensees maintain programming logs and make those logs available to the public. On remand, we were directed to give attention to the possible usefulness of revised programming logs as a valuable source of information in the newly-devised scheme of radio regulation.

4. In reviewing the Commission's rationale for deleting the former program logging requirements, the court concluded that:

> The Commission premised its decision * * * upon a straightforward cost-benefit analysis. First, the logs were found to be a "tremendous record-keeping burden." * * * Next, the Commission notes the low remaining marginal utility of these logs in light of its decisions to eliminate the nonentertainment programming and commercialization guidelines and to re-orient its focus to issue-oriented programming. * * * Finally, the Commission emphasized its "continued reliance on the public file as an index to the general programming responsibilities of licensees." * * * In the Commission's view, [the issues/programs list] and other available information will suffice to enable it and the public to oversee the general public interest responsibilities of licensees. 707 F.2d at 1439.

The court fund no difficulty in accepting the Commission's analysis of the costs and benefits of regulating the record-keeping systems of licensees. In fact, it stated that such cost-benefit evaluations epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency. The court also found it reasonable to conclude that a logging requirement designed to make available certain information relevant under one regulatory scheme may be useless if transplanted unchanged to a new regulatory scheme. However, the court questioned whether the Commission had given adequate consideration to the potential benefits of imposing a revised comprehensive logging requirement—one designed, for example, to log information about issues and not categories of programming. While noting that the Communications Act does not compel the Commission to retain the program logging requirements, the court nevertheless expresed concern that a broader base of information than that provided by an annual issues/programs list may be needed to properly evaluate individual licensee performance under the new regulatory approach to commercial radio as well as to judge the success of radio deregulation in general.[5]

5. *The Further Notice of Proposed Rule Making.* The *Further Notice* elicited comments on the appropriate nature of a program record-keeping requirement for commercial radio broadcasters that would meet the court's concerns and provide the information necessary to satisfy our regulatory obligations with minimum burden on both the Commission and its licensees. Although we noted that options for fashioning such a requirement seemed to revolve around the placement in each station's public inspection file of a more complete record of a licensee's issue-oriented programming, we did not exclude retaining the issues/programs list as a viable option. In this regard, we did not read the court's decision as requiring the adoption or more detailed logging requirements than those initially adopted by the Commission in its *Report and Order.* Rather, we believed the court intended only that we should reexamine the logging issue with a more focused concern for our information needs and those of the public and provide a more closely reasoned justification for our ultimate choice in this area.[6] This is not to say, of course, that more comprehensive record-keeping obligations may not be appropriate. Indeed, the approach tentatively proposed in the *Further Notice* was the retention of an annual issues/programs list along with the creation of a new record of all issue-oriented programming.

6. In connection with our proposals, the *Further Notice* invited interested parties to comment on the following questions:

(1) Should the Commission require a complete listing by time, date and duration of all nonentertainment programming or only of issue-responsive programming?

(2) Should the Commission require a brief statement regarding the nature of the issue addressed in each program noted on the "log?"

(3) At what intervals should the "log" have to be placed in the public file—

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[3] *Report and Order* in BC Docket 79-219, 84 FCC 2d 968 (1981). In eliminating radio program log requirements, the Commission did not, nor does it presently intend to, alter the record-keeping obligations contained in §§ 73.932(d) (1) and (2), 73.961 and 73.962(e)(4) of the Rules. These regulations pertain to entries concerning emergency broadcast procedures required to be made by licensees in their station logs. See *Report and Order* in BC Docket No. 82-537, 48 FR 38473, published August 24, 1983.

[4] On reconsideration, the *Report and Order* was affirmed and clarified. *Memorandum Opinion and Order,* 87 FCC 2d 797 (1981).

[5] The court noted that its concern for the adequacy of program-related information was heightened further by the Commission's concurrent rule making action adopting a simplified renewal application for radio and television broadcast licensees. In that action the Commission eliminated programming-related questions from the renewal application. On appeal at the time the court issued its opinion in the radio deregulation proceeding, the "short form" renewal decision was subsequently affirmed. *Renewal of License,* 46 FR 26236 (1981), *aff'd sub nom. Black Citizens for a Fair Media* v. *FCC,* Nos. 81-1710, 81-2277, Slip Op. (D.C. Cir., decided October 7, 1983).

[6] As Judge Bork stated in his concurring opinion: "We remand on the issue of program logs so that the Commission may reexamine the matter and provide a more thoughtful and detailed justification of whatever decision it may reach." 707 F.2d at 1443.

weekly, monthly, quarterly, yearly, etc.? [7]

(4) Should any new types of "log" be in lieu of, or in addition to, the issues/programs list?

(5) What would be the estimated costs of keeping a comprehensive listing of issue-responsive programming?

(6) What benefits would be conferred by our requiring commercial radio licensees to keep such a comprehensive listing?

We did not intend, by posing these questions, to restrict the scope of the comments submitted. As we stated in the *Further Notice* "these questions, of course, are suggestive rather than exhaustive. Commenting parties are invited to address other pertinent aspects of the logging issue as well."

Comments [8]

7. *Need for a Program Log.* Less than half of the commenting parties favor imposition of a supplementary logging requirement. Among commenters supporting an additional record-keeping obligation, the United States Catholic Conference ("USCC") argues that a broadcaster's self-selected "issues/programs" list is no substitute for a complete log of all material which it represents to be its response to community issues. Absent the availability of comprehensive program logs, asserts USCC, it is likely that most of the public will be discouraged from discharging or will be unable to discharge their watchdog role.

8. On the other hand, opponents are of the view that the appropriate response to the court's remand is for the Commission to reexamine the logging issue and provide a more complete and coherent rationale for its initial action in this matter. CBS Inc., argues that retention of the "issues/programs" list is entirely compatible with the thrust of the court's concerns. While a revised logging requirement would be burdensome and of little utility, it submits, retention of the existing list requirement places a reasonably limited burden and cost on both the Commission and its licensees. Further, that list provides the information necessary both for the Commission to satisfy its regulatory over-sight obligations and for the public to participate in the regulatory process. Retention of the system as it exists now, opponents contend, enables the Commission to continue its movement toward meaningful deregulation and not merely to exchange one set of regulations for another. Some commenters, such as the National Broadcasting Company, Inc. ("NBC"), also base their opposition to a new logging requirement on the tendency it would have to militate against adoption or continuation of formats that rely heavily on discussion of major local and national issues such as "all-news", "call-in" or "talk" formats.[9]

9. Rather than imposing a new logging requirement, American Broadcasting Companies, Inc. ("ABC"), as well as other commenters, recommended a modification of the present "issues/programs" list. They argue that while the court appears to view the 5–10 issue limit as too restrictive, the other extreme of requiring identification of all issues treated is neither necessary nor plausible. Accordingly, these commenters suggests that the Commission drop the current 5–10 issue limit and emphasize instead that licensees will be expected to list the *significant* issue-responsive programming that they provided over the course of the past year or six months.

10. *Scope of Logging Requirement.* The majority of commenters, whether in favor of or opposed to a new "log" requirement, recommend that any additional logging obligation be restricted to issue-responsive programming and exclude other nonentertainment broadcasts. These parties contend that a comprehensive listing of all nonentertainment programming goes far beyond the informational needs of the Commission's reduced regulatory program. USCC, the National Association for the Advancement of Colored People ("NAACP") and Henry Geller and Donna Lampert ("Geller"), however, suggest a "log" that would include all issue-responsive and other nonentertainment programs as well as public service announcements broadcast by the licensee to meet its public interest responsibilities.

11. As to what identifying information concerning a logged program should be required, most commenters agree that the date, time, and duration of the broadcast involved should be provided. However, there was some disagreement as to whether the issue or issues addressed by a listed program should be specified on the log. Some parties believe a brief statement of the issue covered, such as "local taxation", should be included. Others submit that licensees should not be put to the task of identifying the exact nature of the issue or issues treated by a particular program, but should be obliged only to indicate the general subject matter involved. On this point, Broad Street Communications Corporation ("Broad Street") asserts that designating which issues are treated in programming is normally a responsibility of management level employees. By contrast, log preparation is normally a clerical task. If logs must list the issues which programs treat rather than simply record titles, topics or guests, management level employees could be drawn into log preparation, an allegedly inefficient use of personnel and resources.[10]

12. *Frequency of Filing.* Broadcasters generally suggest that any new "log" be placed in a radio station's public file on a semi-annual basis. NBC submits that with licensee renewal applications now being filed every seven years, the public has no earlier need for this information for renewal purposes. A few commenters, such as Broad Street, note that their prior experience with requests for inspection of program logs indicates that few, if any, requests will be made for inspection of modified logs. That being the case, it asserts, there is no need to burden licensees with requirements for more frequent placement of logs in public files. However, USCC and the New Jersey Coalition for Fair Broadcasting suggest that any new "log" be placed in a radio licensee's public file on a quarterly basis. In this regard, USCC contends that the best means of ensuring adequate responsive programming is to encourage an ongoing dialogue between a station and the public which it serves. This dialogue must be based, in USCC's view, upon factual information made frequently available to a station's listenership. USCC suggests that quarterly placement of a comprehensive nonentertainment programming log in the public file would meet this need. Geller, on the other hand, submits that the program "log" should be placed in the public file on an annual basis and that it should be given to the Commission at renewal time.

[7] Comments were solicited on the timing of the issues/programs list, as well as the issue-oriented program "log".

[8] A list of the parties filing comments and/or reply comments is contained in Appendix B.

[9] Although NBC argues that the Commission should reject the idea of requiring a "log," it submits that to the extent a contemporaneous record of issue-responsive programming may be necessary, we should allow radio licensees to substitute an audio type log in lieu of a written record.

[10] USCC would require that a "log" list not only the date, time, duration and issue or issues covered, which are the elements most commenters suggest, but also a description of the program format and the participants in the broadcast. The New Jersey Coalition for Fair Broadcasting even recommends that a "log" contain, among other things, the name of the program's producer and/or executive producer and a short summary of the program's content.

13. By contrast, WROK, Inc., argues that while "local public files" may seem desirable in a theoretical sense, such files in truth have not been relied upon by the public for informational purposes. Therefore, it sees no reason why issue-oriented programming records must be kept as part of a station's local public file. In lieu of such a requirement, WROK, the National Radio Broadcasters Association and others suggest that radio stations only be required to keep such records and to produce them upon reasonable request by a member of the public or by the Commission.

14. *Progam Logs vs. Issues/Programs Lists.* USCC recommends that if comprehensive nonentertainment programming logs are to be made available every three months, licensees should not be obliged to prepare an "illustrative issues/program list" as well. Geller agrees with USCC that issues/programs lists would not add materially to the information on the logs, but instead would merely repeat it. Broad Street also concurs, asserting that such lists would constitute duplicative and unnecessary paperwork and, therefore, should not be required. On the other hand, the National Association of Broadcasters ("NAB") suggests that the new "log" be maintained in addition to an "issues/programs" list, but a modified one. NAB would eliminate the "programs" portion of the list to avoid the duplication which would result were the new record of issue-responsive programming simply added to the existing "issues/programs" requirement. Finally, some commenters would require the new "log" in addition to the "issues/programs" list, while other parties once again argue against any new "log" whatsoever.

15. *Cost of Logging.* As to the costs of requiring radio stations to keep a comprehensive listing of issue-responsive programming, most broadcasters find them significant. Even though commercials would not have to be listed on the logs, asserts Broad Street, substantially all of the program information previously required would be included, as well as additional information necessary to identify issues treated. Furthermore, CBS, Inc., argues that the compilation of such a list would involve many subjective and skilled judgments that could only be made by trained personnel. For example, CBS notes that to the extent issues were covered in news broadcasts, where stories were not preselected with a view toward meeting Commission requirements, time-consuming decisions would have to be made as to the nature of the issues addressed, as well as to whether the news story was sufficiently in-depth to qualify for inclusion. WROK, Inc., estimates that one additional staff member would be needed to maintain issue-based logs and that the salary and other costs associated with this personnel requirement would be substantial. CBS and NBC also believe that for stations with " all-news" or "all-talk" formats, the costs of preparing and maintaining a comprehensive "log" would be enormous. According to these parties, one of the significant costs of requiring maintenance of issue-oriented logs is the discouragement of the "all-news" or "all-talk" format.

16. However, Geller argues that the cost of program logging is a non-issue. Aside from the fact that the requirement can and should be restricted to public service programming, thus reducing the costs of compliance, he submits, as does NAACP, that radio licensees will continue to log their programming and incur the associated costs regardless of Commission requirements. The motiviation to do so, Geller contends, is licensees' ongoing need to demonstrate that they have been operating in the public interest and to meet their commercial obligations.

17. *Benefits of Programming Logs.* With respect to the benefits of requiring a "log", some commenters assert that a comprehensive listing is the only sure way to predict the effect of the Commission's deregulatory actions and whether they will be of positive benefit to the public. USCC submits that this option would ensure that sufficient record-keeping is required of licensees to allow the Commission and the public to assemble data on which to base a valid analysis of individual station and industry wide performance. On the other hand, WROK, Inc., argues that the "comprehensive listing" proposed by the Commission would represent no value at all to either the radio station or to the Commission. It believes that a practical report on subject matter alone should satisfy both parties.[11]

Discussion

18. The Court of Appeals said in remanding our decision to eliminate programming logs that it did so in order that we might "revisit the entire question of what information regarding radio nonentertainment programming must be made available to the public and to the Commission for the proper functioning of the new regulatory scheme." (707 F.2d 1442) The court specifically questioned how, in the absence of programming logs, the Commission would "obtain information to confirm its prediction that adequate amounts of nonentertainment programming will continue on radio." (*Id.*) It also questioned our reliance on the issues/programs list requirement as a source of such information, opining that "petitioners have presented a strong case that both the concerned citizen and the concerned Commissioner will find the issues/programs list to be a woefully insufficient substitute for program logs." (*Id.*, at 1440–41) The court conceded that logging requirements irrelevant to the new regulatory scheme need not be retained, but insisted that "[t]he relevant question thus should be whether a *revised* comprehensive logging requirement—one designed, for example, to log information about *issues* and not *categories* of programming—might not produce benefits that would outweigh the recordkeeping costs." (*Id.*, at 1440).

19. As a threshold matter, we assume that the court did not intend to express a preference for logging as opposed to some other method of documentation suitable and adequate to our new regulatory scheme for radio broadcasting. The court clearly recognized and approved our decision to limit our regulatory concern under the new scheme to the "bedrock" obligation of radio broadcasters to cover public issues (707 F.2d 1430). To require licensees to log or otherwise document other nonentertainment programming, such as commercials, public affairs, or news, whose nature and quantity we have said will no longer concern us, would, in our judgment, serve no valid regulatory purpose. We therefore see no need to require documentation of nonentertainment programming other than issue responsive programming.

20. In the *Report and Order*, we found after an exhaustive analysis that marketplace forces at work today will elicit adequate amounts of non-issue responsive programming without regulatory intervention. If, in the future, there is significant market failure with respect to such programming, we are confident this will be brought to our attention by listener complaints or otherwise. Having been alerted to any problem which arises, we can document its scope by any of several means, such as special studies, investigations and

[11] In its reply comments, NAB opines that most broadcast parties had advanced proposals similar to its own. Regardless of the characterizations used—"expanded annual issues/programs" list or an annual "issues list" supplemented by "issue-reponsive programming information"—NAB submits that the gist of these comments is that the Commission should adopt a record keeping system which avoids redundancies, imposes only minimal paperwork burdens and affords substantial discretion to radio licensees.

temporary logging requirements, etc., and take whatever regulatory action is needed. We do not believe that to guard against such *possible*, almost certainly *limited* problems, we should now impose a *costly, general* logging requirement on our licensees.

21. We have therefore again given careful thought, as the court suggested we should, to the probable costs and benefits of various means by which radio licensees might adequately document their issue-responsive programming. While we have again decided not to impose a general logging requirement for this purpose at this time, in response to the court's concerns we have decided to expand the issues/programs list, as explained below. Under our *Report and Order* the proper inquiry into a broadcaster's performance will be centered on its efforts to program in response to those issues it deems important, rather than on *all issues* included in the broadcast schedule. Consequently, we do not find USCC's suggestion that we require only a comprehensive "log" or NAB's recommendation that we adopt a "log and issues-only list" approach persuasive or necessary to ensure compliance with our *Report and Order*. Rather, we continue to believe that the "issues/programs" list technique is best equipped to elicit the kind of purposeful programming information relevant to our current regulatory concerns. Nonetheless, we are persuaded that the quantity of information produced by the existing requirement—treatment of 5 to 10 issues annually—may be inadequate, particularly in these early stages of radio deregulation. With appropriate modification, however, we believe the "issues/programs" list approach to be entirely capable of providing the data needed both to evaluate licensees' individual performance and to monitor the effect of our action deregulating the commercial radio service.

22. As to costs of logging, commenters in this proceeding have asserted that logs containing information relevant to the new regulatory scheme would require involvement of management level staff and therefore be substantially more costly and burdensome than the simple traditional logs, which can be maintained by clerical staff. We have no reason to question these assertions, and they seem reasonable. The issue, therefore, is whether there is clear need under our new regulatory scheme for logging which is substantially more costly and burdensome than that required heretofore.[12]

23. As to benefits, we agree with the court that a logging requirement might be devised which could be useful to monitoring of licensees' fulfillment of their service obligation.[13] We are unable, however, to reach the conclusion that there is no acceptable or better alternative source of information for this purpose. The new regulatory scheme imposes a basic issue-responsive programming responsibility on commercial radio licensees. An issues/programs list is a most useful vehicle to record a licensee's effort in this regard. An exhaustive log, perhaps necessary under the old regulatory requirements, is not needed to documment the current program obligation which is directed to issues of concern to the community rather than to categories of programs.

24. The most significant source of issue-responsive information under the new regulatory scheme will be the issues/programs list. These lists will certainly contain more relevant information than traditional logs, which usually do not identify issues and issue-responsive programming. Since, as noted below, we are rescinding the 10-issue limit on these lists, we anticipate that broadcasters will probably use them to adequately document their significant issue-responsive programming, because doing so will serve their own self interest.

25. In the context of a routine license renewal, the existence of the issues/programs list in the station's public file and the absence of any contradictory evidence will give the Commission sufficient assurance that the station has met its issue responsive programming responsibility during the past licensee term to grant license renewal on that issue. In other contexts, such as when a programming issue is raised in a petition to deny or in a comparative renewal, these lists will serve as a significant source of information for any initial investigation by a member of the public or by the Commission. If in a particular case, a station's issues/programs lists do not provide sufficient information to resolve a substantial question of fact, the commission may ask, as it has in the past, for more information from the licensee. The burden of proving that programming relevant to public issues has been provided is on the licensee. A broadcaster must demonstrate, if called on to do so, in a hearing or otherwise, that it has met its responsibility in this regard.

26. Another source of information regarding the performance of our radio licensees is the listening public. Complaints from listeners dissatisfied with radio service available to them have long aided our regulatory efforts, and we assume they will continue to do so. As to such complaints, we note the court's observation that programming logs have in the past been heavily relied on by petitioners to deny renewal of exising licenses. (707 F.2d 1441) We also note, however, that petitions to deny are rare and can be documented by other means. As the court itself noted, petitioners to deny could provide their own documentation by monitoring the service of the stations. (*Id.*) Any need for such monitoring would of course impose some burden on petitioners, but it would only be that of supplementing in a particular case the documentation available in the issues/programs lists of the station in question and others in its market. When such supplemental documentation is needed and supplied, it should be a helpful indicator of any need for reassessment of our new regulatory scheme. However, if experience in the future indicates that the public interest would be served by easing the documentation burdens of petitioners to deny at the cost of imposing logging requirements of radio licensees, we can revisit this issue.

27. In our view, any decision as to what documentation requirements will prove necessary under the new regulatory scheme is inherently a matter of judgment. After careful thought, we have again decided that no logging requirement is justified at this time, but this does not mean we are indifferent to the concern expressed by the Court of Appeals that the issues/programs list requirement imposed by the *Report and Order* may prove inadequate. To try to allay that concern, we have decided to modify this requirement in two respects.

28. The first modification we shall make is to eliminate the limitation that no more than ten issues be listed. After further reflection, we perceive no good reason why licensees who provide programming responsive to more than

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[12] We say "clear need" because, as we noted in our *First Report and Order*, even simple, traditional logs constitute a tremendous recordkeeping burden. In view of such recent legislation as the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Paperwork Reduction Act (44 U.S.C. Chapter 35), we think we would flout the will of Congress if we imposed such a recordkeeping burden on radio broadcasters without clear evidence that it is needed under our new regulatory scheme, and no such evidence has been adduced in this proceeding or is otherwise known to us.

[13] We note, of course, that to the extent the system of record-deeping herein adopted also requires management involvement, it is more burdensome than a rote logging requirement. The burden appears consistent with the benefits. By requiring that the licensee sift through and refine raw programming material, we can reduce the paperwork burden, as compared to a comprehensive issue logging obligation, yet also provide more accessible and relevant documentation for the public.

ten issues should be precluded from documenting this service in their issue/program lists.

29. The second modification we shall make is to require that these lists be prepared and made available quarterly, rather than annually. In our view there is no scientific way to determine how frequently these lists should be prepared and disclosed, and, as noted above, commenters varied considerably on this issue. We have decided in favor of quarterly reports because such more frequent reports will probably provide more, and will certainly provide fresher, information than annual reports, without fundamentally altering the reporting burden or increasing its cost. On balance, we believe the slight additional cost of this more frequent reporting will prove justified.

30. As a final matter, we note that licensees currently are expected not only to describe selected issues to which they gave particular attention with programming, how each issue was treated and the date, time and duration of the listed programming, but also to briefly describe how the licensee determined each issue to be one facing its community. In once again reviewing the adequacy of the issues/programs list, we have come to believe that this particular aspect of the obligation does indeed conflict with our decision that the methodology utilized by licensees to become aware of the issues facing their community is not of concern to us. [14] It is the result and not the process that is of interest to us. We are not concerned with how an applicant or broadcaster becomes aware of community issues so long as such issues are identified and adequate responsive programming is offered or proposed. Given this focus and the significant steps we are taking today to enhance the availability of program-related data, we no longer believe that requiring a description and explanation of the means by which a licensee determines any given issue to be one facing its community is necessary, nor the burden incident to such a requirement warranted. Accordingly, we will no longer require that this information be included on the issues/programs list prepared quarterly by commercial radio licensees.

[14] In the *Report and Order* we held that the public interest no longer required adherence to detailed ascertainment procedures. Rather, radio licensees were to be free to determine the issues facing their community that warranted programming consideration and could do so by any reasonable means.

Regulatory Flexibility Analysis

I. Need For and Purpose of Rule

31. The Commission finds that strengthening the issues/programs list requirement will better enable the Commission and the public to evaluate a commercial radio broadcaster's public service record.

32. The additional burden imposed by an expanded issues/programs list requirement is limited in scope and warranted in view of the court's concerns that adequate information be available to the public and the Commission for review of a radio licensee's issue-responsive programming.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. *Issues raised:*

33. A few parties favored the creation of a new record of all issue-oriented programming. They argued that such a "log" was necessary for the Commission to satisfy its regulatory oversight obligations and for the public to participate in the regulatory process. Some suggested retention of the "issues/programs" list in addition to this "log", while others believed the log would be adequate in and of itself as a programming record.

34. There were a number of parties who recommended retaining the present record-keeping requirement or a modification of it. They submit that a revised logging requirement would be burdensome and of little utility.

B. *Assessment:*

35. The Commission concludes that the arguments favoring a strengthening of the annual "issues/programs" list as a record of a broadcaster's public service performance have merit as do those that find a "log" a too burdensome and unwarranted requirement.

36. We conclude that annual issues/programs lists may be an inadequate record of a broadcaster's programming responsive to community issues. Therefore, we modify the present requirement and mandate a quarterly preparation of the issues/programs list in its stead. We also remove the limitation on how many issues may be listed.

C. *Changes made as a result of such comment:*

37. Responding to comments, we have increased the record keeping obligation of commercial radio licensees, but not unduly burdened them.

38. In reply to commenters' requests, we eliminated the requirement to describe how the licensee determined each issue on the list to be one facing the community. We found that this duty conflicted with our resolve earlier in this proceeding that the methodology utilized by licensees to become aware of the issues facing their community is not of concern to us.

39. We adopted a suggestion that we eliminate the existing 10 issue limit on issues/programs lists to permit, though not require, licensees to document whatever significant issue-responsive programming they provide.

III. Significant Alternatives Considered and Rejected

40. *The Further Notice* tentatively proposed retaining the annual "issues/programs" list along with the creation of a new record of all issue-oriented programming. We rejected this alternative as being unduly burdensome and an inadequate source of information on which the Commission and the public could base an evaluation of a broadcaster's public service record.

41. Commenters' suggestions that only a "log" be retained or a "log" along with an issues-only list were also found to be inadequate tools for use by the public and the Commission in reviewing broadcast programming addressing community issues.

42. Authority for the action taken herein is contained in Sections 4 (i) and (j) and 303 of the Communications Act of 1934, as amended.

43. Accordingly, it is ordered, that the Commission's Rules are amended, effective June 4, 1984, as described above and set forth in the attached Appendix A.

44. It is further ordered, that the Secretary of the Commission will publish this *Second Report and Order* in the FCC Reports.

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

46. For further information concerning this proceeding contact Freda Lippert Thyden, Mass Media Bureau, (202) 632-7792.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

Section 73.3526 is amended by revising paragraph (a)(14) and paragraph (e) and adding a Note after (a)(14) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(14) For AM and FM broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to be filed the first day of each calendar quarter (*e.g.*, July 1, October 1, January 1 and April 1). The list shall include a brief narrative describing how each issue was treated, *i.e.*, public service announcements or programs, giving a description of the programs including time, date and duration of each program. These lists are to be retained for the entire license renewal period.

Note.—The first quarterly filing is to include at least the past 3 months of a station's programming performance. If the last annual issues/programs list was filed more than 3 months prior to July 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and July 1, 1984.

* * * * *

(e) *Period of retention.* The records specified in paragraph (a)(4) of this Section shall be retained for periods specified in § 73.1940 (2 years). The manual specified in paragraph (a)(6) of this Section shall be retained indefinitely. The letters specified in paragraph (a)(7) of this Section shall be retained for the period specified in § 73.1202 (3 years). The "issues/programs" list specified in paragraph (a)(14) of this Section shall be retained for the term of license (7 years). The records specified in paragraphs (a) (1), (2), (3), (5), (8), (9), (11), and (12) of this Section shall be retained as follows:

* * * * *

Appendix B

Parties Filing Comments

American Broadcasting Companies, Inc.
Argonaut Broadcasting Company *et al.*
Broad Street Communications Corporation *et al.*
CBS, Inc.
Haley, Bader & Potts*
Henry Geller & Donna Lampert*
Johnston Tribune Publishing Company
National Association of Broadcasters
National Broadcasting Company, Inc.
National Radio Broadcasters Association
New Jersey Coalition for Fair Broadcasting
The Palldium Publishing Company
United States Catholic Conference
WROK, Inc.

Parties Filing Reply Comments

Argonaut Broadcasting Company
National Association for the Advancement of Colored People
National Association of Broadcasters

*The comments marked with an asterisk were late filed (by one day) but since their consideration is not prejudicial to any party, we have decided to consider them in this proceeding.

[FR Doc. 84-12031 Filed 5-3-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1032 and 1039

[Ex Parte No. 137]

Contracts for Protective Services

AGENCY: Interstate Commerce Commission.

ACTION: Final rules and exemptions.

SUMMARY: This proceeding was instituted at 47 FR 26463 and 26409, June 18, 1982, to consider the exemption of contracts for protective services provided to or for rail carriers and express companies from Commission regulation and removal of the corresponding regulations. The Commission has found that continued regulation of contracts for protective service is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. Consequently, an exemption is granted for contracts for protective service against heat or cold from the requirements of 49 U.S.C. 11105, 49 CFR Part 1032 is removed, and a new § 1039.17 is added.

EFFECTIVE DATE: The removal of Part 1032 and the addition of Part 1039.17 will be effective on August 2, 1984.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer, (202) 275-7245
or
David Wuehrmann, (202) 275-7967.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

This action will not significantly affect the quality of the human environment or energy conservation, nor will it have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Parts 1032 and 1039

Railroads.

Authority: 49 U.S.C. 10321, 10505, and 11105 and 5 U.S.C. 553.

Decided: April 25, 1984.

By the Commission.

James H. Bayne,
Acting Secretary.

PARTS 1032 AND 1039—[AMENDED]

Appendix

Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1032—[REMOVED]

1. 49 CFR Part 1032 is removed.

PART 1039—[AMENDED]

2. A new 49 CFR 1039.17 is added to read as follows:

§ 1039.17 Protective service contracts exemption.

Contracts for protective services against heat or cold, provided to or on behalf of rail carriers and express companies, are exempt from the requirements of 49 U.S.C. 11105. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[FR Doc. 84-12075 Filed 5-3-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-166Q; Admt. No. 173-167]

Exceptions for Small Quantities of Hazardous Materials; Correction

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the final rule concerning requirements for small quantities of Poison B materials published in the Federal Register on June 30, 1983 (48 FR 30132), under Docket No. HM-166Q (FR Document 83-17319), and subsequently in 49 CFR Parts 100 to 177, Revised as of November 1, 1983. The error appears in § 173.4(a)(1)(iii).

EFFECTIVE DATE: May 4, 1984.

FOR FURTHER INFORMATION CONTACT:
George E. Cushmac, Office of Hazardous Materials Regulation, Materials

Transportation Bureau, Department of Transportation, Washington, D.C. 20590, (202) 426–2311.

SUPPLEMENTARY INFORMATION: The MTB is correcting the final rule for small quantities of Poison B materials appearing in § 173.4(a)(1)(iii) because the Poison B hazard class, as defined in § 173.343, does *not* require the determination of an LD_{50} (or LC_{50}) or even an approximate lethal dose (ALD). The MTB emphasizes that the DOT toxicity tests are "limit tests" (i.e., pass/fail) adapted to meet DOT transportation safety requirements. Since "LD_{50} tests" are *not* required, the final rule must be corrected to remove the reference to "LD_{50} value" in association with § 173.343 which was inadvertently included in the final rule.

On further consideration MTB believes that a single limit of one gram (based on twenty times the breakpoint of 50 milligrams per kilogram of body weight for oral toxicity specified in § 173.343) is appropriate for the exceptions for poisons provided by § 173.4. Any calculation to determine the maximum quantity of a Poison B material authorized per inner receptable is meaningless without a specific toxicity value and MTB believes that it is inappropriate to call for additional tests to be conducted in order to gain the benefits provided by the exception.

In consideration of the foregoing, **Federal Register** Document 83–17319, published on June 30, 1983, under Docket No. HM–166Q and HM,–166F is corrected as follows:

§ 173.4 [Corrected]

On page 30137, first column, § 173.4(a)(1)(iii) is corrected to read "One (1) gram for authorized materials classed as Poison B; and".

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 App. A to Part 1)

Noted.—The Materials Transportation Bureau has determined that this document does not constitute a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) or require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et. seq.). I certify that this document will not have a significant economic impact on a substantial number of small entitiles because the overall economic impact of this document is minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C. on April 30, 1984.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84–12058 Filed 5–3–84; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 49, No. 88
Friday, May 4, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Agency Settlement of Tort and other Monetary Claims

AGENCY: Administrative Conference of the United States; Committee on Administration.

ACTION: Request for comments.

SUMMARY: The Administrative Conference's Committee on Administration is considering a tentative recommendation on the subject of "administrative settlement of tort and other monetary claims against the government." This topic includes federal agency procedures for investigating, negotiating and settling claims brought under the Federal Tort Claims Act and various other statutes authorizing agencies to pay "meritorious claims." The Committee seeks views and supporting factual material to aid in its consideration.

DATES: Comment Deadline: May 21, 1984. One copy is sufficient. Comments received after the deadline will be considered to the extent feasible.

ADDRESSES: Send comments to: Charles Pou, Jr., Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037; Telephone: (202) 254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Administration is working toward development of a recommendation that would encourage agencies, and to a lesser extent the Congress, to reduce the adversarial nature of administrative claims handling, enhance exchange of information between agencies and claimants, and help claimants avoid procedural pitfalls. The tentative recommendation, based in part on a report by consultant George A. Bermann of Columbia University School of Law, calls for agencies to specify minimal information requirements for a valid claim, to provide claimants with greater guidance, to accept substantial compliance with technical requirements and to assess the merits and worth of a claim fairly and objectively. Also, it calls on Congress, among other things, to raise the ceiling for agencies' independent settlement authority. Copies of Professor Bermann's report, *Administrative Handling of Monetary Claims: Tort Claims at the Agency Level* (March 1984), are available on request.

PROPOSAL ON WHICH COMMENTS ARE REQUESTED

Tentative Recommendation

ADMINISTRATIVE SETTLEMENT OF TORT AND OTHER MONETARY CLAIMS AGAINST THE GOVERNMENT

April 30, 1984.

Preamble

In the Federal Tort Claims Act and dozens of other statutes,* Congress has authorized agencies to provide compensation for losses occasioned by a variety of agency actions. The FTCA, the centerpiece of this array, essentially waives the government's sovereign immunity to damage actions arising out of the negligent or otherwise wrongful acts committed by federal employees while acting within the scope of their employment. Initially designed to ease the burdens on Congress in disposing of private bills to redress government torts by shifting primary responsibility to the courts, the FTCA was amended in 1966 in order to transfer much of the load to agencies. At that time, Congress required claimants to present claims to the responsible agency as a prerequisite to suit and gave the agency a minimum of six months in which to act upon them. The agencies also acquired an unprecedented degree of settlement automony. The FTCA requires that the exercise of this authority be "in accordance with regulations prescribed by the Attorney General," but does not subject it to detailed procedural mandates, apart from the requirement of Justice Department approval of large settlements.

This relatively inconspicuous administrative process has taken on considerable significance in dealings between agencies and individual claimants, and could gain even more if Congress acts to displace suits against individual federal officials by an expansion of the government's liability under the FTCA.** Availble information suggests that the administrative process resolves a high proportion of claims worth paying at the same time as it exposes the meritless character of many of the thousands of claims filed annually. In both ways, it effectively replaces litigations with a largely informal, relatively open, and potentially nonadversarial means of dispute resolution.

Although the present system seems generally to be serving Congress' purposes, it has not been without difficulties. In particular, it is not clear to what extent administrative settlement should be taken as an autonomous dispute resolution process, in which the claims officer begins to approximate a neutral decisionmaker enforcing something in the nature of an inchoate entitlement, or should continue to be viewed a a simple prelude to litigation in which officer and claimant already stand in an adversarial or at least a bargaining relationship.

The Conference does not recommend that this ambiguity be shed entirely through any radical restructuring of the agency claims process. It does believe, however, that the ambiguity has sometimes produced undesirable results that could be avoided, such as inappropriately adversarial responses to technical deficiencies, restrictive policies on information disclosure in connection with a pending claim, and a less than fully fair and objective approach to determining the merits and monetary value of a claim. Since claimants need only wait six months in order to obtain a trial *de novo* before a federal judiciary that has shown itself

*"Meritorious claims" statutes allowing agencies to entertain some kinds of claims even where no fault can be shown, include the Military and Foreign Claims Acts and statutes covering certain actions of the Departments of Agriculture and Justice, NASA, the NRC, the Peace Corps, and the Postal Service. Other ancillary statutes, like the Suits in Admiralty Act, Public Vessels Act, Copyright Infringement Act, Trading with the Enemy Act, and Swine Flu Immunization Act, complement the FTCA, for instance by addressing claims likely to be exempt from that Act.

**See ACUS Recommendation 82–6, Federal Officials' Liability for Constitutional Violations.

increasingly sympathetic to claimants, it is all the more important to ensure the fairness and efficiency of administrative claims handling. To this end, the Conference recomends the following fine-tuning of the FTCA, of certain agency practices, and of the Justice Department's regulations.

Recommendations

A. AGENCY EXERCISE OF SETTLEMENT AUTHORITY

1. *Providing Guidance to Claimants.*—(a) Agency personnel should be required as part of their duties to take reasonable steps to keep a claimant who has come forward with potentially deserving claim from innocently failing to perfect a valid statutory demand, committing technical error, or running afoul of a statute of limitations.

(b) Before disapproving a claim under a particular statute, claims officers should consider the full range of channels legally available for satisfying monetary claims and ensure that the claim is not fairly payable under the FTCA or any other basis available to the agency. To the same end, agency personnel outside the claims area who regularly process other monetary demands should inform the private party of the existence of a tort remedy and applicable requirements when appropriate.

(c) The Attorney General should amend his regulations to accept as sufficient substantial compliance with the formal requirements imposed on claimants. In other words, the regulations should direct agencies not to rely on technical defects in otherwise valid, intelligible, and responsibly filed administrative claims, where they are not prejudiced as a result. Even where the deficiency is a substantial one, the claimant should normally be specifically so apprised and allowed a reasonable opportunity to remedy it.

2. *Filing the Claim.*—(a) The Attorney General's regulations should, for the sake of parallelism and avoidance of hardship, fix the moment presentation of a claim at the date of mailing by the claimant rather than the date of receipt by the agency, and in any case should not place the risk of loss categorically on the claimant. The regulations should also specify that, where a claim has been filed with the wrong agency and transferred to another agency, the original date of filing shall be used for determining its timeliness.

(b) Agencies should require claims officers to advise claimants that the absence of a sum certain for all categories of claims may preclude their consideration by both agency and court, and that, subject to timely amendment and the existing statutory exceptions, the amount of the administrative claim constitutes a ceiling on the damages that may later be sought in court.

(c) The Attorney General's regulations should afford claimants who initially fail to provide a sum certain a reasonable time in which to supply it without prejudice. Until the regulations are clarified, agency officers should be required to make clear their policy on relation back of amended claims.

3. Substantiation of Claims.—(a) The Attorney General's regulations should be amended to reflect the minimal notice standard adopted in *Adams* v. *United States*, 615 F. 2d 284, *on rehearing*, 622 F. 2d 197 (5th Cir. 1980), for purposes of agency determinations of a claim's validity.

(b) Should exchanges with a claimant reveal a pattern of serious noncooperation in furnishing substantial data, the claims officer should promptly and clearly indicate whether he or she is inclined to view the continued nonproduction of designated information as compromising the validity of the claim.

4. *Access to Information.*—(a) Where a claimant, with or without specific refernce to the Freedom of Information Act and related statutes, seeks access to his or her claim file or to other information relating to a pending claim, agencies should look to these statutes as a minimum standard of disclosure. Agencies should consider release even when these statutes would not require it if more liberal disclosure might advance settlement, and endeavor to establish a mutually free and open exchange of relevant information.

(b) Given his supervisory authority over both FTCA and FOIA practices, the Attorney General should provide claims officers with specific guidance on how the FOIA, as construed by the courts in analogous cases, relates to the tort claims process.

(c) When presented with a demand for information relevant to a pending tort claim, agencies should not interpose as wholesale obstacles to disclosure the government's executive privilege for deliberative materials, or the attorney-client, expert witness, or qualified attorney work product privileges. By way of example, "work product" should be construed narrowly in the FOIA context to accommodate most requests for data about the circumstances of the incident, negligence and damage issues, or other factual information not comprising the mental impressions, conclusions, opinions, litigation strategy, or legal theories of the agency's attorney.

5. *Claims Decisions.*—(a) Agencies should give, and the Attorney General's regulations should be amended to require, a brief statement of reasons for the denial of an FTCA or other claim. (*See* 5 U.S.C. 555(e).)

(b) Agency claims officers, aided by the General Accounting Office, should ensure that all payments under the FTCA are properly classed as tort claims (drawn from the judgment fund) and not program-related or general operating expenses (properly charged to agency appropriations).

(c) Whatever the mode in which an agency claims officer deals with claimants, the officer's ultimate goal should be a fair and objective assessment of the merits of a claim and of its monetary worth. To this end, the officer normally should refrain from raising marginal defenses and from paying claims at an unreasonably low level. Thus, for example, an unquestionably valid claim should be paid at full value without regard to extraneous factors such as savings to the claimant in avoiding litigation. On the other hand, it is not improper for a claims officer to evaluate a claim by predicting the probable outcome of litigation, discounted by the degree of factual or legal uncertainty that the claim presents.

(d) The Justice Department should not exercise its approval authority over large administrative settlements in such a way as to impose on agencies the position it would take if the claim were in the adversarial setting of court litigation, or otherwise act in a manner that would tend to discourage claims officers from making serious efforts to reach a fair and reasonable settlement with a deserving claimant.

(e) Unless nonwaivable, a defect in an administrative claim should not be raised as a jurisdictional defense in subsequent FTCA litigation if it is not a substantial one, or if it was not brought to the claimant's attention by the agency and the agency, in spite of the defect, addressed and disposed of the claim on the merits.

6. *Reconsideration.*—(a) Claim denial letters should inform claimants that they have the right to request the agency's reconsideration of its denial, and that such a request extends the six month waiting period before suit may be filed in federal district court.

(b) Reconsideration should, where feasible, be conducted by agency personnel other than those principally responsible for the initial denial, though

it should normally take place on the basis of the existing claim file as supplemented by the claimant.

7. *Claims Management.*—(a) Agencies should maintain data on the volume and dollar value of tort claims. The data, which should include information on outcomes of administrative claims and subsequent litigation, should be categorized so as to permit agencies to evaluate their handling of claims and to assess and manage risks.

(b) Agency claims officers should use some form of case monitoring, and preferably computer techniques, for tracking the progress of the claims for which they are responsible. The Attorney General should coordinate efforts to develop computerized data collection and retrieval systems adapted to the tort claims context and promote the systematic sharing of such technology.

B. STATUTORY CHANGES

1. *Enlarging and Defining Agency Settlement Authority.*—(a) Congress should conduct a comprehensive reexamination of the meritorious and other ancillary claims statutes in force to ensure that each is warranted and together they form a coherent whole both on their own terms and in relation to the FTCA. In the course of doing so, Congress should systematically raise ceilings on agency authority to settle claims where inflation has rendered them obsolete.

(b) Congress should take particular care in enacting legislation that would enlarge an agency's authority to satisfy claims for loss or injury—whether those claims are "meritorious" or sound in tort—to be precise about the scope of that authority, especially in relationship to the agency's existing authority under the FTCA. A good example of legislative precision in this regard is the Swine Flu Immunization Act, 42 U.S.C. 247b(k)(2), 90 Stat. 1113 (1976).

(c) Congress should consider raising the level of agency settlement authority under the FTCA sufficiently high—to $100,000, for example—to encourage claimants to negotiate seriously with agencies.

(d) Congress should discard the provision that FTCA settlements of up to $2500 be paid from agency funds.

2. *Statute of Limitations.*—Congress should amend the FTCA to postpone accrual of the claim for statute of limitations purposes until the claimant first knows or should reasonably have known of the government's connection with the claim.

List of Subjects in 1 CFR Ch. III

Administrative Practice and Procedure, Claims.

Dated: May 2, 1984.

Richard D. Berg,

General Counsel.

[FR Doc. 84-12285 Filed 5-3-84; 8:45 am]

BILLING CODE 6110-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. 1

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission has issued the March 1984 Regulatory Agenda. The Agenda, which is a quarterly summary of all rules on which the NRC has proposed or is planning action and all petitions for rulemaking which have been received and are pending disposition by the Commission, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESS: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 3, No. 1 is available for inspection and copying at a cost of five cents per page at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Single copies of the report may be obtained at a cost of $6.00, payable in advance from the NRC/GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Telephone (301) 492–7086, Toll free number (800) 368–5642.

Dated at Bethesda, Maryland this 1st day of May 1984.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 84-12117 Filed 5-3-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 543 and 563

[84-200]

Amendments Regarding Corporate Titles of Federal Associations and Advertising of Insured Institutions

Date: April 26, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") proposes to revise its regulations to require more informative corporate titles for federally chartered savings associations and, correspondingly, more specific identification of insured institutions in advertising. Corporate titles and certain forms of advertising in use on May 3, 1984, would be exempt from the proposed changes.

Comments must be received by: July 3, 1984.

ADDRESS: Please send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: David A. Permut, (202) 377–6962, Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Corporate Titles of Federal Associations

The Board proposes to amend it corporate title regulation to require more informative titles for federally chartered savings and loan associations and savings banks ("federal associations"). The Board believes that a corporate title which contains the word "savings" helps to identify the entity as a thrift-type depository institution and to convey one of the chief characteristics that distinguishes thrift institutions from other financial institutions: that such institutions exist to promote thrift among individuals, families, and others.

Use of the word "savings" in an insured institution's corporate title became particularly important after passage of the Garn-St. Germain Depository Institutions Act of 1982 ("Garn Act"), Pub. Law 97–320, October 15, 1982. The Garn Act authorized the Board to charter new federal stock savings banks and new federal stock savings and loan associations and permitted savings banks to convert to federal charter but retain Federal

Deposit Insurance Corporation ("FDIC") insurance of accounts. Because of the proliferation of types of federal thrift institutions and the changing relationships within the financial services industries generally, the Board believes there is an increased risk of public confusion as to the nature of a given financial institution. Certain institutions have proposed corporate names which would not identify them as depository institutions of any kind. In addition, savings banks were unknown in the majority of states prior to the Garn Act, so that a title which includes "bank" without the modifying word "savings" would evoke thoughts only of commercial or industrial banks in the minds of many consumers.

In determining to propose these amendments, the Board wishes to emphasize that the changes are meant to ensure against the adoption of corporate titles that appear to characterize thrift institutions as commercial banks or other types of institutions. Although the Garn Act granted to thrift institutions some of the same powers that commercial banks enjoy, it also emphasized the unique role of thrift institutions as primary lenders for the nation's residential real estate markets.

Section 543.1(a) of the Board's Regulations for the Federal Savings and Loan System ("Federal Regulations"), 12 CFR 543.1(a), currently sets forth the following requirements regarding the corporate title of a federal association:

(a) *General.* A Federal association's title shall in some manner indicate that it is a Federal association. A Federal association shall not adopt a title that misrepresents the nature of the institution or the services it offers.

The proposed changes would require federal associations to adopt corporate titles that specificially indicate that they are federal *savings* institutions. However, sorporate titles in use on the date of the publication of this proposed regulation would be exempted ("grandfathered"), because it is not the Board's intention to require costly changes for those institutions that have recently converted or changed their titles in reliance upon the existing regulations. While some parties perceive that there may be a short-term advertising advantage for such institutions, the Board believes the amendment to the advertising regulation which follows will correct any temporary imbalances.

The Board believes that approximately 39 federal savings banks out of a total of 153 federal savings banks (as of January 31, 1984) and 21 federal savings and loan associations out of a total of 1542 federal savings and loan associations (as of January 31, 1984) have corporate titles which would not be permissible under the proposed regulation but would be allowed to retain their grandfathered corporate titles. In connection with conversions to stock form and other transactions already filed as of the date of the proposed regulation, institutions may rely on the existing regulation.

II. Advertising for Insured Institutions

The Board is also proposing to revise its advertising regulation in conjunction with the proposesd amendment of the corporate title regulation. Section 403(b) of the National Housing Act, 12 U.S.C. 1726, prohibits insured institutions from carrying on any advertising in violation of regulations issued by the Board. Section 563.27 of the Board's Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), 12 CFR 563.27, currently sets forth the following requirements regarding advertising for insured institutions:

> No insured institution shall use advertising (whether printed, radio, display, or of any other nature) or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

The Board proposes to revise § 563.27 to require insured institutions (defined by § 561.1 of the Insurance Regulations to include institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") and federal savings banks the accounts of which are insured by the Federal Deposit Insurance Corporation to identify themselves as thrift institutions in their advertising. For example, a savings bank could not simply employ the phrase "bank," it would have to indicate it is a *savings* bank, even if its grandfathered corporate title does not contain the word "savings". In this connection, the Board is aware that institutions commonly shorten their corporate titles for advertising purposes and is not proposing to stop this practice. Rather, the intent of this proposed regulation is to ensure that the public is made aware that insured institutions are savings institutions. An affected institution could comply with the requirement of the proposed amendment by indicating, after use of the shortened corporate title, that it is a savings institution.

In addition to print and broadcast media, advertising includes an institution's signs, stationery and all other promotional material. Because the Board recognizes that signs are expensive to replace, it proposes to exempt existing signs. Should an institution with a grandfathered corporate title open a new office or acquire additional offices through merger or bulk purchase of assets, it could put up a new sign with that title or logo despite its noncompliance with the proposed regulation. However, all other advertising would have to comply. In addition, stationery and other promotional materials on hand on the date of publication of this proposed regulation would be exempt on such date until such time as the institution needed to reorder such materials in the ordinary course of business.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives, and legal basis underlying this proposed rule.* These factors are discussed elsewhere in the supplementary information.

2. *Small entities to which the proposed rule will apply.* The proposed rule on corporate titles would apply only to savings and loan associations and mutual savings banks that are federally chartered ("federal associations"). The proposed rule on advertising would apply to all institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation and to federal savings banks the accounts of which are insured by the Federal Deposit Insurance Corporation.

3. *Impact of the proposed rule on small federal associations.* The proposed rule would not have an adverse impact on small federal associations. The proposed changes are clarifying in nature, and thus would be expected to have a beneficial impact on large and small associations alike.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap, or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* The proposed rule is intended to avoid possible confusion on the part of the public toward the regulated industry, and there are no alternative approaches that would have the intended result with a lesser impact on small entities.

The Board is advising the public of its intention to use the proposal date as the date of effectiveness should the Board adopt the amendments as proposed, in order to avoid institutional activity during the comment period which might promote the type of confusion which the proposal seeks to eliminate.

List of Subjects in 12 CFR Parts 543 and 563

Savings and loan associations, Savings banks.

Accordingly, the Board proposes to amend Part 543, Subchapter C, and Part 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOANS SYSTEM

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION

1. Revise § 543.1(a) as follows:

§ 543.1 Corporate title.

(a) *General.* Except for corporate titles grandfathered as of May 3, 1984, a Federal association's title shall include the word "Savings" and in some manner indicate that it is a Federal association. A Federal association shall not adopt a title that misrepresents the nature of the institution or the services it offers.

* * * * *

SUBCHAPTER D—FEDERAL SAVING AND LOAN INSURANCE CORPORATIONS

PART 563—OPERATIONS

2. Revise § 563.27 as follows:

§ 563.27 Advertising.

(a) No insured institution shall use advertising (which includes print or broadcast media, displays and signs, stationery, and all other promotional meterials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

(b) Any advertising shall specifically indicate that an insured institution. No insured institution shall advertise or hold itself out to the public as a commercial bank. Signs of offices depicting the name of the insured institution existing on May 3, 1984, are grandfathered for as long as the institution choses to continue to use its grandfathered corporate title. Stationery and other promotional materials on hand as of that date are exempt until such time as the insured institution needs to reorder such materials in the ordinary course of business.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464; secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726; Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–11928 Filed 5–3–84; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendments to the Ohio Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: On December 28, 1983, the Ohio Division of Reclamation (the Division) submitted to OSM a proposed program amendment consisting of changes to the Ohio regulations concerning inspection frequency for inactive operations and compliance reviews. OSM published a notice in the **Federal Register** on January 26, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 3709). The public comment period ended on February 27, 1984.

A review of Ohio's proposed amendment by OSM identified a concern relating to the definition of an inactive operation. OSM notified the Division about its concern and on April 25, 1983, the Division responded by submitting modifications to its proposed amendment. Accordingly, OSM is reopening and extending the comment period on Ohio's December 28, 1983 proposed amendment as modified on April 25, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m., May 21, 1984, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: Nina Rose Hatfield, 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, 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, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Ohio Division of Reclamation, Building B–3, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION: The Ohio State program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background on the Ohio program including a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

By letter dated December 28, 1983, Ohio submitted revisions to Ohio rule 1501:13–14–01 *Inspections.* OSM announced receipt of the amendment and initiated a public comment period on January 26, 1984 (49 FR 3209). The public comment period ended February 27, 1984.

During review of the amendments, OSM identified a concern with the Ohio definition of "inactive coal mining and reclamation operation." The definition distinguishes between operations conducted under a "D" permit (permanent program permits) and operations conducted under other than a "D" permit (interim program permits). The definition, for interim program operations, did not require that vegetation be established in accordance with the approved reclamation plan in order to qualify for a phase II bond release. The Federal rule at 30 CFR 840.11(f) states that a site cannot be considered inactive until a phase II bond release is approved under 30 CFR 800.40(c)(2).

OSM notified Ohio about this concern by letter dated March 26, 1984, and Ohio responded by submitting an additional modification to rule 1501:13–14–01 on April 25, 1984. The modification is intended to address OSM's concern. The full text of the proposed program amendment and the subsequent modification is available for review at

the locations listed above under "ADDRESSES". Accordingly, OSM is now seeking public comments on the adequacy of Ohio's December 28, 1983 amendment in light of the State's April 25, 1984 modification.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

Dated: April 30, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–12057 Filed 5–3–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP LA–84–01]

Safety Zone; Ports of Los Angeles and Long Beach, and San Pedro Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This rule will establish a Safety Zone in the Los Angeles-Long Beach harbor during the 1984 Summer Olympic Games including Olympic pre-game and post-game related activities that may generate port congestion and related port safety and security problems. The Rule will be in effect from July 9, 1984 until August 21, 1984, and will cover the Ports of Los Angeles and Long Beach, San Pedro Bay, the Pilot Areas, and the Outer Anchorages. Within the Safety Zone, Captain of the Port Los Angeles-Long Beach (COTP LA–LB) may (1) restrict or prohibit movement of vessels and cargo, the operation of certain waterfront facilities, and related maritime activities; (2) establish areas of limited or prohibited access; and (3) require additional security measures on certain vessels and waterfront facilities. This Rule will promote safety and security, during a period of expected high port congestion.

DATE: Comments must be received on or before June 4, 1984.

ADDRESSES: Comments should be mailed to Commander (m), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822. The comments will be available for inspection and copying at Room 709, 400 Oceangate, Long Beach, California 90822. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul C. Golden, Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Ave., Long Beach, California 90802, Phone Number: 213–590–2315.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice COTP LA 84–01 and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander Paul C. Golden, project officer, Marine Safety Office Los Angeles-Long Beach, and Lieutenant Catherine M. McNally, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

During the summer of 1984, the Los Angeles Harbor area will host a series of special maritime events, beginning in early July and culminating with the 1984 Summer Olympic Games from July 28, 1984 through August 12, 1984. Olympic Yacht races in Long Beach Harbor and offshore from Anaheim Bay will draw major spectator boating crowds. In addition many visiting vessels and official dignitaries are expected to remain in the port area through August 21, 1984. Normal commercial operations in the Ports of Los Angeles and Long Beach will also continue resulting in a short term period of high congestion and security problems.

The following problems are anticipated, among others: (1) Increased search and rescue operations; (2) harbor and shipping channel conflicts and congestion; (3) "Rules of the Road" violations and related casualties; (4) anchorage conflicts; (5) boardings and safety inspections of passenger vessels, water taxis, sport charter boats, and other vessels; (6) pollution incidents; (7) crowd control during Olympic Yacht Racing events; (8) drug trafficking; and (9) potential terrorist activities.

COYP LA–LB will direct its efforts towards maintaining the safe movement of commercial and non-commercial traffic through the shipping channels and waterfront facilities; and towards maintaining the security of the port, the Olympic Yacht Race areas, and the expected large number of visitors arriving to view these events. The Coast Guard has the responsibility, in conjunction with local law enforcement agencies, for the safety and security of the Ports and must plan and prepare to meet any situations which could occur.

Accordingly, Coast Guard vessels carrying armed safety and law enforcement teams will continuously patrol both Ports, their entrances and approaches. The primary mission of these teams will be to prevent or control hazardous boating activities, with an emphasis on facilitating commercial port operations and recreational boating. These teams will also act to interdict any illegal activities found within the areas covered.

The proposed rules for vessel and port facility operations are intended to increase safety and security through increased operation vigilance. The restrictions on recreational craft operating in the Safety Zone are necessary to prevent security patrols from being overwhelmed by large numbers of recreational boats cruising within the ports and to minimize shipping channel congestion for the safe navigation of merchant vessels in restricted waters.

While carrying out these port safety and security operations, the COTP LA–LB will make every effort to minimize the necessary restrictions on vessel and port activities, within overall safety and security considerations.

Separate Safety Zone regulations will be published for the anticipated "Tall Ships" parade and Long Beach Harbor fireworks display on July 4, 1984, and the Olympic Yacht racing sites as soon as events and schedules are finalized. These regulations will be re-printed in the Local Notice to Mariners.

Economic Assessment and Certification

This proposed regulation is considered to be insignificant in accordance with DOT Polices and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the regulation is of limited duration, limits access to certain port areas without denying access to those who require it, will not cause delays to vessels transiting the area, and

prohibits only large shipments of a few hazardous substances. Based on this assessment, it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this Regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that Order.

List of Subjects in 33 CFR Part 165

Safety zone: Ports of Los Angeles and Long Beach, and San Pedro Bay, California.

PART 165—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding § 165.T1142 to read as follows:

§ 165.T1142 Ports of Los Angeles and Long Beach, and San Pedro Bay, California Safety Zone.

(a) *Purpose.* (1) This temporary regulation is intended to manage the expected increase in traffic congestion in the San Pedro Bay, Ports of Los Angeles and Long Beach, and their environs during the period from early July through the 1984 Summer Olympic Games, in order to provide a safe and secure area for all members of the maritime community. Because a large number or visiting boats and dignitaries are expected to arrive early in July and remain in the Ports beyond the end of the Olympic Games, the Safety Zone will be in effect from July 9, 1984 through August 21, 1984 to insure adequate port safety and security. The Captain of the Port (COTP LA–LB) may cancel the Safety Zone at an earlier date if safety and security considerations permit it.

(2) This temporary regulation adds to all existing regulations applicable to the affected areas, and does not replace or supercede any regulation in effect during the term of this temporary regulation.

(3) Upon written application and good cause shown, COTP LA–LB may grant a waiver of any requirement of this temporary regulation.

(b) *Effective Dates.* Unless otherwise indicated in an individual subsection below, this temporary regulation is effective from July 9, 1984 through and including August 21, 1984.

(c) *Area Covered.* All waters and waterfront facilities located within the following boundaries constitute a Safety Zone:

(1) San Pedro Bay and Port Facilities. All navigable waters and water front facilities located north of a line extending from Point Fermin Light eastward along the shoreline to the west end of the San Pedro Breakwater eastward along that breakwater across the Los Angeles Main Channel Entrance, along the Middle BreaKwater, across the Long Beach Channel Entrance, along the Long Beach Breakwater to its east end, then continuing eastward along the COLREGS Demarcation Line (33 CFR 80.1135(a)) to the south end of the Anaheim Bay West Jetty, then southward to the end of the East Jetty and then eastward along the East Jetty to the shoreline. This includes all navigable waters and waterfront facilities within the Ports of Los Angeles and Long Beach and adjacent coastal areas including Anaheim Bay.

(2) Commercial Anchorage F (Outside of the Long Beach Breakwater) (33 CFR 110.214(a)(6)).

(3) The Regulated Navigation Area defined in 33 CFR 165.1109. This area includes Commercial Anchorage G (33 CFR 110.214(a)(7)), the Los Angeles Pilot Area, and the Long Beach Pilot Area.

(4) The Catalina Cruises terminals at Newport Beach, California and Avalon Bay, Santa Catalina Island; and all waters under and within 10 yards of public ferries transiting between Santa Catalina Island and Long Beach, Los Angeles or Newport Beach, California while said ferries are operating on the navigable waters of the United States.

(5) The area bounded seaward from the west end of the Long Beach breakwater ("Queen's Gate") due south to the U.S. Territorial Waters boundary and then southerly along the territorial boundary line to the 33°38′ parallel and then due east to the shoreline. This area of the Safety Zone will encompass the Olympic race course that will be moved to correspond to wind conditions.

(d) *Definitions.*

(1) Bulk Shipments of Cargos of Particular Hazard—Those quantities of the subject cargos as listed in 33 CFR 126.10, that are greater than the volume of one standard shipping container.

(2) Designated Waterfront Facility—A facility including piers and pierside warehouses or storage tanks that handle Designated Dangerous Cargos or Cargos of Particular Hazard as defined in 33 CFR Part 126.

(3) Merchant Vessels—Any vessel carrying cargos of commercial value for commercial purposes. Not included in this definition are commercial fishing, sport fishing, diving, whale watching, or harbor tour boats, water taxis, tug or tow boats and all non-self-propelled barges.

(4) Offshore Structure—Any oil island, oil drilling platform, pipeline, or floating platform permanently fixed or anchored to the ocean bottom within the Safety Zone.

(5) Passenger Vessel—Any passenger vessel carrying over 100 passengers with overnight accommodations for all of them.

(6) Pleasure Craft—Any sail or power vessel operated for recreational purposes (including bareboat charters) that are not carrying paying passengers. Not included in this definition are commercial fishing, sport fishing, diving, whale watching, or harbor tour boats, water taxis, tug or tow boats, all non-self-propelled barges, merchant vessels or passenger vessels as defined above.

(7) Vessel—includes every water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

(e) *The Following Rules Apply To This Safety Zone.*

(1) No vessel may enter or transit the following areas without prior approval from the officials indicated.

(i) *Todd Shipyard, San Pedro, California.*

(A) All waters within 100 yards of Berths 102 through 110, Port of Los Angeles, California.

(B) Manager Todd Shipyard or COTP LA–LB.

(ii) *Military Transportation Management Command (MTMC).*

(A) All waters within 10 yards of Berths 54 and 55, East Channel Port of Los Angeles, California.

(B) Commanding Officer MTMC or COTP LA–LB.

(iii) *United States Naval Station, Long Beach,* California: (See 33 CFR 207.617.)

(A) All waters in the Naval Station West Basin west of a line from LB Berth 122 to the eastern end of the Naval Station Mole.

(B) Commanding Officer of the Long Beach Naval Station or COTP LA–LB.

(iv) *United States Naval Weapons Station Seal Beach,* Anaheim Bay, California: (See 33 CFR 110.215, 33 CFR 204.195.)

(A) All waters in the Anaheim Bay entrance marked and buoyed off as restricted waters.

(B) Commanding Officer of the Naval Weapons Station or COTP LA–LB.

(v) *United States Navy Fuel Piers;* Port of Los Angeles, California:

(A) All waters within 10 yards of LA Berths 37 through 39.

(B) Commanding Officer, Military Sealift Command Long Beach or COTP LA–LB.

(2) All vessels are prohibited from entering within the boundaries of the Olympic race courses on racing days without the permission of the Coast Guard or L.B.R.O.C. boats. Buoys and Coast Guard spectator control boats will mark and control access to these race course areas. In general, all of Commercial Anchorage F and Commercial Anchorage K will have restricted access on racing days from July 29 through August 10, 1984.

(3) Except with the prior permission of the operator of the waterfront facility, structure, or vessel, or the COTP LA–LB; no vessel may berth, anchor, tie up to, or loiter within ten yards of:

(i) Any waterfront facility, or offshore facility or structure, which handles Dangerous Cargos, Designated Dangerous Cargos, or Cargos of Particular Hazard as defined in 33 CFR Part 126. Such facilities and structures will display prominent signs prohibiting access by unauthorized persons.

(ii) Any passenger vessel, Catalina public ferry, or merchant vessel at anchorage or at any berth.

(4) No vessel may block, loiter in, or impede the through transit of vessels in any charted approach, channel entrance, channel, harbor, or basin (Navigational Rules of the road will always apply).

(i) The term "charted approach, channel entrance, channel, harbor, or basin" includes but is not limited to the following areas:

(A) Long Beach Pilot Area, Long Beach Channel Entrance, Long Beach Channel, Southeast Basin, Basin Six, Middle Harbor, East Basin, Inner Harbor, Channel Two, and Channel Three.

(B) Los Angeles Pilot Area, Los Angeles Channel Entrance, Main Channel, West Channel, East Channel, Fish Harbor, Turning Basin, West Basin, Slip No. 1, Slip No. 5, East Basin Channel, East Basin, and Cerritos Channel.

(5) Nothing in this paragraph (e) is intended to deny the right of continuous transit through the areas listed except where prior approval has been specifically required.

(6) No person may engage in any skin diving, scuba diving, or snorkeling within 100 yards of any merchant vessel, passenger vessel, Catalina Ferry, waterfront facility (as defined by 33 CFR 6.01–4) or offshore structure, except with the prior permission of COTP LA–LB.

(7) Pleasure Craft.

(i) Any pleasure craft which desires to remain overnight in the Safety Zone and does not have an assigned slip, berth or mooring in a marina or recreational boating anchorage in the Safety Zone will be required to moor in General Anchorage P (33 CFR 110.214(a)(12) and 110.214(b)). The City of Long Beach Marine Bureau is primarily responsible for the management of General Anchorage P and may impose additional requirements for the use of this anchorage (for additional information (213) 432–4496). This anchorage will be marked with temporary buoys; operational restrictions will be provided by Marine Department patrol boats and announced in the Local Notice to Mariners and by Marine Safety Broadcasts.

(ii) Direct transits within the Safety Zone between slips, berths or moorings and the sea, waterfront recreational boat facilities (e.g., waterfront restaurants, small boat yards, fuel piers), or designated recreational boating areas are allowed, except in areas where prior approval has been specifically required.

(iii) Recreational boating inside the port breakwater from sunset to sunrise, including cruising, racing, fishing, sightseeing, anchoring or related activities is prohibited except in the following designated recreational boating areas:

(A) Recreational boating is allowed inside the breakwater westward of a line running between the southern end of LA Berth 47 (Union Oil Terminal (Light "2")) and the west end of the Middle Breakwater ("Angel's Gate") except where prohibited (see(e)(1)) or limited (see (e)(2)–(4)) by this regulation (e.g. keep at least 10 yards from the Navy Fuel Piers and the Union Oil Terminal and any vessels berthed there).

(B) Recreational boating is allowed inside the breakwater eastward of a line running between the southeast corner of Long Beach Pier J (Light "J") and the east end of the Middle Breakwater ("Queen's Gate") except where prohibited (see (e)(1)) or limited (see(e)(2)–(4)) by this regulation (e.g., keep at least 10 yards from merchant ships, Catalina ferrys, oil islands, and outside Olympic race courses).

(C) Recreational boating outside the Los Angeles-Long Beach breakwater, and Anaheim and Alamitos Bays is allowed except where prohibited (see (e)(1)), or limited (see (e)(2)–(4)) by this regulation (e.g., remain outside U.S. Naval Weapons Station prohibited areas and outside the Olympic race courses).

(iv) Additional safety and crowd control restrictions during Olympic race periods may be imposed as circumstances require. These restrictions will be announced in the Local Notice to Mariners and by Marine Safety Broadcasts.

(8) Cargo Handling and Security (Effective from July 21, 1984 through and including August 14, 1984.):

(i) All bulk shipments of Cargos of Particular Hazard, are prohibited without the prior approval of COTP LA–LB.

(ii) No vessel carrying "radioactive materials" as defined by 49 CFR 173.389, excepting those vessels carrying only "limited quantities of radioactive materials" as defined by 49 CFR 173.391, may enter or transit the Safety Zone unless:

(A) The vessel or agent gives to COTP LA–LB 72 hours advance notice of the vessel's arrival, transit, or departure; and

(B) COTP LA–LB has given prior approval to enter, transit, or depart. The approval will be based on the security measures taken by the vessel's master and operator to protect the vessel and its cargo while in the Safety Zone.

(iii) While bulk Dangerous Cargos, Designated Dangerous Cargos, or Cargos of Particular Hazard are present; a Designated Waterfront Facility shall provide the equivalent of a minimum security level of 3 guards, each with radio communications. The facility shall station on guard at each open gate, one guard on fence patrol, and one guard on pier patrol. The supervising guard shall also monitor Channel 22A VHF–FM. This guard shall report any dangerous circumstances to the COTP LA–LB on this radio channel, or telephone if circumstances permit.

(9) Vessel Security (Effective from July 21, 1984 through and including August 14, 1984.):

(i) Merchant Vessels.

(A) A merchant vessel at berth or at anchor shall maintain continuous port and starboard weather deck patrols (one person on each side) to maintain waterside and shoreside security.

(B) A merchant vessel at berth or at anchor shall maintain a continuous bridge watch. The bridge watch shall monitor Channel 22A VHF–FM and report any dangerous circumstances to the COTP LA–LB on this radio channel.

(C) A merchant vessel at berth or at anchor shall conduct a positive identification check of all persons embarking, and shall check all baggage, stores and cargo being loaded for weapons, explosives, and other contraband.

(D) A merchant vessel at anchor shall keep the accommodation ladder in the raised position, except while actively embarking or disembarking persons.

(E) A merchant vessel at anchor shall block its hawsepipes by shields or by any other equivalent means to prevent access to the vessel via the anchor chain.

(F) Prior to entry into the Safety Zone from another port, the master of the merchant vessel shall certify to COTP LA–LB by radio or message that his vessel has been thoroughly searched for weapons, explosives, and other contraband.

(ii) Passenger vessels.

(A) A passenger vessel at berth or at anchor shall maintain continuuous port and starboard weather deck patrols (one person on each side) to maintain waterside and shoreside security.

(B) A passenger vessel at berth or at anchor shall maintain a continuous bridge watch. The bridge watch shall monitor Channel 22A VHF–FM and report any dangerous circumstances to the COTP LA–LB on this radio channel.

(C) A passenger vessel shall provide and maintain a system of positive identification passes for passengers, guests, crew and related ship support personnel.

(D) A passenger vessel shall have at least one armed security guard at each entry point on the vessel and shall conduct a positive identification check of all persons embarking. All persons, baggage, stores and cargo being loaded shall be checked for weapons, explosives, and other contraband.

(E) A passenger vessel at anchor shall keep the accommodation ladder in the raised position, except while actively embarking or disembarking persons.

(F) A passenger ship at anchor shall block its hawsepipes with shields or by any other equivalent means to prevent access to the vessel via the anchor chain.

(G) Prior to entry into the Safety Zone from another port, the master shall certify to COTP LA–LB by radio or message that his vessel has been thoroughly searched for weapons, explosives and other contraband.

(iii) Catalina Ferry Vessels

(A) All vessels carrying 50 or more passengers on scheduled runs between Santa Catalina Island and Long Beach, Los Angeles or Newport Beach, California shall provide a continuous security watch at the subject ferry terminals and docked ferry vessels, and

(B) Monitor Channel 22A VHF–FM while at berth or anchor, and report any dangerous circumstances to the COTP LA–LB; and

(C) Check all persons, baggage, stores and cargo being loaded for weapons, explosives, and other contraband. Knives, hatchets, and related camping accessories when packed and secured inside camping packs, or similiar luggage, shall be exempt from security controls other than detection, at the discretion of the ferry operator.

(f) *Violations.* (1) Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated this regulation shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation.

(2)(i) Any person who willfully and knowingly violates this regulation shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both.

(ii) Any person who, in the willful and knowing violation of this regulation, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, shall, in lieu of the penalties prescribed in subparagraph (2)(A) be fined not more than $100,000, or imprisoned for not more than ten years, or both.

(3) Any vessel which is used in violation of this regulation shall be liable in rem for any civil penalty assessed.

Authorities: 92 Stat. 1471, 1472, 1475, 1477 (33 U.S.C. 1221, 1223, 1225, 1231); 49 CFR 1.46(n)(4); 33 CFR Part 6; c.30, Sec. 1, 40 Stat. 220, as amended (50 U.S.C. 191); 49 CFR 1.46(b); 46 CFR 78.30.

Dated: April 24, 1984.

J. H. Guest,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 84–11949 Filed 5–3–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Wilmington, NC; Regulation 84–01]

Safety Zone Regulations; Upper Cape Fear River, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to close the Cape Fear River to all traffic from the Hilton Bascule Bridge down river to the Cape Fear Lighted Daymark #57 during the period of the annual Riverfest raft race on Sunday, 7 October 1984. The regulations are intended to reduce river congestion and ensure the safety of the participants in the Riverfest raft race.

DATES: Comments must be received on or before June 18, 1984.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office, Suite 500, 272 N. Front St., Wilmington, NC 28401. The comments will be avaliable for inspection and copying at the Marine Safety Office, Suite 500, 272 N. Front St., Wilmington, NC. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant K. C. OLDS, Chief, Operations Department, Coast Guard Marine Safety Office, Wilmington, North Carolina, Phone: (919) 343–4892.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses identify this notice COTP Regulation 84–01, and the specific section of the proposal to which their comments apply, giving reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed post card or envelope is enclosed. The rules may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one be held if written requests for hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter of this notice is Lieutenant K. C. OLDS, project officer for the Captain of the Port, and Lieutenant W. J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Coast Guard received a proposal for an safety zone from Captain F. S. Conlon, USN (Ret), on behalf of Old Wilmington Riverfront, Inc., requesting that traffic on the Cape Fear River from the Hilton Bascule Bridge to the Cape Fear Lighted Daymark #57 be halted during the period of the annual Riverfest raft race on Sunday, 7 October 1984. More specifically, the proposed safety zone would prohibit any vessel (sailboat, pleasure creaft, commercial vessel) other than designated safety boats and raft race participants, from movement within or through the safety zone. This will eliminate the extreme safety hazard created by moving vessels throwing large wakes, thereby upsetting raft race participants. The tentative duration of this safety zone will be from 1100 to 1600 on Sunday, 7 October 1984.

Economic Assessment and Certification

This proposed regulation is considered to be non-significant in accordance with DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the period of closure to river traffic will only be four hours. Vessel movement records indicate that commercial river traffic in this area of the Cape Fear River would be minimal during the period of closure and scheduling of commercial vessel movements can be adjusted if necessary to avoid the area during the closure times. The most impact, though non-economic, will be to the pleasure boat operators who have in past years lined the riverbanks during past raft races. They have in the past created safety hazards and much congestion in this area of the river during the raft race. Based upon this assessment, it is certified in accordance with Section 805 (b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, waterways.

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding a new § 165.T501 to read as follows:

§ 165.T501 Cape Fear River, North Carolina Safety Zone.

(a) *Location.* The following area is a safety zone: The Northeast Cape Fear River from the Hilton Bascule Bridge down river to Point Peter and the Cape Fear River from Point Peter down river to Cape Fear Lighted Daymark #57.

(b) *Regulations.* (1) in accordance with General Regulation in Subparagraph 165.23 of this part, entry into or remaining in this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 146; 33 CFR 165.3)

Dated: April 23, 1984.

Edward V. Grace,

Captain, USCG, Commanding Officer, Marine Safety Office, Wilmington, N.C.

[FR Doc. 84-11950 Filed 5-3-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 325

Processing of Department of the Army Permits; Procedures for The Protection of Historic Properties

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would establish the procedures to be followed by the U.S. Army Corps of Engineers in its regulatory program in order to comply with the National Historic Preservation Act. They would replace regulations proposed by the Corps on April 3, 1980. With the concurrence of the Advisory Council on Historic Preservation (ACHP), the Corps has been operating in accordance with the 1980 proposed Appendix C which has not been published as a final rule.

DATE: Comments must be received on or before July 3, 1984.

ADDRESS: Comments should be addressed to HQDA (DAEN-CWO-N), Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, (202)272-0199.

SUPPLEMENTARY INFORMATION: Through today's proposed changes to the permit regulations, the Corps of Engineers intends to foster conditions under which today's society and our historic resources can exist in productive harmony and fulfill the social, economic and other needs of the Nation.

Under section 404 of the Clean Water Act, section 103 of the Ocean Dumping Act, and several sections of the River and Harbor Act of 1899, the Army Corps of Engineers regulates many activities in the "Waters of the United States." Regulated activities include such construction activities as ports, marinas and dredging and also activities which involve placing fill material in the "waters of the United States."

Sections 106 and 110(f) of the National Historic Preservation Act (NHPA) require Federal agencies to take into account the effect of their actions on designated historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the agency's undertakings. Section 110(f) of the NHPA further requires Federal agencies to take actions which minimize harm to National Historic Landmarks. For each permit activity affecting designated historic properties the Corps must allow the ACHP a reasonable opportunity to comment. Thus, each citizen, business and public entity becomes subject to the requirements of the NHPA when desiring to undertake an activity which requires a Corps permit, including activities on private property.

In the Corps' regulatory program, permit applications are evaluated on the basis of whether the proposed activity is in the overall public interest. Many factors such as water quality, jobs, historic properties, economics, fish and wildlife, and energy are considered and balanced in determining whether the proposed activity is in the overall public interest. Through the public notice on each individual application, the Corps actively seeks public participation by requesting public comments on the activity and holding public hearings when warranted.

The Corps' regulatory program has been closely examined by the Presidential Task Force on Regulatory Relief which found that permit applications often encountered excessive delay when applying for a Corps permit. For example, if anyone objected to a permit application the average processing time was 250 days. On May 7, 1982, the Task Force directed the Army to take steps to reduce or eliminate delays, including those "* * * caused by investigations and other procedures required under the National Historic Preservation Act." The Corps and these proposed regulations fully support the ACHP's important statutory role in historic preservation. The proposed regulation goes to great lengths to assure that all interested parties, including the ACHP have a reasonable opportunity to comment on permit applications. The ACHP has the further opportunity to comment at the level of detail which it considers appropriate. The State Historic Preservation Officers (SHPOs) are also given the opportunity to comment on all permit applications and to become fully involved in the designation of historic properties which are discovered as a result of a permit application. In its public interest review of an application, the Corps will continue to give full consideration to comments received from the ACHP and SHPO and to other available information concerning historic properties so that the

importance of historic preservation is fully recognized in the process.

While the Corps' regulatory program is excluded from the specific requirements of EO 12372 governing Federal/State coordination, the Corps' program is conducted in the spirit of Federalism. We have developed this appendix in that spirit. It provides an opportunity for involvement of State and local officials as well as the general public.

On January 30, 1979, the ACHP published final amendments to its regulations (36 CFR Part 800) implementing section 106 of the NHPA.

On April 3, 1980, the Corps published proposed counterpart regulations to amend 33 CFR Part 325 (45 FR 22112) by adding new Appendix C. With the concurrence of the ACHP, the Corps has been operating in accordance with the 1980 proposed Appendix C which has not been published as a final rule.

As a result of the maturing Federal program for historic preservation and an October 1983, opinion of the Office of Legal Counsel in the Department of Justice, the 1980 proposed Appendix C is no longer appropriate. Therefore, we are proposing today a revised Appendix C which will help reduce delays in processing permit applications while fufilling our responsibilities under the NHPA. This proposal satisfies sections 106 and 110(f) of the NHPA by providing the ACHP a reasonable opportunity to comment on permit applications which affect historic properties. It is also consistent with the intent of section 404(q) of the Clean Water Act that the Army and other Federal agencies involved with the regulatory program minimize duplication, needless paperwork and delays, and that a permit decision be reached within 90 days.

Under this proposal, the Corps will give the SHPO notice of each application for a permit and provide the current knowledge of the effect, if any, of the proposed activity on the historic properties. If designated historic properties are involved or if there is an historic property which would probably be affected and appears to meet the eligibility criteria, the ACHP will also receive the notice. There will be an opportunity (normally 30 days) to comment on the effect of that activity on historic properties. If within the comment period the ACHP advises the Corps that it needs additional information in order to provide its comments, the Corps will prepare a more detailed report on the effects of the activity and provide the ACHP another opportunity to comment, not to exceed 30 days.

In addition to the ACHP comment process, there is an opportunity for the State Historic Preservation Officer (SHPO) and the general public to provide comments on the permit application. Also, if the need arises, the Corps may consult with the involved parties (e.g., ACHP, SHPO, applicant) within the permit processing period to obtain additional comments on the effect of the proposed activity on historic properties.

If during permit processing an undesignated historic property is discovered in the permit area which is reasonably likely to be eligibile for inclusion in the National Register and is reasonably likely to be affected by the undertaking, the ACHP and SHPO will be provided the same opportunities for comment as for designated historic properties.

Further, if a permit case requires an Environmental Impact Statement (EIS), the ACHP and other parties will have opportunities to comment through the EIS process.

List of Subjects in 33 CFR Part 325

Administrative practice and procedure, Dams, Environmental protection, Intergovernmental relations, Navigation (water), Water pollution control, Waterways, Historic preservation, National Register of Historic Places.

(33 U.S.C. 401 *et seq.*, 33 U.S.C. 1344, 33 U.S.C. 1413)

Note.—The Department of the Army has determined that the proposed regulation is not a major rule requiring the preparation of a regulatory analysis under E.O. 12291. The Corp of Engineers certifies pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that this regulation will not have a significant economic impact on a significant number of entities.

Dated: April 30, 1984.

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

A new Appendix C is proposed to be added to 33 CFR Part 325 to read as follows:

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

* * * * *

Appendix C—Procedures for the Protection of Historic Properties

1. *General.* This appendix establishes the procedures to be followed by the U.S. Army Corps of Engineers (Corps) to fulfill the requirements set forth in the National Historic Preservation Act (NHPA), other applicable historic preservation laws, and Presidential directives as they relate to the regulatory program of the Corps of Engineers (33 CFR Parts 320–330).

a. The district engineer will take into account the effects, if any, of the proposed undertaking on historic properties. Furthermoe, the district engineer shall consider, where the undertaking may directly and adversely affect any National Historic Landmark, actions which may be necessary to minimize harm to such landmark.

b. Historic properties, irrespective of their National Register status, that may be directly affected by the undertaking, are subject to consideration under the National Environmental Policy Act, (33 CFR Part 230, Appendix B), and the Corps' public interest review requirements contained in 33 CFR 320.4 and will be included as a factor in the district engineer's decision on a permit application.

c. In processing a permit application, the district engineer will generally accept for Federal or Federally assisted projects, the federal agency's or federal lead agency's compliance with the requirements of the NHPA.

d. If a permit application requires the preparation of an Environmental impact Statement (EIS) pursuant to the National Environmental Policy Act, the EIS comment period will be the ACHP's opportunity to comment in accordance with the NHPA. The draft EIS will contain the information required by paragraph 5 below.

2. *Definitions.*

a. "Designated historic property" is a property listed in the National Register of Historic Places (National Register) or which has been determined eligible for the National Register pursuant to 36 CFR Part 63.

b. "Undertaking" is an activity that requires an individual Department of the Army permit. (See 33 CFR 322.3, 33 CFR 323.3, and 33 CFR 324.3.).

c. "Certified local government" is a local government certified in accordance with section 101(c)(1) of the NHPA.

d. The term "permit area" as used in this appendix means those areas comprising the waters of the United States that will be physically affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures. The following three tests must all be satisfied for an activity undertaken outside the waters of the United States to be included within the permit area:

(1) Such activity would not occur but for the authorization of the work or structures within the waters of the United States;

(2) Such activity must be integrally related to the work or structures to be authorized within waters of the United States, or conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and

(3) Such activity must be directly associated (first order impact) with the work or structures to be authorized.

e. The term "criteria for inclusion in the National Register" refers to the criteria published by the Department of Interior in 36 CFR Part 604.

f. The term "effect" or "effected" is described in paragraph 13 of this regulation.

3. *Initial Review.* Upon receipt of a completed application, the district engineer will consult the latest published version of the National Register and the list of eligible properties to determine if there are any designated historic properties which may be affected by the proposed undertaking. The district engineer will also consult with other appropriate sources of information for knowledge of undesignated historic properties in the permit area which may be affected by the proposed undertaking.

4. *Public Notice.*

a. The district engineer's current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties will be included in the public notice. A public notice will be sent to the State Historic Preservation Officer (SHPO), the regional office of the National Park Service (NPS), the appropriate certified local governments, and interested citizens. If there are designated historic properties which reasonably may be affected by the undertaking or if there are undesignated historic properties within the permit area which the district engineer reasonably expects to be affected by the undertaking and which he believes meets the criteria for inclusion in the National Register, the public notice will also be sent to the Advisory Council on Historic Preservation (ACHP).

b. For designated historic properties which reasonably may be affected by the undertaking and which have been newly identified through the public interest review process, the district engineer will immediately inform the applicant, the SHPO, the appropriate certified local government and the ACHP of the district engineer's current knowledge of the effects of the undertaking upon these properties. Commencing from the date of the district engineer's letter, these entities will be given a period of time equivalent to that stated in the public notice in which to submit their comments.

5. *ACHP Review and Comment.*

a. If the district engineer receives a request from the ACHP within the appropriate comment period which states that the ACHP needs additional information in order to provide its comments, the district engineer, normally within 30 days, shall provide the ACHP with:

(1) A project description, including, as appropriate, photographs, maps, drawings, and specifications.

(2) A listing of the designated historic properties subject to effect; and a description of any undesignated historic properties identified in paragraph 8(b)(2); and

(3) A description of the effects of the undertaking on the designated historic properties and on any undesignated historic properties identified in paragraph 8(b)(2) and proposed mitigation measures and alternatives considered, if any.

Copies of the above information also should be forwarded for information purposes to the applicant, the SHPO, and the appropriate certified local government.

b. The district engineer will provide the ACHP a reasonable opportunity, not to exceed thirty (30) days from the date of the district engineer's letter forwarding the information in paragraph 5.a., to provide comments and recommendations concerning the impacts of the proposed undertaking on designated historic properties and on undesignated historic properties identified in paragraph 8(b)(2). If the ACHP does not comment by the end of this comment period the district engineer will complete processing of the permit application.

6. *Consultation.* At any time during permit processing the district engineer may consult with the involved parties to discuss and consider possible alternatives to avoid or minimize the adverse effects of a proposed activity. Consultation shall not continue beyond the comment period provided in paragraph 5.b.

7. *District Engineer Decision.* In making the public interest decision on a permit application, in accordance with 33 CFR 320.4, the district engineer shall weigh all factors, including the effects of the undertaking on historic properties and any comments of the ACHP and the SHPO. The district engineer will add permit conditions to reduce effects on historic properties which he determines are necessary in accordance with 33 CFR 325.4.

8. *Designation or Discovery of a Property During Permit Processing.*

a. *Designation.* Upon notification that the NPS has determined that an historic property is eligible for inclusion in the National Register and if such historic property reasonably may be affected by the undertaking, the district engineer will follow the procedures contained in paragraph 4.b. of this appendix.

b. *Discovery.*

(1) If the district engineer becomes aware of the existence of an undesignated historic property within the permit area which he reasonably expects will be affected by the undertaking, he shall immediately notify the regional office of the NPS, the SHPO, and the applicant and examine all reasonably available information on the undesignated historic property.

(2) The district engineer will not delay action on the permit application unless he believes (a) the property appears to meet the criteria for inclusion in the National Register and (b) it is reasonable to expect the historic property will be affected by the undertaking. If both of these requirements are met, he will provide the applicant, the SHPO, the regional office of the NPS, the appropriate certified local government and the ACHP with the available information on the property and the current knowledge of the effect of the undertaking upon the property. Commencing from the date of the district engineer's letter, these entities will be given a period of time equivalent to that stated in the original public notice (normally 30 days) in which to submit their comments. The district engineer will follow the procedures of paragraph 5 if the ACHP desires to provide additional comments in accordance with paragraph 5.a. If insufficient information exists to provide the information required by paragraph 5.a. (2) or (3) the district engineer will conduct a survey within the 30 day time period for in paragraph 5.a.

9. *Recovery of Historic Properties.* If the district engineer concludes that permitting the activity would result in the irrevocable loss of significant scientific, prehistoric, historical, or archeological data, the district engineer will advise the Secretary of the Interior (by notifying the NPS in accordance with 36 CFR 66.2) of the extent to which the data may be lost if the undertaking is permitted and any plans to mitigate such loss that would be implemented.

10. *Historic Properties Discovered During Construction.* If the district engineer finds or is notified of the existence of a previously unknown historic property in the permit area which he reasonably expects will be affected by the undertaking, he shall immediately inform the permittee, the regional office of the NPS, SHPO, and appropriate certified local governments of the current knowledge of the historic property and the expected effects, if any, of the undertaking on the property. If the district engineer believes that the property appears to meet the criteria for inclusion in the National Register, he will also inform the ACHP. Based on comments received, equity to all parties and considerations of the public interest, the district engineer may modify, suspend or revoke a permit in accordance with 33 CFR 325.7. The ACHP will have 30 days to provide its comments.

11. *General Permits.* Potential impacts on historic properties will be considered in the development and processing of general permits. However, because of the nature of the general permit program (see Section 325.5(c) and 33 CFR Part 330), many of the specific procedures contained in this appendix are not normally applicable to general permits. In developing general permits, the district engineer shall consult with the SHPO and, where appropriate, the ACHP and other organizations and/or individuals with expertise or interest in historic properties. Where designated historic properties are reasonably likely to be affected, general permits shall be conditioned to protect such properties or to limit the applicability of the permit coverage.

12. *Emergency Procedures.* The procedures for processing permits in emergency situations are described at 33 CFR 325.2(e)(4). In an emergency situation the district engineer will make a reasonable effort to receive comments from the SHPO and the ACHP, as appropriate, if historic properties can reasonably be expected to be affected.

13. *Considerations for Evaluating Effect.*

a. In determining whether an undertaking is reasonably expected to have an effect on historic property, the district engineer will consider factors such as those described below. If any relevant comments have been received, these will be considered in the district engineer's evaluation.

(1) An undertaking may be considered to have an effect on an historic property when it is reasonable to expect that the undertaking will permanently and significantly alter the integrity of the characteristics of the property which qualify it or may qualify it for its historic designation, as defined by (a) the National Register nomination, (b) a determination of eligibility by the Secretary

of the Interior, or (c) the district engineer in paragraphs 8(b) (2) or 10.

As a minimum the following two criteria must be met by an undertaking in order to determine that it has an effect:

(a) The undertaking will permanently and adversely alter the characteristics of the property which qualify the property for inclusion in the National Register, and

(b) The alteration will directly and significantly diminish the integrity of the qualifying characteristics

(2) Effects on historic properties may include, but are not limited to:

(a) Physical destruction, damage, or alteration of all or part of the property

(b) Neglect of a property, if this will result in its substantial deterioration or destruction

(c) Transfer or sale of a property without conditions or restrictions adequate to preserve those qualities that qualify it for the National Register

b. The above is meant to be a guide only and is not necessarily applicable to all situations. The district engineer may modify these factors as appropriate for the specific case under consideration.

[FR Doc. 84-12005 Filed 5-3-84; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Housing Program

Correction

In FR Doc. 84-10536 beginning on page 16932 in the issue of Friday, April 20, 1984, make the following correction: In the first column of that page, under the **DATES** heading, the date "June 19, 1984" should read "May 21, 1984".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2573-87]

Federal Assistance Limitations; State of Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to limit certain federal funding assistance for Cook, Lake, DuPage, Kane, St. Clair, and Madison Counties, Illinois. These limitations apply to funds provided under the Clean Air Act and Title 23 of the United States Code. The U.S. Enviornmental Protection Agency (USEPA) is taking this action, pursuant to Section 176(a) of the Clean Air Act (Act), because the State of Illinois has failed to make reasonable efforts to submit a State Implementation Plan (SIP) for Cook, Lake, DuPage, Kane, St. Clair, and Madison Counties that considers each of the elements in Section 172 of the Act.

Section 172(b)(11)(B) of the Act, as amended, requires the implementation of an inspection and maintenance (I/M) program in areas that have obtained extensions of the December 31, 1982, deadline for attaining the National Ambient Air Quality Standards (NAAQS) for ozone (O_3) and/or carbon monoxide (CO). Because U.S. EPA approved the State's extension request for Cook, Lake, DuPage, Kane, St. Clair, and Madison Counties, and I/M program is required in these six Counties. Illinois was required to submit a SIP revision by July 1982 that met all the requirements of Section 172 (b) and (c) including implementation of an I/M program.

The 1982 planned revision submitted by the State of Illinois did not contain enforceable rules, regulations and procedures for implementing an I/M program in any of these counties. As a result, U.S. EPA is today proposing to find that the State of Illinois has failed to submit, and is not making reasonable efforts to submit, a SIP that considers each of the elements of Section 172 of the Act. If USEPA takes final action affirming these findings, the funding limitations will apply in Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties, Illinois.

DATES: Written comments must be submitted to USEPA on or before June 4, 1984. See Supplementary Information for public hearing on this proposed action, and on USEPA's August 3, 1983, proposal (48 FR 35315) regarding the imposition of construction and funding limitations under Section 176(b) and 173(4) of the Clean Air Act.

ADDRESSES: Send any comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. EPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604. See Supplmentary Information for the locations of the public hearings.

Copies of all materials related to USEPA's proposed action may be inspected during normal business hours at the above address or at the following locations: Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION:

A. Background

Congress amended the Clean Air Act, 42 U.S.C. 7401 et seq., in 1977 to address the major health problem posed by the states' failure to attain the NAAQS. Congress required states to revise their State Implementation Plans (SIPs) to provide for attainment of the standards by December 31, 1982, and to submit the revised plans to USEPA by January 1, 1979. For areas with serious ozone or carbon monoxide problems that demonstrated they could not attain these standards by the end of 1982, even with the implementation of all reasonably available measures, Congress allowed an extension of the attainment date up to December 31, 1987 (Section 172(a)(2)).

In return for this extension, Congress required states to submit additional air pollution control measures in their 1979 SIP revisions (Section 172(b)(11)). One such additional measure was a schedule for implementation of an inspection and maintenance (I/M) program, along with certification that the State and local governments had the legal authority to implement and enforce that program (Sections 172(b)910) and 172(b)(11)(B)). Areas that obtain extensions also must submit a second SIP revision in July 1982 containing all enforceable measures needed to ensure attainment by 1987 (Section 172(c)). This SIP revision must include all rules, regulations, and procedures needed to implement and enforce an I/M program.

To ensure that federal funds do not further contribute to the already serious air pollution problem, and to encourage state cooperation, Congress adopted Section 176(a). Section 176(a) of the Act requires withholding of certain federal assistance funds for highway construction and air quality planning grants, if the USEPA Administrator finds that a state has failed to submit, or is not making reasonable efforts to submit, a SIP which considers each of the elements of Section 172 of the Act, including the requirement for I/M. On April 10, 1980, after prior notice and public comment, USEPA and the Department of Transportation (DOT) published their final policies and procedures for imposing funding restrictions under Section 176(a) (45 FR 24692). This notice should be used as reference in reviewing today's notice. Congress also requires USEPA to withhold air quality planning grants and restrict new source construction if a State fails to carry out an approved plan. (Sections 176(b) and 173(4)).

The State of Illinois requested an extension of the attainment deadline to

1987 for ozone for Lake, Kane, DuPage, Cook, St. Clair, and Madison Counties, and for carbon monoxide for Cook County. USEPA approved the request on February 21, 1980, (45 FR 11472) and Illinois is, therefore, required to implement an I/M program in these counties. USEPA also conditionally approved the revised Illinois Ozone/CO SIP, including the extension requests and the I/M schedules.

The Illinois SIP included certification that the State has sufficient legal authority to implement and enforce an I/M program, and also contained a schedule for the completion of all actions necessary to implement the program by December 31, 1982.

Because of the delays by Illinois in meeting its schedule, USEPA sent a letter to the Governor of Illinois on April 30, 1982, that notified him of the non-implementation of I/M, and of USEPA's intention to publish a notice proposing to find that Illinois had failed to meet its SIP commitments regarding its I/M program. On May 21, 1982, the State submitted a response but omitted any information to show that Illinois was, in fact, implementing the I/M portion of the SIP. On August 3, 1983, USEPA proposed to find that Illinois was not implementing the I/M schedule and commitment contained in its 1979 SIP (48 FR 35313). EPA proposed to restrict construction and funding under Sections 173(4) and 176(b).

Meanwhile, Illinois submitted its draft 1982 revisions to its Ozone/CO SIP on June 30, 1982. The June 30, 1982, SIP formally withdrew the 1979 SIP commitment to implement an I/M program, and stated that an I/M program would not be adopted unless attainment by December 31, 1987, would not otherwise occur, as indicated by future air quality data.

In a letter dated August 23, 1982, USEPA provided its evaluation of and comments on June 30, 1982, submittal. The I/M portion of the SIP did not contain the various elements required under USEPA's 1982 SIP policy. There was no commitment to implement I/M by December 31, 1982, and no rules and regulations were included. As a result, on February 3, 1983 (48 FR 5110), USEPA proposed to disapprove the I/M portion of the 1982 Illinois Ozone/CO SIP. On March 21, 1983, USEPA extended the public comment period an additional 45 days for plans proposed to be disapproved (48 FR 11725).

On March 22, 1983, USEPA notified affected Federal, State, and local agencies that the USEPA/DOT procedures for imposing the funding limitations under Section 176(a) were being initiated. This notification started a 30-day consultation period in accordance with these procedures. Between March 22, 1983, and the date of this notice, USEPA officials have consulted with several Federal, State, and local officials in an effort to resolve this issue. The following discussion is a summary of the significant events that have occurred since USEPA initiated this consultation period.

March 22, 1983.—The USEPA Regional Administrator, Valdas V. Adamkus, notified the Federal Highway Administration (FHWA) Regional Administrator, John Hibbs, by letter that the State of Illinois had failed to meet the requirements of the Clean Air Act as proposed in the February 3, 1983, **Federal Register** (48 FR 5110). In this letter, the USEPA initiated the 30-day consultation period outlined in the April 10, 1980, **Federal Register** (45 FR 24692) guidelines for the Section 176(a) process.

March 29, 1983.—The USEPA Regional staff met with the FHWA Regional staff to discuss the status of the Illinois I/M program.

April 11, 1983.—The USEPA Regional Administrator and staff met with the IEPA staff to discuss the Section 176(a) schedule and procedures.

April 15, 1983.—In a letter to the USEPA Regional Administrator, the Counsel to Governor Thompson, William O'Connor, addressed several concerns regarding the initiation of the consultation period by USEPA prior to making a final decision on the adequacy of the 1982 Illinois Ozone-CO SIP.

April 21, 1983.—The FHWA Regional Administrator made several recommendations regarding the Section 176(a) schedule and procedures in a letter to the USEPA Regional Administrator. These recommendations included: extending the consultation period to June 6, 1983; allowing 1982 attainment areas adequate time to apply for redesignation; coordinating action for areas included in two Federal Regions; and scheduling a meeting with affected State and local agencies concerning the 176(a) process.

May 12, 1983.—EPA Air Pollution Control Division Manager, Daniel Goodwin, provided USEPA Air Management Division Director, David Kee, with a list of questions, including several related to the Section 176(a) schedule and process, to be discussed in their May 13, 1983, meeting regarding the Illinois 1982 Ozone/CO SIP.

May 13, 1983.—The USEPA Regional staff met with IEPA staff to discuss the issues presented by Mr. Goodwin in the May 12, 1983, letter to Mr. Kee.

The USEPA Regional Administrator responded to the April 21, 1983, letter from the FHWA Regional Administrator and agreed to extend the consultation period and meet with State and local officials, if requested.

July 1, 1983.—The USEPA Regional Administrator responded to the April 15, 1983, letter from the Counsel to Governor Thompson, and forwarded several documents on USEPA's funding restriction policy.

July 5, 1983.—The USEPA Regional Administrator forwarded several documents to the FHWA Regional Administrator on USEPA's Funding restriction policy.

July 29, 1983—The USEPA Regional and the USEPA An Arbor staff met with the IEPA, and personnel from the Office of the Governor, to discuss reasonable further progress requirements and alternative approaches to I/M.

August 3, 1983—A **Federal Register** (48 FR 35315) was published proposing Section 176(b) and 173(4) restrictions for Illinois.

August 12, 1983—In a letter to the IEPA Director, Richard Carlson, the USEPA Regional Administrator notified Illinois of the August 3, 1983, proposed rulemaking. USEPA requested that the State provide USEPA with the specific steps that it would take to establish its I/M program. USEPA stated that, if legislative action were determined to be necessary, it needed to be obtained during the fall session of the legislature. USEPA stated that such action by the State, and subsequent expeditious progress, could forestall the imposition of construction and funding restrictions.

September 19, 1983—The IEPA submitted its response to the August 3, 1983, **Federal Register**. The September 19, 1983, response made reference to a commitment from the Governor of Illinois to the USEPA Administrator that the State planned to proceed with implementation of an I/M program. The State also committed to presenting a description of how it intended to carry out the program.

November 4, 1983—The IEPA submitted a revised implementation schedule with an implementation date of July, 1986.

November 14, 1983—The USEPA Regional Administrator notified the IEPA Director that the schedule submitted on November 4, 1983, was inadequate, and requested that the State submit an acceptable implementation schedule by November 30, 1983, and seek legislative adoption of the proposal by the end of January, 1984.

December 12, 1983—The USEPA Regional staff met with the Executive Director of the Chicago Lung Association, and a representative from the Environmental Consensus Forum, to

discuss their possible roles as mediators in assisting the State of Illinois in developing a political consensus as to the I/M program.

December 16, 1983—The USEPA Regional Administrator notified the FHWA Regional Administrator that the State of Illinois had failed to submit an approvable I/M program in its 1982 Ozone/CO SIP, and that the USEPA was reinitiating the 30-day consultation period.

USEPA also notified the Governor of Illinois, the Director of the IEPA, the Illinois Secretary of Transportation, the Chairman of the IPCB, the County Board Chairmen of Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties, the Illinois State Chamber of Commerce, the Chicago Area Transportation Study, the Chicago Lung Association, the Northeastern Illinois Planning Commission, and, the East-West Gateway Coordinating Council.

December 20, 1983—USEPA distributed a press release regarding the reinitiation of the 30-day consultation period for Illinois.

December 21, 1983—The USEPA Regional staff met with the FHWA Regional staff to discuss the Section 176(a) process and procedures.

December 27, 1983—The Mayor of East St. Louis, Illinois, Carl Officer, requested information regarding the effect of restrictions on East St. Louis from the USEPA Regional Administrator and the FHWA Regional Administrator.

December 27, 1983—In response to the USEPA letter of November 14, 1983, IEPA submitted a new implementation plan, that included information on four program options, that was to be presented to the Illinois General Assembly during the Spring, 1984, session without specifying a single preferred option. The four options included a scheduled date of October 1, 1985, for testing of the general automobile fleet.

January 4, 1984—The FHWA Regional Administrator responded to the December 27, 1983, letter from the Mayor of East St. Louis, and indicated that the exact impact of the restrictions on East St. Louis was unknown because the project evaluation criteria were still being negotiated by USEPA and FHWA.

January 13, 1984—The USEPA Regional staff, FHWA Regional staff, and representatives from the Illinois Department of Transportation (IDOT) and IEPA met to discuss the project evaluation criteria and procedures.

The USEPA Regional Administrator met with the IEPA Director, and with personnel from the Office of the Governor and the Secretary of State, to discuss the legislative and funding restriction schedules.

January 16 and 17, 1984—USEPA contacted environmental groups and planning organizations regarding USEPA's position on I/M, USEPA's recent activity with respect to I/M, and possible funding restrictions on Illinois.

B. Proposed Findings and Actions

Based on the failure of the State of Illinois to submit rules, regulations, and procedures, for an I/M program, as part of its 1982 SIP revision USEPA proposes the following actions:

1. USEPA proposes to find that the State of Illinois has failed to submit, and is not making reasonable efforts to submit, an approvable SIP for ozone and carbon monoxide that considers each of the elements required by Section 172 of the Act; and,

2. USEPA proposes to impose federal funding restrictions on Lake, Kane, DuPage, Cook, St. Clair, and Madison Counties under Section 176(a) of the Act.

During the public comment period, USEPA will consider any comments on this issue. If Illinois fails to remedy this situation before USEPA takes final action, the resulting funding limitations become effective on the date that the final rulemaking is published in the **Federal Register**. Upon final rulemaking, the Secretary of Transportation will not approve any projects or award any grants in Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties under Title 23 of the United States Code, except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. Furthermore, the Administrator of USEPA will not approve any projects or award any grants authorized by the Clean Air Act unless they qualify for the exemptions noted in the April 10, 1980, policy notice.

Although USEPA has discretion to withhold certain grants, pursuant to Section 316 of the Act, for the construction of sewage treatment works available under Section 201(g) of the Clean Water Act (33 U.S.C. 1251 et seq.), USEPA is not proposing to impose these restrictions on Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties at this time. USEPA will publish a separate notice of proposed rulemaking and will provide an opportunity for comment before imposing these additional funding restrictions on sewage treatment works. For more information on the scope and procedures for these restrictions, see 45 FR 24692 (April 10, 1980) and 45 FR 53382 (August 11, 1980).

C. Opportunity for Public Hearing

In the August 3, 1983, **Federal Register** (48 FR 35315), USEPA has proposed funding restrictions for the State of Illinois under Section 176(b) and 173(4) of the Clean Air Act for failure to implement a vehicle inspection and maintenance program in Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties, as required by its approved 1979 State Implementation Plan (SIP). Section 176(b) requires USEPA to withhold Clean Air Act funds from any area where a State or Local Government has failed to implement an approved or promulgated SIP. Section 173(4) imposes a moratorium on the construction of new major stationary sources and modifications of existing major stationary sources in any area where USEPA finds that a State is not carrying out an approved plan. Section 176(a), as stated elsewhere in this rulemaking, requires withholding of certain federal assistance funds for highway construction and air quality planning grants, if USEPA finds that a State has failed to submit an approvable 1979 or 1982 Part D SIP. Section 105(e) requires USEPA to provide an opportunity for public hearing before it disapproves or revokes planning grants.

Because the basis for proposing the Section 176(b) restrictions, i.e., failure to implement an approved I/M program as part of the 1979 SIP, is closely related to the reason for proposing 176(a) restrictions, i.e., failure to submit revisions to the implementation plan, USEPA intends to consolidate the two rulemakings. This will include a joint public hearing on both sets of proposed restrictions.

The hearings will be held on the following dates at the times and locations listed below:

May 30, 1984, 10:00 a.m., U.S. District Court Room 2525, 219 S. Dearborn Street, Chicago, Illinois

May 30, 1984, 7:00 p.m., Wheaton City Council Chambers, 202 N. Wheaton Avenue, Wheaton Illinois

May 31, 1984, 11:00 a.m., Waukegan City Council Chambers, 106 N. Utica, Waukegan, Illionis

June 1, 1984, 10:00 a.m., Collinsville City Council Chambers, 125 S. Center, Collinsville, Illinois.

D. Request for Comment

Interested parties are invited to comment on all aspects of these proposed actions regarding the Illinois SIP. USEPA is soliciting comment specifically on its proposed finding that the State is not making resaonable efforts to submit a SIP that satisfies the

requirements of Section 172 of the Act. USEPA is also soliciting comment on when the funding limitations, if imposed, should be removed. If USEPA imposes funding restrictions, USEPA proposes that vehicles testing under the I/M program begin in Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties before these restrictions are removed.

USEPA will consider all comments received within 30 days of the publication of this notice. The comment deadline is June 4, 1984.

E. Regulatory Impact

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If USEPA takes final action to find that the State has failed to submit, and is not making reasonable efforts to submit, a SIP that considers each of the elements required by Section 172, certain highway construction funds under Title 23 of the United States Code, and air quality planning funds under the Clean Air Act, will be withheld. Thus, some small entities probably will be affected by final USEPA action.

USEPA cannot predict reliably the impacts of the Clean Air Act restrictions under Section 176(a) because of the exemptions authorized for highway and air quality planning projects. Careful review and evaluation of each project is necessary to determine whether or not a project is exempt. Consequently, USEPA is making no quantified assessment of the potential economic impact on small er tities that may result from today's proposal.

Furthermore, although USEPA believes that a final action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the funding restrictions in Section 176(a) is automatic and mandatory whenever the USEPA determines that a State has not submitted, or is not making reasonable efforts to submit, a SIP which considers each of the elements of Section 172.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V office listed above.

Authority: Secs. 110, 172, 176(a), 301 and 316 of the Clean Air Act, as amended; (42 U.S.C. 7410, 7502, 7506(a), 7601 and 7616).

List of Subjects in 40 CFR Part 52

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

Dated: February 10, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-12034 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-FRL 2581-2]

Ocean Dumping; Notice of Tentative Denial of Petitions To Redesignate 12-Mile Site and Scheduling of Public Hearings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative denial of petitions and announcement of public hearings.

SUMMARY: EPA today announces its tentative decision to deny petitions by several current municipal sewage treatment sludge ("municipal sludge") dumpers to amend 40 CFR 228.12(b)(4) to redesignate the 12-Mile Sewage Sludge Dump Site in the New York Bight Apex. Furthermore, EPA announces suspension of its further consideration of the redesignation of the 60-Mile Alternate Sewage Sludge Dump Site in the New York Bight. The designation of both the 12-Mile and 60-Mile Sites as EPA-approved ocean dumping sites expired on December 31, 1981. Public hearings at three locations in New York and New Jersey are scheduled for June 1984.

EPA today also announces in a separate notice that it is designating two disposal sites located in the Atlantic Ocean about 120–150 nautical miles (nmi) from the entrance to New York Harbor as EPA-approved ocean dumping sites, one for the dumping of aqueous industrial materials and the other for the dumping of municipal sludges. Both sites are located within the boundary of the former EPA-approved interim 106-Mile Ocean Waste Dump Site.

Generally, on all future permit decisions, EPA's approach to ocean dumping may be summarized as follows:

(1) The Agency will, as an overall principle, protect the oceans from significant adverse effects of waste disposal. We will particularly assure that they are not used for "cheap" waste disposal as a matter of short run economic considerations alone;

(2) In any specific case, the Agency will allow ocean disposal of a waste only if the applicant can show that no practicable alternatives are available that have less impact on the total environment. EPA will apply a rule of reason in determining practicability; and

(3) For the long run, the Agency will actively encourage environmentally beneficial approaches such as waste minimization, recycling or reuse.

DATES: Comments on this action must be received on or before July 3, 1984.

ADDRESSES: Send comments to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH–585), EPA, Washington, DC 20460.

The record supporting this proposed action may be examined at:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region II Library, Room 1002, 26 Federal Plaza, New York, NY

FOR FURTHER INFORMATION CONTACT: Mr. T.A. Wastler, Chief, Marine Protection Branch (WH–585), EPA, Washington, DC 20460 202/755–0356.

SUPPLEMENTARY INFORMATION:

I. Statute and Regulations

Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended (33 U.S.C. 1401 et seq.), authorizes EPA to grant permits for the ocean dumping of various materials. Under EPA's ocean dumping regulations (40 CFR Parts 220–229) approval of ocean dumping activities has two primary aspects. Before ocean dumping activities can commence, EPA (or the Corps of Engineers in the case of dredged materials) must issue a permit in accordance with criteria found at 40 CFR Part 227. These criteria include: (1) Specific limitations on the type and quantities of materials which may be dumped into ocean waters; (2) an assessment of the need for ocean dumping; (3) an assessment of the availability and impact of alternatives to ocean dumping; and (4) an assessment of the impact of the proposed dumping on aesthetic, recreational, and economic values and on other uses of the ocean. In applying for such a permit, an applicant must

indicate the site at which the dumping activity is proposed to take place. The applicant may propose to conduct dumping at a site already designated by EPA or at another site. In either case, EPA regulations require that the site be designated as an approved site according to procedures and criteria found at 40 CFR Part 228 before or at the same time that a permit is issued.

Section 102(c) of the MPRSA provides that the EPA administrator may, considering the criteria established pursuant to Section 102(a), designate recommended sites or times for dumping. On September 19, 1980, the Administrator delegated authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

EPA has promulgated implementing regulations which provide criteria for the designation and management of approved sites for ocean dumping (40 CFR Part 228). Criteria for the selection of dumping sites are found at 40 CFR 228.4 to 228.6. Generally, these regulations provide procedures for designation (§ 228.4), general criteria for selection (§ 228.5), and specific criteria for selection (§ 228.6). Application of these criteria to the 12-Mile Site is discussed below. The 12-Mile Site has been used since 1924 for the ocean dumping of municipal sludges. In 1973 (subsequent to enactment of the MPRSA), EPA designatd (38 FR 12875) this area as an "interim" site to be used primarily for the dumping of municipal sludges. However, small amounts of industrial materials also have been dumped at the site. While more than 200 sewage treatment plants have previously dumped sludges at the site, only 26 plants (operated by nine municipal sewerage authorities) are now authorized (all under Federal court order) to use this site for sludge disposal. Although the number of municipal sludge dumpers has decreased since passage of the MPRSA, the volume of sludge dumped at the 12-Mile Site has increased from 4.6 million wet tons in 1973 to 7.6 million wet tons in 1982. This increase has resulted from the upgrading of sewage treatment and the resultant increase in sludge production in the New York/New Jersey metropolitan area.

On May 18, 1979, the 12-Mile Site was designated as an approved municipal sludge disposal site (45 FR 29052). At the same time, an alternate site, the 60-Mile Site, was designated in the event dumping at the nearshore site became unacceptable for environmental or public health reasons. No sludges have been dumped at the 60-Mile Site. These site designations, both of which expired on December 31, 1981, were based on the information and analysis presented in the "Final Environmental Impact Statement (EIS) on the Ocean Dumping of Sewage Sludge in the New York Bight." A notice of the availability of the EIS was published in the **Federal Register** on October 16, 1978. The underlying assumption of that EIS was that, by December 31, 1981, the ocean dumping of municipal sludge in the New York/New Jersey metropolitan area would cease and environmentally acceptable alternatives would have been implemented. Requirements to implement an alternative on or before the end of 1981 were included in all interim permits for ocean dumping issued by EPA. Therefore, pending development of land-based disposal alternatives, continued use of the existing dump site was recommended.

EPA believed that so long as the required safeguards (i.e., permit restrictions on disposal, efficient monitoring program, etc.) were in effect, disposal for a limited period of time at the 12-Mile Site was preferable to use of a new, undisturbed area which would be affected if dumping were to occur there.

However, EPA did recognize that with the required upgrading of sewage treatment facilities and the construction of various new plants, the quantity of sludge needing disposal would increase and could cause additional impact to the existing disposal site. EPA submitted the following informaion during the 1976 joint hearings before the House Committee on Merchant Marine and Fisheries concerning the 12-Mile Site:

> With regard to impact categories, since the * * * sewage sludge dump site is located within 12 nautical miles of the nearest shoreline, and, based on EPA and NOAA data, the wastes dumped are detectable outside of the dumpsite itself, then under the proposed new regulations (228.10(c)(1)(i)) this site would be classified under Impact Category I. (Joint Hearings on Ocean Dumping, July 24, 1976, September 30, 1976, p. 132.)

In general, an area classified in Impact Category I shows one or more of the following five conditions relating to the quality of water or resources in the area such that these conditions can be reasonably attributed to ocean dumping activities. Specifically, these conditions relate to: (1) Detection of wastes (above ambient concentrations) within 12 miles of shoreline; (2) toxicity effects on valuable commercial species due to the wastes; (3) impairment of usage of the area due to the accumulation of solid waste material; (4) adverse effects on the taste or odor of valuable species; or (5) elevated toxic waste concentrations outside the disposal area apparent after four hours. The regulations specify that limitations on usage of a site must be made upon its classification as an Impact Category I site.

In addition, recognizing the potential for increased volumes of sludges needing disposal, EPA designated an alternate site (i.e., the 60-Mile Site) to be used "only upon a finding by EPA that the existing site [could] not safely accommodate any more sewage sludge without endangering public health or degrading coastal water quality." Specifically, the EIS stated:

> Potential adverse environmental impacts of dumping increased volumes of sludge at the existing site are related to the dispersive characteristics and the assimilative capacity of Bight Apex waters, both of which are unknown. Therefore, an expanded program has been established ot monitor the impact of countinued dumping at the existing site, especially the impact along the Long Island and New Jersey beaches and in the Hudson Shelf Valley. Results of such a program can be useful to those responsible for deciding when or whether to phase out or abandon the existing dump site. (EIS, p. 204.)

Since the end of 1981, the ocean dumping of municipal sludge at the 12-Mile Site has been authorized by court orders. Those court actions are discussed below.

II. Court Actions

In 1981, New York City and several other municipalities brought suits against EPA, challenging EPA's refusal to renew their permits to ocean dump municipal sludge at the 12-Mile Site after December 31, 1981. In the New York City case, Judge Sofaer held that EPA could not deny ocean dumping permit applications without considering the availability and impact of land-based alternatives. "City of New York v. EPA," 543 F. Supp. 1084 (S.D.N.Y. 1981). The Judge's order bars EPA from taking any action to prohibit New York City from dumping municipal sludge at the 12-Mile Site (as long as certain conditions of previously issued EPA permits are met) until the Agency rules on the City's petition to redesignate that site. If the Agency's final action is to deny the petition, New York City will take all steps necessary for a rapid and orderly shift of its dumping operations to such sites as are designated by EPA. (As noted above, EPA today is designating a Deepwater Municipal Sludge Site in the area of the former 106-Mile Site.) Dumping at such a site may continue until EPA takes final action on New York City's pending action on its permit application. Orders similar to

that issued in the "City of New York" litigation were entered on the consent of the parties in cases involving EPA and eight other municipal sewerage authorities in the New York/New Jersey metropolitan area.

Thus, in light of these court orders and today's designation of a Deepwater Municipal Sludge Site (the "106-Mile Site"), final denial of the petitions to designate the 12-Mile Site would result in the transfer of municipal sludge dumping operations from the 12-Mile to the 106-Mile Site. Dumping at the 106-Mile Site would continue, pending a final determination by EPA on the Municipalities' permit application.

III. Petitions

On December 20, 1982 (47 FR 56665), EPA requested comments on the possible redesignation of the 12-Mile and 60-Mile Sites. The Agency's consideration of the redesignation of the 12-Mile Site is based on petitons submitted by the New York City Department of Environmental Protection, the Bergen County Utilities Authority, the Joint Meeting of Essex and Union Counties, the Linden Roselle Sewerage Authority, the Passaic Vallery Sewerage Commissioners, the Rahway Vallery Sewerage Authority, and the Middlesex County Utilities Authority to commence rulemaking proceedings to extend the designation. Since the 60-Mile Site was designated as an alternate to the 12-Mile Site and since both designations have expired, EPA requested public comment on the possible redesination of one or both sites.

The original petitions filed by New York City and the six New Jersey authorities cited the lack of degradation outside the dump site, the unlikelihood of improvement if dumping were stopped there, and the additional cost of moving to a new dump site as reasons for redesignation. Since no additional factual information on the site was presented, EPA granted the petitioners additional time to provide further technical information to support their petitions. All submitted additional documentation.

IV. Findings Upon Which the Tentative Determination is Based

EPA's tentative decision to deny petitions to redesignate the 12-Mile Site is based upon a finding that designation of the site would be inconsistent with the criteria set forth in Section 102(a) of the MPRSA and in regulations issued pursuant thereto (40 CFR Part 228).

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

These general criteria are given in § 228.5 of the EPA ocean dumping regulations; § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA established these 11 factors to identify the key elements in the environmental assessment of the impact of the site for disposal. These factors are used to make critical comparisons between the alternative sites and are the bases for final site selection. The characteristics of the 12-Mile Site are summarized below in terms of the five general criteria and are covered in more detail in the subsequent discussion of the 11 specific factors.

The 12-Mile Site is located in an area of heavy commercial and recreational navigation. Because of this, strict limits have had to be placed on the time municipal sludge barges may occupy the site for dumping. Also, the individual barges utilizing the site are numerous enough at this time to cause concern about the potential hazards to navigation that may result from increased utilization of the site in the future. The site is located in and adjacent to existing fishery and shellfishery areas. Sludge dumped at the site is widely dispersed in the New York Bight Apex and contributes to the overall degradation of the area, including the inability to use shellfisheries as a result of bacterial contamination of shellfishery areas.

The impacts of sludge dumped at the site are not confined to the site itself, but are dispersed widely throughout the Bight Apex. The site is within 12 nmi of coastal beaches in New Jersey and Long Island and adjacent to important recreational fishing areas. Oceanographic conditions at the 12-Mile Site are such that dumping operations cause perturbations in water quality in and near the site. Elevated levels of bacteria have resulted in the area surrounding the site being closed by the Food and Drug Administration to shellfishing. Levels of toxic metals and organohalogens on bottom sediments are increased over normal ambient levels in areas near the site, including known fishing areas and within 5 nmi of coastal beaches. Changes in relative abundance and diversity of species in areas affected by sludge dumping have been observed, as have indications of sublethal effects, including bioaccumulation. While these impacts cannot be exclusively attributed to ocean dumping of municipal sludge at the 12-Mile Site, sludge dumping at the site is a contributing factor to the overall degradation of the New York Bight Apex. While EPA's monitoring has not detected adverse impacts from municipal sludge dumping on New York and New Jersey beaches, increased utilization of the site for sludge dumping in the future carries with it the potential for direct effects on shorelines and beaches around the Bight Apex.

The site's location near other significant sources of contaminant inputs affecting the overall Bight area (e.g., the Hudson-Raritan estuary plume) severely restricts our ability to isolate, identify, and control the immediate impacts of sludge dumping and to implement an effective monitoring and surveillance program to detect long-term impacts. With increased utilization of this site in the future, the inability to identify impacts on a countinuing basis could result in irretrievable damage to the Bight Apex before sufficient conclusive information becomes available to take mitigative measures.

The 12-Mile Site location, while historically used for sludge disposal, does not satisfy the statutory mandate for sites to be located off the Shelf wherever feasible. Municipal sludge dumped at an off-the-Shelf site would be largely dispersed in the upper part of the water column. It is technically feasible to monitor the impacts of such dumping. The greater distance from shore of such a site would reduce the probability of any impacts on shorelines and beaches or interference with nearshore fisheries and shellfisheries. The cost to the municipalities using an off-the-Shelf site would be greater. However, EPA believes that municipal sludge disposal at an off-the-Shelf site (e.g., the 106-Mile Site,) is environmentally preferable and economically feasible. EPA's decision to designate a deepwater municipal sludge site within the 106-Mile Site is based upon a finding that the site is consistent with the criteria set forth in Section 102(a) of the MPRSA and in 40 CFR Part 228.

Sewage sludge dumped at the 12-Mile Site does not remain at the site but spreads through the Bight Apex. The site was originally designated for a finite period on the presumption that municipal sludge dumping in the New York/New Jersey metropolitan area

would be terminated at the end of 1981. This has not been the case. Larger quantities of municipal sludge will be generated in the near future and may need to be dumped at an ocean site. The present sludge dumping site does not meet the criteria as an acceptable site. An alternate deep ocean disposal site does exist. Therefore, EPA has tentatively determined to require use of a different site for municipal sludge dumping in the future.

The eleven specific factors considered in site designation are discussed below as they relate to the 12-Mile Site.

Factor 1—Geographical position, depth of water, bottom topography and distance from coast.

- The site is located on the Continental Shelf in the New York Bight Apex.
- Water depth is approximately 27 meters.
- Bottom topography is flat, and elevated relative to the adjacent Hudson Shelf Valley and Christiaensen Basin.
- The nearest point of land in New Jersey is approximately 10.3 nautical miles from the site and on Long Island, 9.9 nautical miles.
- The site occupies an area of about 6.6 square nautical miles with coordinates of 42°22'30" to 40°25'00" N Latitude and 73°41'30" to 73°45'00" W Longitude.

Factor 2—Location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases.

- Substantial valuable living marine resources are associated with the 12-Mile Site and adjacent areas. These resources are heavily utilized by commercial and recreational fishing interests.
- The site is located within an area in which shellfishing is prohibited by the Food and Drug Administration due to bacteriological contamination.
- The area is utilized by fish and shellfish for breeding, spawning, nursery, feeding, and passage in both juvenile and adult phases.
- Approximately 30 species of whales, seals, and dolphins are observed in the mid-Atlantic area in the course of their migration, although infrequently in the dump site area.
- Three endangered and two threatened species of sea turtles are found in the mid-Atlantic. Two of the five, Atlantic ridley and loggerhead turtles, are known to occur nearshore.
- Fin and right whales occur in both nearshore and offshore waters. The humpback whale prefers shallow (less than 200 meters) coastal waters.
- Several species of seabirds breed in the middle Atlantic states with New Jersey and Long Island harboring the largest nesting areas. Of particular concern are the least tern, roseate tern, and the black skimmer, as the present populations of these species are greatly reduced over historic population sizes.
- The 12-Mile Site lies within the Atlantic Flyway through which over three million migratory waterfowl travel annually.

Factor 3—Location in relation to beaches and other amenity areas.

- The site is near coastal beaches, resorts, state and Federal parks, and other amenity areas in New Jersey and Long Island. The nearest coastline (Long Island) is 9.9 nmi away. The nearest landfall in New Jersey is 10.3 nmi away.
- Sludge-related waste constituents are detected above normal ambient values in bottom sediments within 5 nmi of Long Island.

Factor 4—Types and quantities of waste proposed to be disposed of, and proposed methods of release.

- All wastes authorized to be dumped at the site, if redesignated, must meet EPA's ocean dumping regulations and criteria.
- It may be possible for individual dumpers currently using the 12-Mile Site to comply with the persmissible discharge rate required by EPA's ocean dumping criteria (40 CFR 227.8, 227.27). However, because of the significant volume of sludge dumping, the limited size of the dump site, significant concern for navigational hazards, the relative toxicity of the sludge dumped, and other technical factors, it does not appear to be possible for the present dumpers, in combination, to comply with that discharge rate.
- All authorized municipal sludges would be transported by vessels with subsurface release mechanisms.
- None of the authorized wastes would be packaged in any manner.
- From 1973 to 1982, approximately 55 million wet tons of municipal sludges were dumped at the 12-Mile Site. In 1973, 4.6 million wet tons were dumped. This increased in 1982 to approximately 7.6 million wet tons.

Factor 5—Feasibility of surveillance and monitoring.

- Both activities are feasible at the site.
- Surveillance activities can be accomplished by patrol boat, aircraft, or shiprider provided by the Coast Guard, or remote observation such as by radar or satellite.
- The site can be monitored by ocean-going vessels. EPA, NOAA, the permittees, and others have conducted extensive monitoring/research activities in and near the site in the past.

Factor 6—Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevalent current direction and velocity.

- The mixing of waters at the 12-Mile Site is quite complex. Surface waters are derived from two different water masses, Shelf water and Hudson estuary water, each with distinctive physical, chemical, and biological characteristics. Shelf water normally occupies the site.
- A thermal stratification between depths of 5 and 23 meters exists during June through September. In winter, the site is characterized by well-mixed conditions; however, a weak residual stratification may exist. Spring and fall are transitional periods.
- Circulation patterns at the 12-Mile Site are variable and complex. The average surface currents at the site are south-southwesterly, roughly paralleling the New Jersey coastline. Net bottom currents in the Apex, including the dump site area, are shoreward toward Long Island or New Jersey. The mean surface currents at the site are 5 centimeters per second; mean bottom currents are 2 centimeters per second. The greatest net movement of water and sediment takes place during storm periods.
- Municipal sludges have four components of environmental concern: a surface film generally transported by prevailing winds; an aqueous phase (sludge is approximately 95 percent water) which is dispersed by currents within the upper water colomn bounded at times by a seasonal thermocline; a suspended-particulate phase which is dispersed in a similar manner; and a solid phase (approximately 2 percent) which tends to settle rapidly to the bottom.

Factor 7—Existence and effects of current and previous discharge and dumping in the area (including cumulative effects).

- Active dredged material, cellar dirt, and acid waste dump sites are located in the Bight Apex; an inactive derelict vessel dump site also is located in the Apex.
- Quantities of municipal sludges dumped in the Bight have increased from about 4.6 million wet tons in 1973 to over 7.6 million wet tons in 1982. Quantities of dredged material dumped at the Mud Dump Site in the Bight Apex decreased from over 13 million tons in 1973 to 4.7 million tons in 1982. Acid wastes dumped at the Acid Site decreased from about 2.7 million wet tons in 1973 to 0.8 million wet tons in 1982. Cellar dirt dumping decreased from 900 thousand tons in 1973 to 89 thousand tons in 1980; no cellar dirt was dumped in 1981 and 1982.

• Currently, 200 million gallons of raw, 133 million gallons of primary treated, and 1,883 million gallons of secondary treated wastes are discharged daily to the Hudson estuary from municipal treatment plants and ultimately enter the Bight Apex. Approximately 275 million gallons per day of industrial wastes (excluding cooling waters) also are discharged directly to the estuary.

• Monitoring by EPA, NOAA, and others has indicated that the Bight Apex is significantly degraded.

• The relative mass loading of the different contaminant inputs to the Apex varies considerably. The largest contributions, by weight, are those associated with discharges in the Hudson estuary (including municipal and industrial discharges); the next largest are those associated with the ocean dumping of municipal sludges, dredged materials, and industrial wastes. The relative environmental impact of these contaminant inputs varies considerably, independent of mass load contribution. For example, while municipal sludge is only two to twelve percent of the total contaminant input to the Bight Apex, its widespread dispersion enhances its bioavailability. In contrast, as discussed in EPA's EIS on the Mud Dump Site, when dredged material is ocean dumped, much of the mass load of contaminants is sequestered in a mound when it is dumped and thus is not readily available to the biota

• Sludge associated contaminants have been found within 5 nmi of coastal beaches, including portions of the sensitive Hudson Shelf Valley and other important fishing areas.

• Ecological effects attributed wholly or in part to the ocean dumping of municipal sludge include: closure of shellfish beds; introduction of viral, bacterial, fungal and protozoan pathogens into the Apex; elevated levels of heavy metals and toxic organic compounds (e.g., PCB's) in bottom sediments; reduced bottom dissolved oxygen levels reduced catches of bony fishes; alterations in the benthic biological community, particularly the proliferation of stress-tolerant polychaete worms; observed sublethal effects in organisms, including reduction of reproductive functions, increased incidences of fin rot and black gill, mutation of fish larvae, and decreased surivial of offspring; and introduction of carbon and nutrients, which contribute to planktonic blooms and anaerobiosis.

Factor 8—Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.

• Previous dumping activities at the 12-Mile Site have been reported to interfere with fishing and recreational use of the Bight Apex.

• The site is located in the heavily trafficked entrance to New York Harbor. It is within the precautionary zone established by the U.S. Coast Guard for commercial and recreational ship traffic. Navigational hazards may result from vessel transit to and from the site and from their limited maneuverability while discharging. The imposition of more stringent discharge rate requirements on sludge dumpers would reinforce this concern.

• Valuable living marine resources associated with the site and adjacent areas are substantial and heavily utilized by commercial and recreational fishing industries and the public. The ability of the Bight Apex to sustain living resources harvested by man has been impaired. Shellfishing in much of the Apex is banned.

Factor 9—The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

• Elevated levels of bacteria and viruses in the water column and bottom sediments have been observed in a large area adjacent to the site.

• Changes in relative abundance and diversity of species in areas affected by sludge disposal have been observed, as have indicators of sublethal effects, including bioaccumulation, mutations, and increased bacterial resistance to antibiotics and toxic metals.

• Elevated levels of heavy metals, including cadmium, mercury, lead, copper, and chromium, have been found in and adjacent to the 12-Mile Site and in the Christiaensen Basin and the Hudson Shelf Valley. A fecal steroid, Coprostanol, and bacterial spores of *Clostridium perfringens*, which are associated with municipal sewage sludge and are utilized as sludge tracers, are found in the same areas.

• Municipal sludge dumping contributes to depressed bottom dissolved oxygen levels at and near the site, particularly in the late summer. This represents an additional stress on the benthic fauna.

Factor 10—Potentiality for the development or recruitment of nusiance species in the diposal site.

• The development or recuitment of nuisance species has been observed, particularly polychaete worms and microbial organisms (bacteria, viruses, etc.) in and around the site.

• Impacts to the benthic fauna at and adjacent to the site have altered the biological community, resulting in the loss of the preferred food sources for important finfish.

Factor 11—Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

• The site is located in close proximity to Gateway National Recreational Area, the most heavily utilized national park in the United States.

• The site also is located near a number of important Federal, State, and local parks, including Fire Island National Seashore and Jones Beach State Park on Long Island, and Island Beach State Park in New Jersey.

• Due to its proximity to the metropolitan area, the site is in close proximity to various features of historical importance, including the Marconi Twin Lights, various forts, and Liberty Island.

Conclusion—Based on its analysis of the petitions and supporting documents, EIS and comments thereon, public hearing records, public comments on the petitions to redesignate the site, and EPA/NOAA documents containing the results of scientific studies of dumping activities at and near the 12-Mile Site, EPA concludes that designation of this site would not be in compliance with statutory and regulatory criteria for ocean dump site designation. Furthermore, continued use of this site for municipal sludge disposal would result in further degradation to the area, including both ecological and public health impacts. Evidence of degradation is apparent through detection of waste constituents (above ambient levels) in bottom sediments within five nautical mile of the coastline; toxicity effects (finrot, gill fouling, etc.) on valuable commercial species; changes in abundance and diversity of valuable food web species; and elevated bacterial levels resulting in closure of shellfish harvesting areas.

EPA has consistently worked toward meeing the goal of restoring the quality of the nation's marine environment. Based on this goal, the current state of the environment in the Bight Apex, an anticipated increase in the amount of sludge needing disposal in the future, and the existence of an environmentally preferred ocean dump site, EPA has determined that further contamination of the area by municipal sludge dumping is no longer justified nor is it permitted by the siting criteria in the regulations. NOAA and EPA scientists expect a gradual but slow recovery of the area with regard to many environmental impacts after discontinuation of

dumping at the 12-Mile Site. In addition, these scientists believe that shellfishing may be reopened, particularly in the eastern portion of the Apex, if dumping were ceased. Thus, discontinued use of the area along with its anticipated recovery is consistent with the statute, regulations issued pursuant thereto, and the goals of environmental restoration.

V. Suspension of Consideration of Possible 60-Mile Site Redesignation

The 60-Mile Site is located located on the Continental Shelf in the New York Bight. As such, the site fails to comply with the statutory preference for sites to be located off the Shelf wherever feasible (§ 228.5(e)). The site has never been used for the regulated disposal of wastes and contains a diverse biological community. Like the 12-Mile Site, the 60-Mile Site serves as a spawning and nursery ground for resource species. Bottom organisms supporting these species also occur in high standing stocks. It is located in or adjacent to areas identified as valuable commercial fisheries for mackerel, fluke, whiting, scup, and butterfish, among other species. Furthermore, the site is located in or adjacent to areas identified as having commercially valuable surf clam, quahog, and scallop fisheries. It is also in the migration pathway for many species of fish, lobster, marine mammals and turtles.

Because both the 60-Mile Site and the 12-Mile Site are located on the Continental shelf, many of the environmental concerns noted above which pertain to the 12-Mile Site also apply to the 60-Mile Site. However, several differences do exist which should be noted. The 60-Mile Site is not located in the U.S. Coast Guard precautionary zone. It is located farther from shore, and thus a longer transit time for sludge barges would be required. This increased distance, however, also is associated with increase depth, which would allow for greater dispersion and dilution of the wastes in comparison to the 12-Mile Site. However, as NOAA reports, the relatively shallow depths along with other physical characteistics would probably reduce dispersion. Thus, benthic accumulation is possible. Also, due to the increased distance for shore, there would be less potential for adverse impact to New Jersey and Long Island beaches.

Conclusion—EPA's decision to suspend further consideration of possible designation of the 60-Mile Site is based on the probability of experiencing many of the same detrimental effects already apparent at the 12-Mile Site. Furthermore, although it was designated as an alternate site, the 60-Mile Site has not been utilized in the past for disposal of any type of waste and is a relatively uncontaminated area. Commencement of sludge dumping at the site would undoubtedly result in closure of the area to shellfishing. More importantly, an area does exist (i.e., the 106-Mile Site) which has been previously used for disposal of industrial and municipal wastes and also meets the statutory criteria in that it is located off the Continental Shelf. The notice designating the Deepwater Municipal Sludge Dump Site and the Deepwater Industrial Wastes Dump Site may be found elsewhere in today's **Federal Register.**

VI. Response to Comments

EPA received a substantial number of responses to its request for comments on the possible redesignation of the 12-Mile and 60-Mile Sites (47 FR 56665, December 20, 1982). The petitioners and a few other commenters favor the redesignation of the 12-Mile Site. However, EPA has received hundreds of comments, including resolutions by approximately 50 municipalities and letters of concern from numerous elected officials objecting to the redesignation of the 12-Mile Site. Responses to many of these comments may be found in Section VII of the notice designating the 106-Mile Site, found elsewhere in today's **Federal Register.** Additional technical information can be found in the site designation EIS referenced above. Responses to specific comments on the 12-Mile Site follow.

Comment—Current sludge dumpers (the petitioners) have asserted that continued use of the 12-Mile Site would not cause further degradation of the marine environment, nor would it result in direct impacts to beach/shoreline areas. These petitioners assert that, based on the absence of impact along beaches specifically due to current dumping of sludge at the 12-Mile Site, continued use of this site will not result in further degradation of water quality. In addition, claiming that costs of utilizing a site farther offshore (i.e., the 106-Mile Site) can be three to five times higher, the petitioners conclude that the environmental benefits associated with the use of an alternate site do not outweigh these increased costs.

Response—First, while the ocean dumping of municipal sludge at the 12-Mile Site has not been shown to adversely affect beaches, such an impact is a potential hazard due to anticipated increased volumes of sewage sludge and to variability in winds and currents in the area. Second, although continued dumping (assuming no substantial increase in volume) might not affect water quality, the continued input of contaminants will be reflected in further elevation of contaminant levels in bottom sediments, posing the risk of further bioaccumulation. Third, while EPA does not engage in a cost-benefit analysis in selecting sewage sludge disposal sites, the Agency has concluded that the incremental costs of disposal at the 106-Mile Site are reasonable. (See response to comments on 106-Mile Site designations.)

Although the 12-Mile Site has been used in the past, EPA will not redesignate a site which is inappropriate, not only based on statutory criteria, but also technical evidence of contamination and ecological damage.

Comment—Has the contamination of the 12-Mile Site and adjacent areas been a direct effect of sludge disposal activities? Will the area recover in the event disposal activities cease?

Response—Many of the adverse environmental effects noted in the vicinity of the 12-Mile Site can be attributed in whole or in part to the dumping of municipal sludges. These include the introduction of pathogenic organisms and the resultant closure of shellfish beds; elevated levels of heavy metals and toxic organic compounds; reduced bottom dissolved oxygen levels, particularly during summer months; and alterations in the biological communities. Once the input of contaminants by sludge dumping is ceased, it is expected that the area, especially the easterm portion of the Apex, will begin to recover due to natural reworking of bottom sediments. Although this recovery is predicted, the rate at which it will occur is as yet undetermined. Evidence of such a recovery has been documented at two ocean sites previously used by the city of Philadelphia for sludge dumping.

Comment—What is the current policy for monitoring the 12-Mile Site? Does the responsibility lie with EPA or the permittees?

Response—Ongoing monitoring of the New York Bight, specifically the sewage sludge dump site, is a coordinated effort between permittees, EPA, and NOAA. Compliance monitoring, accomplished by the permittee at the time of dumping, assesses the waste itself as well as its immediate dispersion and dilution, and short-term impacts. Requirements for this compliance monitoring are incorporated as specific permit conditions. EPA, being responsible for overall management of the designated

dump sites, provides monitoring through various means, including near-field monitoring and trend assessment surveys. Far-field monitoring is performed by NOAA as part of its ongoing oceanographic research efforts and provides data relative to marine resources and ocean processes on a much wider scale.

Comment—What are the options available to the petitioners once a final action on the 12-Mile Site is taken? Will public hearings be scheduled in the areas most affected by the decision?

Respones—EPA is today proposing denial of the petitioners' requests to redesignate the 12-Mile Site for sewage sludge disposal. EPA today is also disignating the 106-Mile Site for municipal sludge disposal. When and if EPA makes its final decision to deny the petitions, under existing court orders, the petitioners will be required to relocate their dumping operations to the 106-Mile Site (or such other sites as may be designated), pending EPA action on the petitioners' aplications for ocean dumping permits. In the event that the final EPA action is to redesignate the 12-Mile Site, permit applications must be finalized to address continued dumping at this site.

As indicated in this notice, prior to any final decisions by EPA, public hearings will be held at three locations to receive comments from all interested parties.

Comment—Should not the EIS on Ocean Dumping of Sewage Sludge in the New York Bight (September 1978) be updated to include more current information prior to final action relative to site designation?

Response—Since publication of the EIS, a substantive public record of subsequent information has been developed pertaining to the ocean dumping of sewage sludge in the Bight Apex. Included as part of this record are detailed technical reports and comments submitted by the petitioners, by various groups and individuals in response to public notices, and by EPA, NOAA, their contractors, and others.

This information has been summarized and presented in a report entitled "Technical Review of the 12-Mile Sewage Sludge Disposal Sits" (Camp, Dresser & McKee, EPA Contract 68–01–6430). All this information, as well as other information submitted in response to this notice and at the three scheduled public hearings, will be utilized by the Agency in formulating its final action.

VII. Request for Comments and Scheduling of Hearings

EPA today solicits written comments on both the tentative denial of petitions to redesignate the 12-Mile Site and the decision to suspend further consideration of the 60-Mile Site redesignation. Recognizing the considerable interest by affected parties, the Agency is scheduling public hearings at three locations in the New York and New Jersey area. Public notice of exact times and locations will be announced in the **Federal Register.**

Dated: April 26, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84–12065 Filed 5–3–84: 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would revise existing regulations governing the Health Education Assistance Loan (HEAL) program, to permit the Secretary to increase or decrease the rate of the insurance premium on HEAL loans, as necessary to ensure the solvency of the Student Loan Insurance Fund, through notices published in the **Federal Register.** The proposed effective date of each such rate change will provide lenders sufficient time to implement the new rate.

DATE: As discussed below, comments are invited. To be considered, comments must be received by June 4, 1984.

ADDRESSES: Written comments should be addressed to the Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice M. Swift, Chief, Program Development Branch, Division of Student Assistance, BHPr, HRSA, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number 301 443–4550.

SUPPLEMENTARY INFORMATION: Section 732(c) of the Public Health Service Act authorizes the Secretary to charge an insurance premium for each HEAL loan at a rate not to exceed 2 percent per year of the unpaid loan principal. All premiums are deposited in the Student Loan Insurance Fund established by section 734 of the Act, which is the only source of payments by the Secretary on defaulted HEAL loans. It is described that the premium rate be maintained at a minimum level sufficient to assure that funds will be available to cover insurance claims made by HEAL lenders.

In the **Federal Register** of October 12, 1982 (42 FR 44730) the Secretary increased the insurance premium rate from one-quarter of 1 percent to 1 percent. However, amending the regulation each time the premium rate needs adjustment is time consuming, inefficient and places an unnecessary burden on the Department.

The Secretary has determined that it is more efficient to announce any decreases or increases in the insurance premium rate by a notice published in the **Federal Register.** Such notices would be effective 30 days after the date of publication of the notice in the **Federal Register.**

This notice proposes, therefore, to revise § 60.14 of the current regulation to allow adjustments in the premium rate by a notice published in the **Federal Register.** This change in procedures would provide the Secretary with the flexibility necessary to adjust the premium rate in a timely manner. This proposed change in procedure also ensures that the insurance premium rate charged at any given time will reflect current needs.

The Department notes that the HEAL variable interest rate is announced quarterly through a notice published in the **Federal Register.** The Department proposes to announce the current insurance premium rate in the same publication for the convenience of program participants.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed new requirements in this regulation are minimal. The HEAL lenders pass on the cost of the insurance premiums to the HEAL student borrowers. Therefore, since the increase in the rate of the insurance premium

established in this regulation will impact only individuals, a regulatory flexibility analysis under th Regulatory Flexibility Act, Pub. L. 96–354, is not required.

The Secretary has determined that this regulation does not meet the criteria for a major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required. Specifically, since the total amount the Federal Government is authorized to guarantee under this program is only $250 million in 1984, any change in the rate of the insurance premium will not approach $100 million per year.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan progams—health, Medical and dental schools, Reporting requirements, Student aid.

(Catalog of Federal Domestic Assistance, No. 13.108; Health Education Assistance Loan, Program)

It is therefore, proposed to amend 42 CFR Part 60 as set forth below:

Dated: March 1, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: April 1, 1984.

Margaret M. Heckler,

Secretary.

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGAM

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 93 Stat. 582 (42 U.S.C. 294–294).

In § 60.14 paragraph (b) is revised to read as follows:

§ 60.14 Insurance premuim.

* * * * *

(b) *Rate.* The Secretary determines the rate of the insurance premium based upon the amount of claims paid compared to the amount of insurance premiums collected. This rate shall not exceed 2 percent per year of the loan principal. The Secretary announces the rate of the insurance premium on a quarterly basis through a notice published in the **Federal Register.** Any rate change shall be effective 30 days after the date of publication of the notice in the **Federal Register.**

* * * * *

[FR Doc. 84–12035 Filed 5–3–84; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act, Intent To Propose Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to propose rulemaking.

SUMMARY: The Bureau of Land Management is studying the possibility of revising the existing regulations concerning the determination of fair market rental fees for rights-of-way crossing public lands. This action is in response to recent questions concerning the determination of fair market rental fees and appeals which question the regulatory and administrative procedures used in decisions establishing rental payments. Those raising questions argue that the current methods are inconsistent and not uniformly applied. Some individuals are concerned that the methods currently used are costly, inefficient and may not satisfactorily estimate fair market rental value as required by the Federal Land Policy and Management Act and the Mineral Leasing Act.

The Bureau of Land Management requests suggestions from the public in developing and reviewing possible methods for establishing fair market annual rental. Any method suggested for adoption should reliably estimate fair market rental, reduce administrative costs for individual appraisals and be easily updated to reflect changes in fair market rental. This notice is being issued in conjunction with a similar notice by the Forest Service.

DATE: Comments should be submitted by July 3, 1984. Any comments received or postmarked after the above date may not be considered in the decisionmaking process on issuance of a proposed rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Cavanaugh (202) 343–5441.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) and the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 185), require that the holders of a right-of-way across public lands pay annually in advance the fair market rental value of the right-of-way "as determined by the Secretary".

In 1983, the Bureau of Land Management received $1, 942,466 in right-of-way rental payments for use of the public lands. Approximately 32,000 linear rights-of-way are in a billing status with almost half being in New Mexico and Wyoming. Each year 5 to 6 thousand rental determinations are made with the average rental being approximately $60.00. Currently, rentals are established for a five-year period based upon either an appraisal or use of an administratively adopted "screening" procedure.

Two methods of appraisal currently used attempt to approximate typical market conditions. The Land Value/Rental approach attempts to arrive at fair market rental value by estimating rent as a percentage of land value. Land values are established and predetermined adjustments are applied to account for the degree of land encumbrance and the percentage of rights and interests being conveyed by the right-of-way grant. The adjusted value of the right-of-way grant is then converted to an annual rental by application of an inerest rate. As an example, a right-of-way for an oil and gas pipeline (50' × 2.83 miles) miles would be valued as follows:

Fee value, $1,715.00

17.15 acres @ $100 per acre

$(2.83 \times 5280) \times 50/43.560 = 17.15$ acres

Value Interest Acquired, $686.00

$\$1,715.00 \times .40^{*} = \$686$

Right-of-Way Rental Payment, $68.60

$\$686.00 \times .10^{**} = \$68.68$

Value Per Unit, $.976/rod; $24.24/mile

*40 percent reflects appraisers judgement of rights conveyed.

**10 percent reflects rate of return.

The other appraisal method presently used is the "going rate" approach and is used in New Mexico, Wyoming and Colorado to establish rentals on oil and gas pipelines. Using this method, the appraiser obtains information on recent purchases of rights-of-way and determines if the right-of-way purchased on a "going rate", i.e., per mile, per rod. Once the "going rate" is established, the appraiser makes a 30 percent downward adjustment to reflect the overall differences between a one-time payment for a permanent easement and a rental for a right-of-way across public lands. This amount is then converted to an annual rental by using an interest rate factor. For example:

Applicable "Going Rate", $10.00/rod
Market Value of Right-of-way of 960 rods (3 miles), $9,600.00
Adjustment for BLM Grant (30 percent reduction), $7.00/rod
Market Value of Right-of-way of 960 rods (3 miles), $6,720.00
Rental Computation, $610.00/year
$6,720.00 × .090915* = $610.00/year
Value Per Unit, $.63/rod; $203.00/mile
*Interest rate factor (.090915) represents annual amount in advance necessary to amortize total payment over 100 years at a prevailing interest rate of 10 percent.

Both methods use appraisal rationale to support an estimate of value where no rental market exists. Questions have been raised about the direct relationship between land or right-of-way value and rental, as well as about measurable data used in making assumptions to justify various downward adjustments used by the appraiser. Although each method purports to arrive at fair market rental value, both utilize assumptions which may be questionable and may lead to erroneous rental estimates.

The "going rate" method has received the greatest amount of criticism since it has resulted in sharply higher rental payments. Oil and gas right-of-way holders allege that using the "going rate" approach violates the Administrative Procedures Act because it has a singificant financial impact on an affected right-of-way grant. It is also alleged that this method is improper, not professionally recognized, includes unsupported adjustments, is improperly applied and does not estimate the fair market rental value as required by law.

The "screening" method is used in approximately 30 percent of all right-of-way cases. This method is used when an appraisal would be too costly. Under it, rental payments are renewed at the existing rental or at a minimum of $5 per year established in the regulation. Rentals established using this system are not considered rental value as required by law. The screening procedure is being phase out in those States which have adopted rental schedules based upon market data.

The public is requested to make suggestions on cost effective methods or procedures to estimate fair market rental payments. Of special interest is the application of market-derived formulas or schedules that could be applied on a State or regional basis. Such schedules or formulas should be applicable to most linear right-of-way grants crossing public lands and should result in rentals that are applied consistently for various types of right-of-way grants.

Suggested methods should reflect:

1. The legislative requirements established by the Federal Land Policy and Management Act and the Mineral Leasing Act.

2. Reliability of the method to reasonably establish fair market value.

3. Cost effectiveness in establishing and updating rental payments.

The public is also requested to give its comments on methods, other than rulemaking, that might be used to change the existing procedure used in setting fair market rental value for right-of-way grants.

The determination as to whether this rulemaking will be a major rule under E.O. 12291 and whether it will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) has not been made. Final determinations will be made on both of these questions prior to the publication of a proposed rulemaking on this subject and any public comments on these issues will be reviewed as part of the decisionmaking process on the determinations.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines, Public lands—right-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements.

Dated: April 27, 1984.

Leona A. Power,

Acting Assistant Secretary of the Interior

[FR Doc. 84-12017 Filed 5-3-84; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 61, 71, 91, 107, 167, 176 and 189

[CGD 84-024]

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Various Coast Guard regulations specify the intervals for drydocking and tailshaft examinations on inspected vessels. The Coast Guard is considering changing these intervals. Extending the interval between drydockings, if it could be accomplished without diminishing overall vessel safety, could result in significant savings to vessel operators. This advance notice solicits public input regarding appropriate intervals for drydockings and tailshaft examinations and the details of tailshaft examinations.

DATE: Comments must be received on or before August 2, 1984.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44)(CGD 84-024), U.S. Coast Guard, Washington, DC 20593. The comments will be available for examination or copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays at the Marine Safety Council (G-CMC/44, Room 4402, Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Alan E. Spackman, Project Officer, at (202) 426-4431.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this advance notice of proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses and identify this notice, CGD 84-024, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed post card is enclosed. All comments received before the expiration of the comment period will be considered before further action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by anyone raising a genuine issue.

This advance notice contains requests for specific information that the Coast Guard believes will aid in developing specific proposals for changing the existing drydockings and tailshaft examination requirements. The fact that we have posed specific questions should not limit persons from providing any other data that they may consider pertinent. While no specific information is solicited regarding the intervals for, or the scope of, other examinations required by current Coast Guard regulations, comments in this regard, particularly if they serve to define any inherent relationship between these other requirements and the requirements for drydocking and tailshaft examinations would be helpful and will be considered. Based on a review of such comments, the Coast Guard may, in the future, and by notice in the **Federal Register**, expand the scope of this proposal to include these other examinations.

Drafting Information

The principal persons involved in the drafting of this rule are LCDR Alan E. Spackman, Project Manager, Office of Merchant Marine Safety and Michael N. Mervin, Project Attorney, Office of Chief Counsel.

Discussion

Need to Reexamine Requirements:

Various Coast Guard regulations set specific intervals for the drydocking or hauling-out of inspected vessels. The interval is currently determined by the specific subchapter under which the vessel is inspected and is based on the percentage of the vessel's service that is in fresh water; for the majority of vessels the result is a two-year drydocking interval.

By law (46 U.S.C. 3307(3)) *most* vessels are required to be inspected for certification at two year intervals. The Coast Guard's machinery regulations require periodic inspection and testing of pressure vessels, boilers, steam piping, etc. at 2, 4 and 8-year intervals; the interval corresponding with the statutory requirements for the Coast Guard to inspect the vessels for certification. Largely due to economic reasons, vessel operators have chosen to schedule these inspections concurrently with the drydocking of their vessels.

The technology for bottom coatings, corrosion control, welded fabrication and steel quality control have changed considerably since the Coast Guard established the drydocking intervals. Drydocking, and accompanying gas-freeing costs are high. The lay-time necessitated by drydocking presents scheduling problems, and reduces the time the vessel is available for service. Extending the interval between drydockings may result in significant savings to vessel operators. However, overall vessel safety must not be diminished.

The American Bureau of Shipping (ABS) and other classification societies have recently revised their rules, and now require most classed vessels to be drydocked at 30-month intervals instead of two-year intervals. This corresponds to the intervals currently under consideration by the International Maritime Organization (IMO) under its program to recommend standardized survey procedures for various international maritime conventions. Further, the Towing Safety Advisory Committee (TSAC), at its 20 July 1983 meeting, recommended that the Coast Guard change the drydocking interval for barges in lakes, bays and sounds service to three years.

Given these circumstances, it is the position of the Coast Guard that it is appropriate to reexamine our drydocking requirements at this time. Since, for most vessels, tailshafts can only be examined while the vessel is drydocked, these requirements, as well as the specific requirements for the examination, should also be considered at the same time.

Drydocking

Why Vessels are Drydocked:

Vessels are routinely drydocked for a variety or reasons, the primary reasons include:

(a) Drydocking provides the best opportunity to develop an overall impression of the condition of a vessel's underwater body. It is often the only way that, on large conventionally hulled vessels, symptoms of deficiencies in the strength of the main hull can be observed.

(b) Certain areas of a vessel, such as the seachests, the propellers, rudders, etc., are readily accessible for inspection or maintenance only when the vessel is on drydock.

(c) The vessel's plating can best be examined for areas of general or localized wastage and evidence of minor bottom damage while on drydock. Examination while on drydock also permits the use of testing methods that would be inpracticable or inadvisable while the vessel is afloat.

Other benefits of drydocking include:

(a) Drydocking often provides an extended idle period during which it is possible to inspect and maintain such items as propulsion boilers, main and auxiliary steam piping, starting air systems and pressure vessels.

(b) Drydocking provides an opportunity to clean a vessel's hull and propellers, which increases the vessel's fuel efficiency.

(c) Being out of the water provides the opportunity to apply paint, preservatives or coatings to the vessel's bottom.

Current Requirements for Drydocking and Hull Examination:

Besides the Coast Guard's requirements, which will be discussed below, there are several international conventions which specify intervals for examination of the hull structure. Since the United States is a party to these conventions, their terms are binding. However, these conventions have limited and differing applicability. For example, the International Convention of Load Lines only applies to vessels over a minimum specified length when on international voyages, while the Safety of Life at Sea convention only applies to vessels that have a gross tonnage above a specified minimum. The principal requirements under these international conventions are:

(a) Chapter I, Regulation 7(b)(3) of the Safety of Life at Sea Convention (SOLAS) requires examination, at one year intervals, of the outside of the bottom of the hull on vessels which carry more than 12 passengers.

(b) Chapter I, Regulation 10(a)(i) of the International Convention for the Safety of Life at Sea (SOLAS) requires examination, at five year intervals, of the hull of cargo vessels of 500 gross tons or more.

(c) Chaper I, Regulation 10(a)(ii) of SOLAS requires examination of the outside of the bottom of the hull on tankers of 500 gross tons or more which are ten years of age and over, at intervals not to exceed 36 months and at least twice in each five year period.

(d) Annex I, Regulation 4 of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 (MARPOL 73/78) requires, at intervals not to exceed five years, a complete survey of a vessel's structure for tankers of 150 gross tons or more and ships, other than tankers, of 400 gross tons or more.

(e) Article 14 of the International Convention on Load Lines, 1966 requires a complete survey of a vessel's structure at intervals not to exceed five years.

In addition, the International Maritime Organization has under consideration proposals that would amend Chapter I, Regulation 10 of SOLAS to require examination of the outside of the bottom of the hull on all cargo ships, including tankers, at intervals not to exceed 36 months and at least twice in each five year period.

The various classification societies, such as ABS, have requirements in their rules for general surveys of the hull structure and for drydocking surveys. In a broad generalization, they require annual surveys of the hull structure, and in keeping with the changes under consideration by IMO, have adopted 30 month intervals for drydockings. These classification society requirements are not binding on the Coast Guard; however, as a matter of practicality, and in determining the costs of any proposal for changing Coast Guard drydocking requirements, they must be considered. It should also be noted that classification societies, not being constrained by regulatory procedures, generally have more flexibility in the adoption and application of their requirements than does the Coast Guard.

The intervals at which the Coast Guard requires drydocking or hauling

out are specified in § 31.20–20 (tank vessels), § 71.50–1 (passenger vessels), § 91.40–1 (cargo and miscellaneous vessels), § 107.261 (mobile offshore drilling units), § 167.15–30 (nautical school ships), § 176.15–1 (small passenger vessels), and § 189.40–1 (oceanographic vessels). In some instances these regulations also specify specific examinations or inspections which must be conducted while the vessel is on drydock; § 61.20–5 also contains requirements for specific examinations while a vessel is on drydock.

Generally (the requirements vary somewhat between vessel types), tank vessels, cargo vessels, mobile offshore drilling units, nautical school ships, and oceanographic vessels that operate in salt water are currently required to be drydocked at 24 month intervals. Those operated exclusively in fresh water must be drydocked at 60 month intevals. If they are operated part time in salt water, they must be drydocked at either 36 or 48 month intervals, depending on the vessel type and its percentage of salt water service.

Passenger vessels and small passenger vessels operating in salt water are required to be drydocked at 18 month intervals. Those operating exclusively in fresh water must be drydocked at 60 month intervals. If they are operated part time in salt water, a 36 month interval may apply, depending on the percentage of salt water service. Passenger vessels on international voyages, in keeping with the SOLAS requirements, must be drydocked at 12 month intervals.

Tailshaft Examinations

Why Tailshafts are Examined:

Tailshafts are examined to reduce the probability that a vessel will be rendered unable to maneuver while at sea because of shaft bearing failure or catastrophic failure of the propeller shaft. The examination may consist of one or more of the following:

(a) Determining shaft bearing clearances.

(b) Use of dye penetrant, magnetic particle testing or other methods to verify that the shaft is free of surface discontinuities.

(c) Ultrasonic testing of the shaft.

Current Requirements for Tailshaft Examinations: The Coast Guard regulations governing the intervals for, and details of tailshaft examinations are contained in §§ 61.20–15 to 61.20–21 (marine engineering regulations), § 167.15–50 (nautical school ships), and § 176.15–5(a)(1) (small passenger vessels). The examination requirements in the marine engineering regulations in general agreement with the ABS standards in effect at the time of their publication. The type and frequency of the examination normally required, both by the classification societies and the Coast Guard, is based on the service of the vessel (ocean or coastwise), the number of shafts, the shaft material and design, whether it is fitted with a liner, and the method of lubrication. In practice, examination intervals range from one to six years. There are no specific requirements under any international treaties or conventions for tailshaft examinations.

Information Desired

The following questions were developed by the Coast Guard to provide the information and views that it believes will be helpful in formulating proposed changes to the drydocking and tailshaft requirements and determining the effects of these changes.

Regarding Drydocking and Hauling-out:

1. In the absence of Coast Guard regulations, what would vessel owners or operators adopt as appropriate drydocking or hauling-out intervals for various types and sizes of vessels? How often are vessles hauled-out or drydocked earlier than scheduled because of hull damage or other problems?

2. Would vessel schedules, particularly for large seagoing steam vessels, permit major inspections of the boiler and steam piping to be conducted at intervals the frequency of which did not correspond with the vessel's drydocking interval? Would similar scheduling problems exist with diesel powered ships, and if so, to what extent?

3. Would a system that, following an examination after an initial period of service, required drydockings to be conducted more frequently as a vessel ages be feasible or desirable, i.e. one that required a large seagoing ship to be examined within 2 years of being placed in service (or at the "guarantee drydocking" provided for in many shipbuilding contracts), then again after completing 7, 12, 16, 19, 21, 23, 25, etc. years of service?

4. Should specific requirements for hull gauging (measurement of hull thickness) be included in the regulations? If so, how long after the vessel is placed in service should the first gauging be conducted and at what intervals should gauging be repeated?

5. Should past experience with a specific vessel be considered in determining when it should next be drydocked? If so, how could it be considered without being criticized as unduly arbitrary?

6. Should greater or lesser consideration be give to the hull material (wood, fiberglass, aluminum, steel) and the percentage of service in fresh versus salt water?

7. How well have tank coatings, special hull paints, and hull protection systems performed in service? Has their performance been consistent between similar vessels?

8. Should consideration be given to the vessel's operating area because of the likelihood of ice damage, undetected damage from grounding, scouring, etc.?

9. Because of the different type of hull structural loading involved, should differing intervals be specified for displacement hulls than for non-displacement hulls?

10. Should more consideration be given to the type of cargoes that the vessel carries because of the corrosive effects of those cargoes?

11. Should more frequent examinations of the hull be required when a vessel carries bulk cargoes that may be particularly harmful to the marine environment if accidentally released?

12. What are the typical costs, excluding maintenance and repair costs, for drydocking or hauling-out various sizes and types of vessels and otherwise preparing their hulls for examination? What proportion of these costs are related to gas-freeing and otherwise internally preparing the vessel for examination?

13. For various sizes and types of vessels, what are typical daily values for the loss of revenue if a vessel is out of service?

14. To what extent would shipyards and repair facilities be adversely affected if the Coast Guard were to increase intervals specified for tailshaft examinations or drydocking?

Regarding Tailshaft Examinations:

1. In the absence of Coast Guard regulations, what would vessel owners or operators adopt as appropriate intervals and methods for tailshaft examinations? What is the experience with, and what intervals have been adopted on vessels not subject to inspection?

2. The present marine engineering regulations require tailshaft examinations only on vessels in ocean and coastwise service, presumably because loss of propulsion is a greater concern when offshore. The potential loss of a vessel's capability to maneuver in near-shore or inland waters is of equal or greater concern; if tailshaft examination requirements are to be

retained, should they be extended to inspected vessels operating in these waters also?

3. Since loss of motive power quickly and directly affects the earning capacity of a vessel, is it possible that economic considerations would drive vessel owners and operators to conduct tailshaft examinations, particularly on newer vessels where there is substantial equity to protect, as frequently as is presently required?

4. Should regulatory consideration be given to alternative means of monitoring bearing wear-down?

5. What are the typical costs of pulling the tailshaft and conducting the required tests for various shaft sizes and configurations?

(46 U.S.C. 3306; 49 CFR 1.46)

Dated: April 30, 1984.

L. N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 84-11945 Filed 5-3-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 82-540; FCC 84-122]

Modification of Policy on Ownership and Operation of U.S. Earth Stations That Operate With the INTELSAT Global Communications Satellite System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This NPRM proposes a new policy for ownership and operation of U.S. earth stations that operate with the INTELSAT global communications satellite system. This proposed policy would establish a more open and flexible ownership/operational scheme. This action is taken to reduce costs to carriers and to result in lower rates to users.

DATES: Initial comments are due June 22, 1984, and reply comments are due July 16, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joel Pearlman, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-3214.

Proposed Rulemaking

In the matter of modification of policy on ownership and operation of U.S. earth stations that operate with the INTELSAT global communications satellite system, CC Docket No. 82-540.

Adopted: March 30, 1984.

Released: April 20, 1984.

By the Commission.

I. Introduction

1. On August 17, 1982, we initiated the captioned proceeding to solicit comments on whether our current policy, established in 1966, on the ownership and operation of U.S. earth stations which operate with the INTELSAT global communications satellite system still serves the public interest.[1] Under our current policy, international earth stations in the United States are owned by a consortium of carriers, including the Communications Satellite Corporation (Comsat) and certain U.S. international service carriers.[2] These international service carriers are the American Telephone and Telegraph Company (AT&T), RCA Global Communications, Inc. (RCA), ITT World Communications, Inc. (ITT), Western Union International, Inc. (WUI), and the Hawaiian Telephone Company (Hawaiian). Comsat, through its World Systems Division, has a 50 percent ownership share and the international service carriers share the remaining 50 percent interest in approximate proportion to their usage.[3] Comsat serves as manager of the stations subject to overall control and guidance on basic policy and investment matters by a committee composed of all co-owners. Voting shares within this committee are in accordance with ownership percentages.

2. The policy enunicated in 1966 was implemented in 1967 by Comsat and the U.S. international service carriers through a carrier created Agreement establishing the Earth Station Ownership Committee (ESOC). This Agreement, as amended,[4] set up separate earth ownership consortiums for the contiguous United States, Hawaii, and Guam. It also fixed, in accordance with the 1966 policy decision, the percentage ownership shares for Comsat, AT&T, Hawaiian, ITT, RCA, and WUI.[5] The Agreement provides that ESOC earth stations are to be made available to Comsat for the purpose of furnishing earth station and space segment communications services under applicable tariffs to authorized carriers and users. Comsat, in turn, compensates the carriers for their investment by paying them a monthly rental rate for each half-circuit established through the stations.

3. Below we shall discuss: (a) The Notice of Inquiry (NOI); (b) the comments and reply comments; (c) a subsequent proposal by Comsat; (d) the comments and reply comments submitted in response to Comsat's proposal; and (e) several recent developments which highlight the need for a fresh look at our earth station ownership policy. We shall then make several tentative conclusions based upon our analysis of the record and explain the major characteristics of the new earth station ownership arrangement that we envision.

A. Notice of Inquiry

4. For the purpose of eliciting discussion on possible changes in our earth station ownership policy and the carriers' ownership arrangements, we defined in the NOI two classes of earth stations. General purpose earth stations are those Standard A (30–32 meters in diameter), Standard B (10–13 meters in diameter), and Standard C (18–19 meters in diameter) facilities with which all authorized U.S. international carriers interconnect their operating centers in order to offer international switched and private line services to the public. The ESOC earth stations, such as those at Etam, West Virgina, Andover, Maine, Brewster, Washington, Jamesburg, California, Paumalu, Hawaii, and Pulantat, Guam are general purpose earth stations. Special purpose earth stations are Standard B or non-standard earth stations designed to meet private line needs of a dedicated user or group of users. Comsat's earth station at Santa Paula, California for television service to Australia is a special purpose earth

[1] 90 FCC 2d 1458 (1982).

[2] Ownership and Operation of Earth Stations, 5 FCC 2d 812 (1966).

[3] While earth stations are jointly owned, Comsat is the sole U.S. investor/provider of INTELSAT space segment and is also the sole U.S. representative to INTELSAT.

[4] The Agreement was amended to add Guam as a separate consortium. Puerto Rico/Virgin Islands is also a consortium but it has no earth stations at this time and does not hold meetings.

[5] The carriers' ownership shares were allocated in 1967 (continental United States and Hawaii) and 1969 (Guam) in proportion to their projected use of the stations within the separate consortiums. Since 1969, however, we have approved requests by ESOC members for certain modifications in ownership shares including: (a) Purchase by AT&T of ITT's share in the four contiguous U.S. stations and; (b) purchase by RCA of ITT's share in the Guam earth station. We have also authorized 100 percent ownership of earth stations to Comsat where: (a) it is directly serving end users (TV service via Santa Paula, California earth station) and; (b) where the local carrier does not desire joint ownership (American Samoa, Palau, Saipan, Marshall Islands, and Micronesia).

station. Special purpose earth stations are envisioned to be located near a customer's premises in order to reduce landline interconnection costs, improve quality of service or both.[6] We also distinguished in the NOI between existing stations and new stations.[7]

5. As to existing general purpose earth stations, which are owned by ESOC, we asked for comments on the merits of individual ownership versus continued consortium ownership. On the individual ownership option, we requested specific comment on the benefits of non-ESOC ownership as well as any disadvantages arising from technical, economic, operational, or foreign policy considerations that might be associated with a change in current policy. We also asked whether Comsat should retain an automatic 50 percent ownership share in these stations (should we decide to continue consortium type ownership) rather than a share proportionate to its actual usage in providing end-to-end services.

6. As to new general purpose earth stations, we asked for comments on the benefits of individual ownership versus a Commission mandated ESOC-like arrangement. As to individual ownership, we again asked for proposed regulatory criteria, including cost/benefit trade-offs that we should apply in deciding whether or not to authorize these new earth stations. As to ESOC-type ownership, we asked for comment on Comsat's role and ownership arrangement.

7. We did not ask for comment on existing special purpose earth stations as they are not owned by ESOC, but by Comsat or other carriers. We did not envision the possibility of bringing these within the ESOC structure. As to new special purpose earth stations, we requested comment on whether they should be owned and operated in a competitive fashion or in an ESOC-like manner. Again, we requested comment on regulatory criteria for considering individual applications and also on the appropriate role for Comsat if a consortium approach were adopted.

8. Additionally, we asked for comments on the relationship of Comsat's corporate structure to the issues in the proceeding. One issue we identified is whether Comsat's ownership of new earth stations should be in the parent company's World Systems Division (WSD), as currently structured, or in a separate subsidiary. Another question is whether Comsat's current ownership share of general purpose earth stations should be transferred from WSD to a Comsat subsidiary. Finally, we raised the issue of segmenting Comsat's existing tariff, which bundles the earth station and space segment elements into one rate, if entities other than Comsat or ESOC were to be authorized to construct and operate international earth stations.

B. Comments and Reply Comments on the Notice of Inquiry

9. We received comments from fourteen parties and reply comments from thirteen parties. These were carriers (Comsat, AT&T, ITT and All America Cables and Radio filing jointly, RCA, WUI, Western Union Telegraph Company, Hawaiian, TRT Telecommunications Corporation, and American Satellite Company) governmental entities (Departments of Defense and Justice), users (Home Box Office, National Public Radio, American Petroleum Institute, and ABC, NBC, and CBS filing jointly), and a satellite/earth station equipment manufacturer (M/A-COM).

10. All parties with the exception of Comsat advocated a more open policy on ownership and operation of international earth stations.[8] The parties favoring an open entry policy generally did not distinguish between general and special purpose earth stations. Instead, they divided earth stations into two categories: existing and new. As to new earth stations, they proposed that any carrier be allowed to apply to the Commission for authorization subject only to the "public interest, convenience, and necessity" test of Section 201(c)(7) of the Communications Satellite Act.[9] Parties differed, however, on the kinds of factors they believed should be considered by the Commission under this test. Most, including AT&T, advocated the use of all relevant technical, economic, and foreign policy factors. But one party, RCA, proposed the consideration of only frequency coordination (interference) as the relevant criterion. As to existing stations, the parties had two divergent views. One group, including Comsat, RCA and Hawaiian Telephone, wanted to retain the present ESOC joint ownership arrangements. Another group, including AT&T and WUI wanted to dissolve ESOC. The group proposing dissolution of ESOC would leave it to the ESOC owners, in the first instance, to propose to the Commission a plan for this breakup. This plan would be presented to the Commission at the end of negotiations.[10] The parties advocating a more open ownership policy also argued that such an arrangement will provide substantial benefits to users. Additionally, in this and other proceedings, these parties have contended that Comsat's rates are excessive and that a more conpetitive earth station ownership policy, coupled with an unbundling of Comsat's tariff, will lead to lower end-to-end rates.

11. The parties also submitted comments on a number of other issues. These included the proper role of Comsat, as Signatory, in any ownership arrangement for earth stations; the method of coordinating U.S. earth station investment and operation with INTELSAT space segment investment and operation; the methodology for unbundling Comsat's current combined tariff into separate earth segment and space segment tariffs; the desirability of offering various types of cost-based pricing in earth segment and space segment tariffs; and the need for greater public and carrier participation in Comsat/INTELSAT forums. A full description of the parties' filings is found in Appendix A.

C. Comsat Proposal

12. On June 23, 1983, Comsat moved for leave to file a pleading titled "Proposal for Restructuring Earth Station Ownership and Operating Arrangements". In this pleading Comsat stated that since its views on preserving the status quo had not been accepted by other parties it now proposed a new approach that would preserve the benefits of the present arrangements (e.g., efficient use of the INTELSAT syatem and the ability of actual and potential U.S. carriers which are competitors in the provision of end-to-end international communications services to obtain fair and equitable access to the INTELSAT system) while being more acceptable to other interested parties. Because of Comsat's position as manager and 50 percent owner of the ESOC earth station network, and the potential changes in its

[6] The Santa Paula special purpose earth station for international television service is located relatively close to Los Angeles, California, and the various television studios located in and near that city.

[7] Existing stations were considered to be stations that have been authorized, whether or not they were actually operating or even under construction.

[8] Comsat stated that the existing arrangement provided for a low cost and high quality service. It argued that independent ownership would promote a proliferation of stations that could harm U.S. and INTELSAT interests.

[9] 47 U.S.C. 721(c).

[10] NPR stated that it is the Commission's responsibility to weigh the benefits of customer choice against the current need to guarantee the provision of high quality, efficient service to the public in determining whether or not to authorize independent stations. NPR recognizes the possible benefits of increased competition but emphasizes that its major concern is to maintain service quality.

position as a result of this rulemaking, the Commission granted Comsat's motion.[11]

13. The key elements of Comsat's proposal are as follows. The present ownership arrangement providing for joint ownership of earth station facilities would be dissolved. All present ESOC stations would be converted into "wholesale/retail" combination stations at which Comsat's international "wholesale" facilities and operations, as well as the carriers' end-to-end "retail" facilities and operations, would be colocated. Comsat would provide earth station services and the INTELSAT space segment to the end-to-end service carriers. The end-to-end service carriers would provide a through service to their customers which included the use of facilities provided by Comsat. Following a three year moratorium period, the end-to-end "retail" service carriers would have the option of continuing to participate in combination earth station arrangements and/or seeking authority to construct and operate their own general purpose earth stations.[12]

14. Under Comsat's proposal the ESOC joint owners would negotiate the dissolution of the consortiums and a division of the earth station assets. As the "wholesale" provider, Comsat would acquire the land, buildings, antennas, and most of the common electric equipment. The carriers, as "retail" end-to-end providers, could own cretain electronic equipment peculiar to their needs, but could also lease similar equipment under tariff from Comsat if they so desired. Comsat, therefore, would offer a variety of earth station service options and would tariff these services according to their costs. Comsat has also proposed that all of its ownership interests and associated tariffs be placed within its World Systems Division, which under Comsat's current structure is the U.S. Signatory to INTELSAT and sole investor/provider of INTELSAT space segment.

D. Second Round Comments

15. In accepting Comsat's "Proposal" as comments for the record, we reopened the docket for additional comments and replies by other interested persons. We received 14 comments and 5 replies. Comments were filed by carriers (AT&T, ITT and AAC&R filing jointly, Hawaiian, TRT Telecommunications Corporation, American Satellite Corporation, Western Union Telegraph Company, WUI, RCA, and Western Systems), a governmental entity (National Telecommunications and Information Administration), users (Home Box office, the International Comunications Association, and ABC, NBC, and CBS filing jointly), and an equipment manufacturer (M/A-COM). Replies were filed by Comsat, the International Communications Association, RCA, the National Telecommunications and Information Agency (NTIA), and ITT and AAC&R filing jointly.

16. The commenting parties were particularly divided on the merits of Comsat's proposal dealing with the existing ESOC stations. As indicated, Comsat had proposed converting these stations to "wholesale/retail" facilities. Although some saw this proposal as a starting point for negotiations among the ESOC owners, others were totally opposed to it. Some parties, including AT&T, proposed alternative approaches, including (a) transferring ownership of some stations on an individual basis to carriers who would use them for their own service requirements or, (b) restricting joint ownership to end-to-end retail carriers who would participate in proportion to their share of end-to-end traffic. Hawaiian favored retention of the present ESOC arrangement.

17. As to the merits of Comsat's proposal of a three-year moratorium on new applications for all general purpose stations and most special purpose stations the commenting parties were not divided. Rather, they uniformly opposed such an approach. Most contended that the Commission should immediately begin to consider individual applications, even before any decision is made on the disposition of the present ESOC investment. Any moratorium, they argued, could give an anti-competitive head start to Comsat (and ESOC) in the earth station services market.

E. Recent Developments

1. Petition to Realign ESOC Shares

18. An ESOC matter which was recently resolved by the Bureau and affirmed by us today highlights the existing tensions within ESOC and the need for us to re-examine our present earth station ownership policy. In January 1983, RCA advised Comsat and the other joint owners of the one Hawaiian and four continental United States earth stations that it would not make any further capital contributions in these earth stations until its ownership share was reduced to approximate its current relative usage. WUI subsequently took the same position. Both RCA and WUI argued that the ESOC Agreement, which was accepted by the Commission, permitted this method of readjusting ownership interests to a level corresponding to current usage of the earth stations. Comsat, on the other hand, argued that Commission approval is a prerequisite to any readjustments among the ESOC participants. The Bureau found that the 1966 policy order and subsequent construction/transfer orders required Commission approval of any modification of ownership shares and capital contribution obligations. Therefore, unless RCA and WUI remedied any deficiencies in their capital accounts they would be in violation of Commission policies.[13]

2. *Introduction of INTELSAT Business Services (IBS)*

19. In June 1983, INTELSAT announced the parameters and charging policy for a new offering called INTELSAT Business Services (IBS). Comsat has filed an application to provide this service to U.S. carriers which we grant today. Application File No. I-P-C-83-009. By means of these new business services, INTELSAT anticipates that carriers will be able to establish for their customers dedicated international communications networks employing a large number of customer-premise earth stations to carry all types of digital communications services, including video conferencing, facsimile, and highspeed data transfers. INTELSAT has based charges for IBS on the amount of capacity used, rather than on the specific type of service involved. Unit capacities vary between 64 kilobits per second and 2.048 megabits per second. Fractional or full transponder allocations may also be available. Charges also depend on a number of other factors, including the duration and the number of countries and type of earth stations in a communications network.

20. IBS customers will be able to establish networks with global coverage and connectivity by using the 11/14 (and/or 12/14) Ghz spot beams for heavy traffic paths as well as the wider 6/4 Ghz beams. To provide access to IBS using 11/14 (and/or 12/14) Ghz frequency bands, INTELSAT has promulgated various Standard E earth station antenna specifications. These relatively small antennas range in size from 3.5 to 8 meters in diameter. For areas of the world where IBS would

[11] Earth Station Ownership, Mimeo No. 5713 (released August 2, 1983).

[12] Applications for IBS and certain small earth stations, however, could be submitted to the Commission prior to the end of this transition period under Comsat's Proposal.

[13] Joint Request of Comsat and RCA, Mimeo No. 1202 (released December 9, 1983), *Applications for review denied*, FCC 84—(released April, 1984).

operate in the 6/4 Ghz frequency band. INTELSAT has also prepared specifications for Standard F stations ranging from 5 to 9 meters in diameter. INTELSAT expects that the added convenience, reduced construction costs and the lower terrestial haul costs associated with smaller Standard E and F earth stations located near the customer will more than offset the relatively higher satellite access charges associated with them.

21. INTELSAT has indicated that three IBS network concepts are possible. The selection of one or more of these will be a matter for each user country. The concepts are:

(1) User Gateway network—where an international business user would locate a small Standard E or F earth station on or near its premises, minimizing the need to use and the cost of switched network terrestial connecting facilities.

(2) Urban Gateway network—where a community of users in one area shares a small Standard E or F earth station.

(3) Country Gateway network—where the users in a country access the service through large Standard A, B, or C earth stations.

3. *Application by Comsat for Construction and Operation of an IBS Station*

22. Another recent event that is important is Comsat's Application File No. CSG–83–034 P/L to construct and operate international earth station facilities at the New York Teleport Complex for the provision of IBS.[14] Comsat states that it has attempted to convince its ESOC partners to join in this application but that they have refused. Comsat has, therefore, proposed that this station be operated as a combination "wholesale/retail" station, i.e., a station at which Comsat provides space segment and earth station facilities to the various international service carriers who in turn provide end-to-end service to their customers. Other parties have opposed this application arguing that no action should be taken until we complete our comprehensive review and possible revision of our current ownership policy. Other objections to this application also include the failure of Comsat to change its application from that of the World Systems Division to a separated Comsat subsidiary and the alleged failure of Comsat to demonstrate that its use of the Teleport location would not preclude other parties from obtaining similar access. We grant Comsat's application today conditioned on our ultimate policy determinations in this docket.

4. *Applications by IRI for Construction and Operation of Two IBS Stations*

23. In addition to Comsat, International Relay, Inc. (IRI) has also filed for authority to construct and operate IBS stations. IRI's first application (File No. CSG–84–011–P/L) requests authority to construct and operate 11/14 Ghz and 12/14 Ghz earth station facilities in the vicinity of Chicago, Illinois for the provision of IBS. The proposed station is of the Standard E design and would serve the commercial district of Chicago as a "Mid-America" urban gateway for Atlantic Ocean Region satellites. IRI claims that this earth station would meet a presently unfulfilled need for a low cost international satellite terminal in the Chicago area that is capable of satisfying user demand for diverse digital services. IRI also distinguishes its offering from the "wholesale/retail" type of service proposed by Comsat in its Teleport Application.

24. The second IRI application (File No. CSG–84–004–P/L) requests authority to construct and operate a similar Standard E earth station in downtown Manhattan for use as an urban gateway in the Atlantic Ocean Region. IRI claims that its application is superior to Comsat's Teleport Application in that it not only serves users/customers directly, but it also alleviates the needs for construction of expensive fiber optic connecting links. We grant both of these applications today conditioned on our ultimate policy determinations in this docket.

5. *Authorized User Revisited (Authorized User II)*

25. The international record carriers have requested in a number of proceedings that we adopt a more open earth station ownership policy and that we permit carriers some form of direct access to the INTELSAT space segment. In addition, the IRCs have argued that there is a nexus between these two policy proceedings and our completed *Authorized User Revisited* proceeding. It is averred by the IRCs that to maintain a competitive balance between Comsat and the IRCs these three policy inquiries should have been considered together. In *Authorized User Revisited* we determined that it would be in the public interest to permit Comsat to provide space segment capacity directly to users. We also indicated that the earth station ownership and direct access proceedings were separate and independent inquiries: that there was no necessity to consider all three issues simultaneously. The IRCs thereafter filed for court review of our *Authorized User Revisited* decision. On appeal, the court adopted the IRCs' nexus argument. It vacated and remanded the *Authorized User Revisited* decision on the grounds, *inter alia*, that we had abused our discretion by implementing a new authorized user policy prior to considering the merits of direct access and earth station ownership.[15] Our action today in this docket and in the direct access proceeding are therefore consistent with the court's directive.

II. Discussion

A. Policy Overview

26. We note as a threshold matter that the Commission under Section 201(c)(7) of the Communications Satellite Act of 1962 has the responsibility to establish an earth station ownership policy which best serves the public interest.[16] In carrying out this responsibility we believe that there will be significant benefits in liberalizing our current ownership policy. The existing policy was established in 1966 at a time when INTELSAT was barely operational, when satellite technology was in its infancy and when the driving policy consideration was the establishment of a global satellite system. In this environment it was reasonable to give Comsat a dominant role in any earth station ownership scheme. However, the successful evolution of INTELSAT from a fledgling entity managed by Comsat with only a handful of members to a mature and financially sound organization with over 100 members and its own management staff gives us the opportunity to advance from a necessarily conservative policy to a policy which stresses benefits to users while recognizing our commitment to INTELSAT. Moreover, recent changes in satellite and earth station technology have helped open the way for greater individual carrier participation in earth station ownership and operation. Finally, we believe that competition in the provision of earth station services would encourage innovation, promote efficiency and create a downward pressure on rates. Specifically, competition in the provision of earth station services enhances intramodal competition by permitting carriers other than Comsat to own and operate earth stations. Additionally, intermodal

[14] The application requests authority to construct and operate a Standard E station to be used in the urban gateway configuration as described in paragraph 21.

[15] *Authorized User Policy*, 90 FCC 2d 1394 (1982), *vacated and remanded*, ITT World Communications Inc. v. FCC and consolidated cases, Case No. 79–1046 *et al.* (D.C. Cir., January 13, 1984).

[16] 47 U.S.C. 721(c)(7).

competition may be augmented by our proposed policy by permitting carriers to provide satellite services in a more efficient manner.

27. We therefore tentatively conclude that individual carrier ownership and operation of international earth stations which operate with the INTELSAT global communications satellite system would serve the public interest. We believe that such a policy would encourage carriers to build their own earth stations as marketplace forces dictate, thus providing users with additional choices while creating a downward pressure on earth station rates. In implementing such a policy we propose to permit competition consistent with statutory objectives for both existing and new stations, and would consider applications from any carrier. We shall permit the existing jointly owned international earth stations to continue to operate under the ESOC Agreement or under any other arrangement the joint owners may agree upon. Additionally, with a proper unbundling of the present Comsat tariffs, carriers will be able to obtain space segment capacity separate from earth station capacity for use in conjunction with their individually owned stations. While we recognize the need for a smooth transition from one ownership arrangement to another in order to prevent any disruption of service and to preserve the integrity of the INTELSAT system, we reject as unwarranted the three year moratorium period on applications that Comsat has proposed.

28. In opening up alternative ownership formats, we shall continue to employ our authorization process to assure that each proposed earth station will serve the public interest and that there will be no significant adverse impact on the INTELSAT system.[17] Below we discuss the legal, policy, technical, economic and other considerations which prompt us to tentatively conclude that a more competitive earth station ownership policy would serve the public interest.

B. Legal Considerations

29. the Commission's authority over INTELSAT earth stations within the United States is found in Titles II and III of the Communications Act of 1934, as amended, and Titles I, II, and III of the Communications Satellite Act of 1962, as amended. In particular, Section 201(c)(7) of the Communications Satellite Act directs the Commission to "grant appropriate authorization for the construction and operation of each satellite terminal station, either to the corporation [Comsat] or to one or more authorized carriers or to the corporation [Comsat] and one or more such carriers jointly, as will best serve the public interest, convenience, and necessity." In enacting this section, Congress expressed no preference on which ownership arrangement we should permit but gave us the discretion to determine the ownership scheme which would best serve the public interest.[18] Thus, we believe that we were given two responsibilities; (a) to use our expertise and discretion to establish an initial earth station ownership policy which served the public interest; and (b) to modify that policy as called for by changes in the facts and circumstances underlying the original formulation of the policy.[19]

C. Policy Consideration

30. The principal policy issue adressed by the parties in this proceeding is whether earth station capacity can and should be provided by any entity other than ESOC. Comsat and the other parties are polarized on this issue. Comsat argues that ESOC has established a technically efficient and cost effective network capable of growing to meet the needs of both large and small users and that this network should continue, albeit under a somewhat modified form of ownership under which Comsat acts as a "wholesale" service provider of the earth station facilities to carriers which, in turn, act as end-to-end "retail" service providers for their customers. Nonetheless, Comsat concedes that the Commission could consider applications from other carriers (after a transition period) and grant these applications if they meet a strict public interest standard. Other parties argue that a more flexible ownership and operational scheme for both new and existing stations would better serve the needs of international satellite users without adversely affecting the efficiency of the INTERLSAT global system

31. After undertaking a thorough review of our earth station ownership policy and the comments in this proceeding we tentatively conclude that it is no longer necessary to mandate that international earth stations be owned jointly by COMSAT and the international service carriers. Rather, we believe that a more flexible ownership scheme which encourages intramodal competition would promote innovation, encourage system efficiency, establish more service choices for users, and create a downward pressure on costs and rates to the public. Under our proposed policy earth stations could continue to be owned by ESOC, by individual carriers, or by any combination of carriers with or without Comsat's participation. We particularly believe that the filing by Comsat of a cost-based, unbundled tariff—separate rates for earth station and space segment services—coupled with the opportunity for carriers to construct their own earth stations at locations of their choosing will promote the establishment of efficient networks and result in substantial savings for users. Although there remains a need for a smooth transition and for the weighing of public interest factors when considering specific applications in our authorization process, we believe that new forms of ownership for all types of earth stations which operate with the INTELSAT system would serve the public interest.[20]

D. Technical Considerations [21]

32. The NOI separated earth stations into four classes to assist interested parties in submitting comment on specific issues: (1) New general purpose; (2) existing general purpose; (3) new special purpose; and (4) existing special purpose. Upon review, we believe that these classes of stations were useful in describing the existing earth station arena but do not reflect the future earth station environment. For instance, Comsat's New York Teleport application has been characterized by some as a request to construct a new general purpose station and by others as a

[17] 47 U.S.C. 214, 304, 308, 309, 319, and 721.

[18] Section 201(c)(9) of the Satellite act also directs us to ensure that no substantial additions are made to the U.S. earth station network unless required by the public interest.

[19] The changes would include advances in earth station technology, the feasibility of competition in the provision of earth station services and facilities, the impact of a proposed policy on INTELSAT, the quality and price of service to users, the development of intermodal and intramodal competition in the international marketplace, foreign policy and national security considerations, and interference, compatibility and connectivity requirements.

[20] Since that Notice of Inquiry initiating this docket was released, INTELSAT has established the IBS offering which is aimed expressly at customers who could benefit from the use of small antennas on or near their premises. This service anticipates a large number of earth stations accessing a satellite. We are aware of no public interest reason to mandate that these new stations be owned by a single COMSAT/carrier consortium rather than by competing carrier offerors.

[21] No party has asserted technological impediments to the construction by a non-ESOC entity of earth stations to operate with the INTELSAT system. In fact, it is partly in recognition of state-of-the-art earth station and satellite technology that we tentatively conclude to establish a more open and flexible earth station ownership policy.

request to construct a new special purpose station. The same may very well be said for IRI's applications. To avoid trying to force such applications into one of these two previously recognized classes, we would substitute a more practical classification scheme based upon prevalent technology, i.e., IBS, television, and multi-purpose earth stations. We shall therefore employ these three earth station classes when addressing technical and other issues raised by the parties. We shall also use these categories in proposing application evaluation criteria.

33. The primary technical issue raised by the parties is whether a policy encouraging competition in the provision of U.S. earth station capacity will have significant adverse affects on the overall efficiency of the INTELSAT system. It is argued by Comsat that as more antennas access a particular satellite (and that satellite's transponders) the overall efficiency of the satllite will decline. The result of such increased access by different earth stations may be that satellites will reach traffic saturation before they would have reached saturation under a more restricted access scheme. Once saturation occurs, all INTELAST countries will have to fund earlier launches of new satellites and install additional multiplexing equipment.

34. Inefficient use of the space segment can arise from a number of sources. Certain modulation formats for multi-purpose earth stations work more efficiently with only one or two earth stations accessing a transponder than with multiple earth station access that one might expect in a competitive envionment. Further, a competitive environment may tend to encourage the use of earth stations smaller than Standard A or Standard C stations (such as Standard B stations) for multi-purpose service. These small stations in some situations do not achieve the satellite efficiencies that could be achieved with the larger stations. INTELSAT does discourage overly wide use of small stations, such as the Standard B, for voice-grade service, by exacting a space segment surcharge for circuits transmitted from or received by these stations. Unfortunately, it is virtually impossible for use to make a general policy finding of the exact degree of inefficiency, if any, that might be generated by new earth stations, both large and small, in a competitive environment. It would depend on such factors as they type of modulation and multiple access used (*i.e.*, FDMA vs. TDMA) the frequency band (i.e., 6/4 GHz vs. 14/11 GHz), the ocean region (i.e., Altantic vs. Pacific), the particular satellite (*i.e.*, Major Path or Primary), the particular transponder with its connectivity requirements (*i.e.*, few vs. many countries), the type of communications (*i.e.*, analog vs. digital), and the size of the antennas on both the U.S. and foreign ends (*i.e.*, Standards A, Standards B, Standard C, or other).

35. We believe it best to examine these factors on a case-by-case basis when considering applications to construct and operate one of the three classes of earth stations rather than in a generalized policy context. However, we note that for IBS and television earth station application the issue of inefficiency is generally irrelevant. As to IBS earth stations, INTELSTAT anticipates a multi-earth station service and has already evaluated considerations of satellite efficiency. It has arrived at space segment prices that compenesate it for the full cost of space segment associated with each type of IBS earth station. We therefore will not give this argument substantial weight when considering applications to construct and operate stations for IBS. As to television service earth stations, the number of television channels which can be derived from a transponder is generally independent of the number or size of earth stations accessing the transponder. Ordinarily, no more than two earth stations will access the same transponder. Thus, the operational nature of television service does not create a significant inefficiency issue. As to multi-purpose earth stations, which have in the past utilized mostly Standard A and Standard C antennas, the inefficiency concerns are real and must be considered. Yet, we believe that a reasonable additional of new multi-purpose U.S. earth station may not result in a discernable change in achieveable satellite efficiency from that obtainable under our present ownership policy. Thus, while the concern over inefficiency is real, in practical terms it does not appear to be relevant to our determination of IBS and television earth station applications, and in many instances may not be critical to our consideration of multi-purpose earth station applications. Moreover, advancements in both satellite and earth station technology—such as the further development of multiplexing equipment like TDMA—will enhance the efficiency of multi-purpose earth stations and the INTELSAT system.

36. Further, balanced against the potential inefficiencies in space segment usage under the situation discussed above are the benefits of increased user choice and lower rates that could be provided by allowing mutliple carriers to offer competitively priced stations which can be located near or at a customer's premises. Through use of these stations a customer can reduce the expense, inconvenience and technical problems associated with the terrestrial transmission to more distant earth stations. These benefits similarly apply to carriers who are able to locate earth stations closer to their switching centers and, therefore, use these stations to provide more reliable and lower priced service to their customers. We particularly emphasize here to potential savings in reducing the lengths of the terrestrial hauls to distant earth stations.

E. Economic Considerations

37. Economic issues raised by the parties relate to the costs and benefits of independent ownership both to participants in the INTELSAT system (i.e., Signatories and international carriers) and to users of the INTELSAT system. These include the integration of U.S. earth station planning with the planning of INTELSAT satellite resources, additional costs for foreign administrations, and revenue diversion.

1. *Integration*

38. We recognize that the operations of U.S. earth stations must be integrated into the INTELSAT system and that the obligations of the United States to install new earth station equipment as scheduled by INTELSAT must be met. We believe that the earth station owners should, in the first instance, be given the opportunity to resolve these issues themselves. However, because of the importance of these issues we believe that retaining jurisdiction over the U.S. earth stations plus conditioning earth station authorizations as necessary would remedy any integration or coordination problem. For example, an issue may arise when INTELSAT, with input from the United States, decides that certain traffic from certain countries should be handled by special modulation formats (such as TDMA). As an operational policy INTELSAT does not decide which earth stations in a given country should change their formats to meet these requirements. It allows the country to make this decision. With competitive stations, there may arise disagreement among the owners concerning who should incur the extra investment. If this situation occurs, we believe the earth station owners could resolve the matter through negotiations. Subsequently, and only if necessary, the matter would be resolved by the Commission through its retained

jurisdiction and conditioned authorizations.

2. PTT Economic Concerns

39. Comsat argues that our foreign partners will be adversely affected by a major policy change since overseas earth stations would need additional equipment to operate with new U.S. earth stations. Such equipment would increase the costs to our foreign correspondents and provide an economic incentive for these administrations not to enter into operating agreements with new U.S. earth station operators. We cannot disagree with Comsat on this point. However, we would make three points. First, the expenditure of additional funds and/or the interconnection with new entrants continue to be decisions to be made by our foreign partners just as they are today. Thus, operation of any new U.S. earth station would require, as an operational matter, a willing foreign partner.[22] Second, because of our proposed policy, foreign administrations, in order to increase their revenues, may show a greater willingness to enter into operating agreements with U.S. carriers which have distinct customer basis and their own earth stations. And third, new entrants and increased competition in the United States should increase demand for all INTELSAT services, assuming demand price elasticity, and thus increase revenues for both INTELSAT and its members.

3. *Traffic and Revenue Diversion*

40. Comsat argues that traffic diversion from existing ESOC earth stations will have a severe economic impact on the owners of existing earth stations. In particular, Comsat argues that some international carriers (particularly AT&T) would likely divert significant amounts of traffic from the existing ESOC stations to new earth stations. This diversion, according to Comsat, would substantially reduce revenues and cause rates to rise for the remaining carriers (and users) of these earth stations. Therefore, Comsat believes it would be more costly overall to accommodate future traffic increases through new earth stations than through existing ESOC stations (when possible). On the other hand, several potential owners of new earth stations argue that any traffic diversion would generally be offset by increases in international satellite traffic.

41. The IRCs and AT&T are the ESOC members which originate and terminate traffic. They provide end-to-end service to users in contrast to Comsat which, at present, merely serves these carriers. As to the IRCs, they generate relatively little international satellite traffic and own relatively small shares of the ESOC earth stations. In the most important consortium, the four earth stations located in the continental United States, the IRCs generate approximately 10 percent of the traffic and own about 15 percent of the facilities. Since satellite traffic handled by U.S. earth stations is estimated by INTELSAT to grow in the next several years at an annual rate of about 16 percent, any diversion of traffic by one or more IRCs to new earth stations is likely to be offset by overall market growth, thus avoiding any economic harm to Comsat, other ESOC members or the public.[23] However, the same is not necessarily true for traffic originated by AT&T. Clearly, if AT&T were to divert a substantial percentage of its traffic to a new facility, Comsat would suffer a revenue loss and the joint owners, including AT&T, would suffer a rental payment decrease. Yet, we are not convinced that some traffic diversion would necessarily be undesirable. We recognize that traffic diversion may be an inevitable consequence of the independent ownership of international earth stations and the competitive provision of international earth station services. As a general matter, we believe that some diversion would not unduly harm Comsat and should not dissuade us from pursuing a competitive policy. To accord Comsat blanket protection against all diversion would deprive the public of the benefits of new and efficient service offerings which we foresee resulting from the competitive ownership and operation of international earth stations. Presumably, if AT&T's current costs of obtaining earth station capacity exceed its costs under a scenario where it builds and operates one or more earth station facilities, then independent (or at least non-ESOC) ownership of earth stations by AT&T could lead to a more efficient service offering and lower rates to users. However, before making final conclusions on this point we seek comment on the issue of what weight should properly be given to potential traffic diversion from existing ESOC earth stations to new earth stations. Should we treat such diversion as a natural and benign consequence of the market mechanism or should we attempt to balance the interests of the current providers of earth station capacity with the interests of consumers likely to benefit from more efficient entrants? We would anticipate considering in the application process, on a case-by-case basis, questions of economic harm and impact on other carriers.[24]

F. Other Issues and Future Market Structure Characteristics

42. We now turn to a number of issues relating to the transition to a new ownership policy and the basic structure of the proposed earth station ownership environment. These issues include the disposition of the ESOC earth station assets, expanded participation by U.S. earth station operators in our INTELSAT instructional process, the unbundling of Comsat's existing tariff into separate earth station and space segment rates, the necessity of any moratorium period, general criteria that we will utilize in considering applications to construct and operate new earth stations, and the structural separation of Comsat's monopoly space segment services and competitive earth station services.

1. *Disposition of Existing ESOC Earth Station Investments.*

43. Almost all the parties commented on whether the existing joint ownership arrangement should be preserved, whether an independent ownership arrangement should be established, or whether a hybrid ownership arrangement should be fashioned. Several parties advocated the dissolution of ESOC, preferably by means of voluntary agreement among the ESOC partners. Others voiced no objection to the continuation of the ESOC arrangement for existing stations but recommended that the Commission permit new stations to be constructed independently of ESOC. Some parties took yet another position of wanting to continue an ESOC-like arrangement (i.e., ownership proportional to use), but with the removal of Comsat's monopoly-based World Systems Division as a guranteed 50 percent owner. This third group would permit Comsat to enter the competitive earth station market only through a separate subsidiary and to participate in any ESOC-like arrangement based on its proportionate use of the facilities as an end-to-end service provider.

[22] This decision is wholly within the sovereign prerogative of the foreign administration.

[23] We also note that Comsat's operating revenues increased by 24.4% in 1979, 14.13% in 1980, 11.44% in 1981, and 22.6% in 1982. Source: FCC Monthly Report 901.

[24] In addition to the issue of traffic and revenue diversion, we solicit comment on whether AT&T's unique position in the international arena as the major source of traffic and the major owner of cable facilities should be considered (and if so, how) when formulating our general earth station ownership policy and evaluating specific earth station applications.

44. In considering this important issue, we emphasize that any solution must assure the continued provision of service to users at reasonable rates. Certainly, retaining the ESOC arrangement for one or more of the existing earth stations is a possible alternative. This would not preclude us from authorizing new earth stations. Also possible are a full dissolution with a sale/transfer of the ESOC assets to one or more carriers or any combination of these two solutions. We tentatively conclude that the ESOC partners should be given the opportunity to negotiate the future of ESOC.[25] These negotiations would be initiated after the release of our Report and Order and continue for several months. At the end of this period an agreement to retain or dissolve all or part of ESOC would be presented to the Commission for public comment and approval. Absent such an agreement by the ESOC partners, we would then consider at the end of the negotiating period individual proposals regarding the future of the ESOC investment.[26] While we have tentatively concluded to permit the joint owners to negotiate the future of ESOC, we solicit comment on the merits of permitting carrier negotiations, on the period of time for negotiations, the framework for the negotiations and the alternative option of going immediately to a prescription without negotiations.

2. *INTELSAT Representation*

45. The primary representational issue is whether a policy encouraging competition in the provision of earth station capacity will create problems in the effective coordination and presentation of U.S. policy interests within INTELSAT. As distinct from earth station integration as described in paragraph 38, which relates to the operation and technical coordination of U.S. earth stations with the INTELSAT system, this issue deals with U.S. input into INTELSAT policy, tariff and procurement decisions. At present, in accordance with the INTELSAT Agreements, Comsat is the U.S. Signatory to INTELSAT and represents the United States at INTELSAT meetings. Comsat's actions within INTELSAT are subject to our instructional process by which NTIA, the Department of State and the Commission develop U.S. positions on various issues. Under a competitive policy, different earth stations would be owned by defferent entities, yet would still be considered by INTELSAT to be U.S. operated earth stations. The question arises as to what role the U.S. earth station community should have in the instructional process and ultimately in INTELSAT.

46. A number of possibilities have been suggested by the parties. At one end, each entity owning one or more earth stations might attend certain INTELSAT meetings. At the opposite end, only Comsat's World Systems Division (as Signatory) would attend as agent for all of the U.S. owners. Another possibility that has been proposed is the creation of a carrier committee to attempt to coordinate positions and participate, to the extent possible, in the instructional process and INTELSAT meetings.

47. We have considered the various possibilities and tentatively conclude that Comsat, the U.S. Signatory to INTELSAT under the INTELSAT Agreement, is in the best position to continue to represent the Unitied States at INTELSAT meetings. Comsat is the only U.S. entity responsible for planning and investing in space segment and is therefore the logical choice for this role. We further believe that Comsat, through the instructional process, will continue to adequately represent U.S. interests. While we have no reason to believe that Comsat will not fulfill its representational role in the proper manner, we will monitor Comsat's role to assure that it acts in a manner consistent with its mission.

48. Although we believe Comsat should act as the spokesman for U.S. earth station owners at INTELSAT meetings, we also believe that carrier input on selected issues into the instructional process would be beneficial. While we seek to establish a mechanism for greater carrier and earth station operator participation, we will not permit a situation to develop that would be disruptive to the achievement of a cohesive U.S. role in INTELSAT. We invite comments on the establishment of a satisfactory mechanism.

3. *Unbundling*

49. Under the current ownership and operational arrangement, Comsat offers earth station and space segment services under a bundled tariff to the international service providers. The other ESOC members, AT&T and the IRCs, tariff end-to-end services for their own customers. These latter rates necessarily include Comsat's charges for earth station and space segment facilities. Under our proposed policy, carriers would no longer be required to take service from an ESOC (or Comsat) earth station but could apply for authority to construct and operate their own earth stations. They would turn to Comsat for the provision of space segment service only. Therefore, it is imperative that Comsat file tariffs offering space segment only services for use by carriers owning their own earth stations. The unbundling by Comsat of space segment and earth segment charges is a necessary and logical requirement to make competition feasible in the provision of earth station facilities. In its comments to this NPRM, Comsat should describe how it would unbundle its existing tariffs and submit sample tariffs which are consistent with our *Second Comsat Structure* order with rates and an explanation of the methodology employed. Comsat should clearly identify and explain all expenses and capital costs wholly associated with space segment and earth station services. In addition, Comsat should clearly identify and describe costs of all activities common to earth station, space segment, and other services. These latter costs should be apportioned in a reasonable manner among all services.

4. *Moratorium on Authorization of New Stations*

50. Comsat has argued in its "wholesale/retail" combination earth station proposal that we should adopt a lengthy transition period before we permit competition. The first part of this period would involve negotiations necessary for the dissolution of ESOC and the establishment of the combination earth station operations. The second part would be a baseline period during which Comsat would develop and offer a range of services to carriers only. During this transition period, which Cosmat suggests may take up to three years, Cosmat requests that we forebear compeletly from accepting applications for multi-purpose and television earth stations.[27]

[25] In considering any disposition of the existing ESOC ownership arrangements, parties should note that the Commission's rules address the accounting treatment of the transfer or sale of these assets among carriers from both the transferor/seller and transferee/buyer perspective. Ratemaking implications for such proposed transactions will be addressed in appropriate future proceedings, as necessary.

[26] Of course, the joint owners could initiate discussions after the release of this NPRM and we would encourage them to do so. We expect that any arrangement negotiated now to be consistent with our structural requirements proposed here and required in our *Comsat Structure* orders.

[27] Comsat would permit early applications for certain special purpose stations which meet its "regulatory criteria" including the requirement that the station be self-sustaining and that it be used to provide a single telecommunications service to a single carrier that could not be provided by a general purpose station.

51. All other parties commenting on the future market structure reject such a moratorium as unnecessary and anti-competitive. While some transition period might be necessary for multi-purpose earth stations, we view Comsat's lengthy moratorium proposal as unwarranted and not in the public interest. We request further comments on the issue.

5. *Application Criteria*

52. We believe that all relevant public interest factors should be considered, as they are now, under Parts 63 and 25 of our Rules, in deciding whether to authorize the construction and operation of new stations and in determining the future operation of existing stations. We intend to consider all applications on a case-by-case basis and will not limit our review of an application to merely technical/interference issues. However, as indicated in paragraphs 31 through 35 on earth station efficiency, we do believe that the relevant factors can differ with respect to different classes of earth stations. We shall, therefore, discuss the factors we shall consider in formulating specific ownership and operational policies for the IBS, television and multi-purpose classes of earth stations.

53. IBS is a flexible, totally digital integrated service designed to accommodate a full range of user applications including telex, voice, facsimile, data and teleconferencing. INTELSAT has planned the space segment capacity for IBS, unlike its standard capacity, to enable a single transponder to accommodate access by a large number of earth stations, including those with small and medium sized antennas. The IBS capacity is further designed to accommodate user networks through a variety of connectivity arrangements. Comsat has stated in this proceeding that the characteristics of the space segment that INTELSAT plans to have available for IBS purposes are such that they do not give rise to the same concerns that Comsat has with respect to independent ownership of multi-purpose stations. Thus, since the multiple access concept is an integral part of the IBS concept, we need not consider the effect of multiple IBS earth stations on established INTELSAT services. However, since INTELSAT has been developing performance characteristics for earth stations to operate with satellites providing business services, any application for such specialized earth stations would have to conform to those standards.

54. Comsat states in its comment to the application (File No. CGS–84–011–P/L) of International Relay, Inc. that the space segment resources that INTELSAT has now committed for IBS should be more than sufficient to accommodate the demand for reasonable use through the end of the decade. However, Comsat is concerned that authorization of an inordinate number of IBS stations in a few markets or geographic areas may inhibit efficient use of IBS capacity to effectively serve all areas of the U.S. Comsat therefore believes that a "structured framework" must be established for the authorization of IBS stations. However, we do not see the need at this time for a "structured framework" which would place limitations on who should be authorized IBS stations and where they should operate. We believe that U.S. use of IBS capacity should be determined by the actual need for IBS service as evidenced by applications that we may receive and not by some predetermined or otherwise restrictive plan. We will, of course, consider any specific proposal that Comsat may wish to present in this proceeding or in response to specific applications. However, we believe that any such proposal should be based on planning for adequate TBS space segment to meet U.S. competitive needs.[28]

55. Television service, like IBS, is a specialized offering distinct from INTELSAT's general offering of space segment capacity. This service is a relatively minor source of revenues for INTELSAT. It is provided by a small number of specific satellite transponders which can be accessed by only a limited number (ordinarily two) of earth stations per transponder at a given time. As with IBS, we do not view the issues of inefficiency, or revenue diversion to be particularly critical for consideration of television service earth station applications. System inefficiency would not occur since no greater number of earth stations would access technically a particular transponder even under a more liberal ownership policy. Revenue diversion for such a limited service offering cannot be considered substantial as it accounts for only a small percentage (less than 4 percent) of Comsat's current revenues and is now provided, in part, through special purpose earth stations such as Comsat's Santa Paula facility. We therefore intend to process television and IBS applications in a similar manner. Multi-purpose earth stations will continue to be closely scrutinized since they raise more complex economic and operational issues and clearly impact other carriers.[29]

56. Accordingly, we need not consider the full panoply of issues in reviewing applications for IBS and television earth stations that we will have to consider in reviewing applications for multi-purpose stations. In reviewing applications for IBS and television earth stations, we will consider the minimal legal (citizenship and character), financial (ability to meet the costs of construction and operation), and technical (station location, desired frequencies and types of equipment to be used, hours and mode of operation, etc.) qualifications of the applicant as required by Sections 308 and 319 of the Communications Act.[30] In addition, the Commission will monitor frequency coordination [31] and engage in procedures to implement the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347, as may be necessary. Applicants should file FCC Forms 401 (Application for New or Modified Common Carrier Radio Station Construction Permit) and 430 (Common Carrier and Satellite Licensee Qualification Report) in addition to a Section 214 application under Section 63.01 of the Commission's Rules. Upon a acceptance for filing, the applications will be placed on 30 days public notice pursuant to Section 309 of the Act and Section 63.52 of the rules. Absent special problems, the Commission will treat these applications as routine and will seek to expeditiously process them. Upon grant, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456–P). While we will limit the use of the facilities authorized for the provision of IBS or television services to these services, carriers may seek additional authorization if they desire to use these facilities as multi-purpose earth stations. Additionally Section 201(c)(2) of the Communications Satellite Act requires authorized carriers to have

[28] Comsat's application for an IBS earth station in New York City and IRI's two applications for IBS earth stations in New York City and Skokie, Illinois are consistent with our proposed policy and application criteria. Further, these applications are consistent with INTELSAT's technical standards. Because of the public benefits of initiating IBS as soon as possible, we grant in two companion orders the Comsat and IRI applications. These grants of authority are, however, conditioned on the outcome of this rulemaking proceeding.

[29] *See* FCC vs. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Company, 28 FCC 231 (1960).

[30] For application by U.S. Carriers to provide future services offered by INTELSAT we believe that a generic approach based on our treatment of IBS/TV and multi-purpose earth stations would be appropriate. Thus, depending on the space segment utilized, we would routinely process or fully review the applications on a case-by-case basis.

[31] We view the resolution of interference problems as an important part of all earth station application proceedings.

nondiscriminatory use of and equitable access to the communications satellite system and satellite earth stations owned by other carriers.

6. *Structural Modifications*

57. Several parties have commented on the issue of the appropriate structural form for Comsat's participation in the competitive ownership and operation of earth stations. The particular question is whether Comsat's ownership and operation of INTELSAT stations should be in the parent company (i.e. World Systems Division) or in a separate carrier subsidiary providing non-monopoly service. Comsat argues in its comments that earth station ownership must be within the parent World Systems Division rather than within a competitive subsidiary. Comsat contends that as a matter of law the parent is the "corporation" as referenced in Section 201(c)(7) of the Communications Satellite Act.[32] Other parties have argued, however, that the term "corporation" includes the competitive subsidiaries of Comsat. We tentatively adopt the latter view. This view is consistent with our determination in the *Comsat Study*, the *First Comsat Structure* order and the *Second Comsat Structure* order that most activities other than the provision of INTELSAT capacity should be performed outside of the World System Division.[33]

58. The structural separation of Comsat's competitive earth station activities from its monopoly space segment activities will minimize cross-subsidization between the emerging competitive entity for earth station services and the monopoly WSD for space segment services. It will also insulate Comsat's monopoly rate base, provide for separate accounting treatment for the monopoly services, assure arms-length dealings between the competitive subsidiary and the WSD, and help prevent improper transfers of information.

59. Therefore, we tentatively conclude that all Comsat applications for new stations or for additions to existing stations should be made through a Comsat subsidiary. We also propose that Comsat be required to transfer any ownership interests in existing INTELSAT stations from its World Systems Division, which provides monopoly space services, to a separate subsidiary, which will provide competitive earth segment services. Such a transfer would be submitted to the Commission for review.

III. Summary of Tentative Conclusions

60. *Flexibility in Authorization for New Stations.* We have tentatively concluded that the adoption of a more open and flexible earth station ownership policy which relies on marketplace forces is consistent with the Communications Act of 1934 and the Communications Satellite Act of 1962. Carrier owned and operated earth stations are technically feasible, create no major economic hurdles, will not adversely affect our foreign partners in INTELSAT, and will result in lower cost and technically superior service to consumers. We are also confident that a smooth transition to this new environment can be achieved so as not to jeopardize service to users or carrier investments. Thus, we would, consistent with our authority under the Communications Satellite Act and INTELSAT commitments, permit any international carrier or group of carriers to apply for authority to construct and operate such stations, be they IBS, television, or multi-purpose types. To facilitate this policy, Comsat would be required to file cost-based traiffs for INTELSAT space segment usage. Consistent with our *Comsat Structure* orders, Comsat would file space segment tariffs through its World Systems Division and earth station tariffs through a subsidiary acting as an international carrier. Finally, we believe that a moratorium on accepting applications is not in the public interest.

61. *Authorization Criteria for New Earth Stations.* We also tentatively conclude that all relevant technical, economic, operational, and global system considerations should be addressed in our determination of whether to authorize a particular multi-purpose application. We have discussed certain factors we believe will usually be relevant for mult-purpose stations, and have requested comment on the possible relevancy of other factors, such as diversion of traffic among stations and AT&T's unique position in the international market. With respect to IBS and TV stations it is clear that space segment efficiency and diversion of traffic for multi-purpose to IBS and television stations are not significant issues.

62. *Flexibility in Determining the Disposition of ESOC Investment.* We tentatively conclude that as to existing stations it is not necessary for us to prohibit continuation of the ESOC ownership arrangement. We beleive such an arrangement could be part of the choice available to carriers and users in the emerging competitive environment. Nevertheless, it is possible that the ESOC owners may desire to change the current ownership arrangements. Therefore, we propose to give the owners of existing earth stations an opportunity to determine the future of ESOC. Absent a unanimous agreement of the owners to retain, modify or dissolve ESOC after a period of negotiations, perhaps three of four months, any individual owner who seeks a change would be able to propose its own plan and we would then take appropriate action.

IV. Ordering Clauses

63. Accordingly, in view of all the above, it is ordered, pursuant to Sections 1,4 201–205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–05 and 403, and Titles 1 through 4 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701–44, and 5 U.S.C. 553, that rulemaking proceeding is hereby commenced into the above described matters.

64. It is further ordered, that pursuant to applicable procedures set forth in § 1.410 and 1.415 of the Commission's Rules, interested parties may file comments on or before June 22, 1984, and reply comments on or before July 16, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding, participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Comission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

65. It is further ordered, that for purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte*

[32] Section 201(c)(7) of the Communications Satellite Act directs the Commission to grant appropriate authorization for the construction and operation of earth stations to the corporation (Comsat), to authorized carrier(s), or to both jointly.

[33] See Comsat, Study, 77 FCC 2d 564 (1980) and Communications Satellite Corporation (Comsat Structure), 90 FCC 2d 1159 (1982).

presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that persentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

66. Pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354) it is certified, that Sections 603 and 604 of the Act do not apply because this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b). We do not anticipate that a substantial number of carriers will enter the earth station market. Further, we do not believe that very many of these entrants will be small entities.

67. It is further ordered that the Secretary shall cause a copy of this order to be published in the Federal Register and shall mail a copy of this NPRM to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Comments and Replies to Notice of Inquiry

1. Western Union (WU). Western Union states that an expanded ownership policy is necessary to offset competitive advantages granted to Comsat by the *Authorized User Revisited* decision, 90 FCC 2d 1394 (1982). Carrier choice, WU argues, will promote greater efficiency, lower prices, and opportunities for technological innovation. WU does not distinguish between special purpose and general purpose stations nor does it discuss the future of the ESOC arrangement. WU recognizes that nultiple earth stations may sacrifice some efficieny but states that the cost of service is also dependent on may other factors. One such factor is the reduction in costs of terrestrial lines that would be present with additional stations in the network. A second factor is the ability of carriers to offer tailor-made services with independent stations. WU asserts that such services would attract customers currently unable to use satellite communications.

2. National Public Radio (NPR). NPR wants maximum choice of carriers and services. NPR asserts that the more flexibility it has to send and receive international transmissions via a multiplicity of carriers, satellites, and earth stations, the better it can serve its listening public. However, NPR also wants high-quality, cost-efficient service. NPR states it is not in a position to assess whether the changes proposed by some parties would ultimately make it easier and less costly for NPR to meet some parties would ultimately make it easier less costly for NPR to meet its unique requirements. Instead, NPR suggests that it is the Commission's responsibility to ensure that any changes in ownership do not have adverse affects on the availability, quality, and cost of service to end users.

3. RCA American Communications and RCA Global Communications, Inc. (referred to jointly as RCA. RCA contends that a policy permitting independent ownership of earth stations, particularly special purpose ones, is supported by technical, economic, legal, and operational considerations. RCA maintains that allowing diverse ownership would encourage technological innovation and efficiency in the operation of the stations. Price competition would then follow. RCA believes that such a policy is necessary to promote fair competition following the *Authorized User Revisited* decision, which permits Comsat to provide satellite capscity directly to users.

RCA believes that the Commission should apply only technical criteria in authorizing new international stations. Issues concerning potential economic impact on existing carriers and possible duplication of facilities would not be relevant in RCA's view.

RCA does not advocate abolishing the current ESOC general purpose network. Instead, it sees this as a benchmark for users to compare on a cost/benefit basis with new special purpose stations.

RCA states that additional earth stations (even Standard B's) will not result in a significant loss of satellite efficiency and revenues to INTELSAT. It reasons that such a loss would occure only in the current Frequency Division Multiple Access (FDMA–FM) mode of operation and not for amplitude modulated single side band (AM SSB) mode of operation, which RCA expects will be used internationally in the near future. In addition, RCA states that television transmission is not subject to inefficiencies created by multiple stations even with the present mode of access. Further, RCA maintains that INTELSAT's surcharge fully compensates it for all efficiency losses due to Standard B earth station operation.

As to the coordination of independent earth stations, RCA contends that it is extemely unlikely that any lack of unanimity among U.S. owners of stations would interfere with effective coordination between the U.S. and foreign owners of INTELSAT earth stations. In the event that such a problem occurs, the Commission has the authority to issue rules to insure proper coordination, maintains RCA.

4. Hawaiian Telephone Company (HTC). HTC supports several modifications to the Commission's ESOC policy. With regard to general purpose stations, it would allow the existing ESOC arrangement to continue but it would also allow other carriers to apply to the Commission for authority to jointly own and operate these stations. With regard to special purpose stations, it would favor individual carrier ownership. In both cases, applications for the construction of such stations would continue to be subject to the public interest, convenience and necessity standard. Therefore, the Commission could and should prevent technical, operational and economic harm to the INTELAST system.

As to technical feasibility, HTC argues that Time Division Multiple Access (TDMA) operation will allow additional stations to be placed into the system. HTC also believes that the INTELSAT surcharge is an appropriate mechanism for handling the inefficiency caused by Standard B stations. HTC recognizes that additional stations may require some greater coordination than is presently the case. However, this burden is outweighed in its opinion by certain benefits in operational flexibility and efficiency, such as improved performance, greater physical reliability and the higher degree of security inherent in stations located near customers' premises. Coordination would continue to operate with Comsat acting as the U.S. representative to the global system. The Commission would act to prevent anti-competitive behavior.

HTC recognizes the need for unbundled tariffs in a competitive earth station market. Therefore, it asks the Commission to require Comsat to unbundle its earth and space segment tariffs.

HTC supports continuation of rate averaging policies for those general purpose earth stations owned by ESOC. It argues that such averaging helps provide worldwide service at reasonable rates, especially to many lesser-developed countries that might otherwise not have adequate communications services.

5. American Telephone and Telegraph (AT&T). AT&T argues that changes in the marketplace and in the roles of the participants therein indicate that a change in the present ownership policy for both general purpose and special purpose stations is warranted. AT&T advocates independent carrier ownership. AT&T believes that carrier ownership of earth stations will not impinge on the technical, operational, or economic viability of INTELSAT and is in the public interest. AT&T states that carrier ownership of earth stations will obviate the need for ESOC. Therefore, AT&T advocates that ESOC owners should be permitted to devise a paln, subject to Commission approval, which will phase out ESOC.

AT&T reasons that competition between carriers will foster the use of state-of-the-art transmission techniques for multiple earth station/space segment access. Competition will also stimulate additional services and expand the satellite communications market.

AT&T states independent ownership will not result in unfettered authority of the carriers to construct stations. Instead, the Commission would prevent uncontrolled proliferation through its granting of applications on a strict public interest standard.

As to technical efficiency consideration, AT&T agrees that FDMA–FM modulation is subject to degradation from multiple earth station access, but suggests that INTELAT should use other modulation techniques including Companded Single Side Band (CSSB) and Time Division Multiple Access (TDMA). As to interference considertions, AT&T states that existing INTELSAT mechanisms are adequate to handle this kind of problem.

AT&T recognizes that permitting additional earth station owners will increase the difficulty of overall coordination. It proposes that Comsat continue to act as agent for all United States earth station owners in order to provide a focal point in the INTELSAT planning and coordination process. As a condition to granting a license to construct, own, and operate an earth station, earth station owners would be required to submit appropriate technical and traffic information to Comsat. AT&T states that Comsat's role as the unified voice for independent earth station owners would be quasi-managerial (as it is currently). These independent owners would compensate Comsat for its services as their agent.

On another topic, AT&T desires that INTELSAT and Comsat lease satellite capacity on a full transponder or partial transponder basis, rather than on only a per-channel basis. A transponder lease approach would encourage carriers to maximize efficiency, claims AT&T.

6. American Petroleum Institute (API). API is in favor of a competitive environment for the provision of earth station services, especially for stations located on customer premises. API states that if the Commission finds that there are no overriding technical or economic reasons why carriers cannot own and operate special purpose earth stations, the Commission should allow such ownership. API also urges the Commission to consider private ownership of earth stations should it be authorized to do so by Congress.

7. ABC, CBS, and NBC (The Networks). The Networks, as users of the INTELSAT system, argue that greater competition in the provision of international communications should be encouraged, to the extent it is technically, operationally, and economically feasible as well as consistent with considerations of international comity. Such competition would provide price and/or service improvements for users.

8. American Satellite Company (ASC). ASC favors carrier ownership of both general and special purpose stations albeit under the oversight of Comsat. ASC argues that advances in satellite technology now permit many entities to own and operate earth stations without technological or operational problems. Multiple ownership, argues ASC, would increase competition and result in a greater variety of services at a lower cost. ASC contends that adoption of such a policy does not mean that the Commission would authorize every application without regard to potential problems presented by the station. Instead, the Commission would make a case by case determination as to whether the particular earth station proposed serves the public interest. In making this determination, the Commission would take into account possible adverse economic and technical impact of that earth station on all other earth station owners, telecommunications entities, and carriers within the INTELSAT system.

To minimize the impact on INTELSAT of operational problems created by such a change in policy, ASC advocates that the Commission give Comsat limited supervisory powers over all U.S. earth stations. Comsat would also act as the U.S. representative to the INTELSAT system planning and coordination process. However, to ensure that Comsat does not abuse these roles, ASC sees the need for strict Commission oversight.

ASC voices thoughts on the economic impact of such policy on both INTELSAT and Comsat. As to INTELSAT, ASC claims that even if technical or operational inefficiencies and additional costs result from competitive earth station ownership, these costs will be offset by increases in revenues resulting from increases in traffic. Similarly as to the possibility of increased costs for Comsat's ratepayers because of diversion of traffic from ESOC stations, ASC states that it is more likely that international traffic will increase with the advent of competition and this increase will offset the traffic lost by Comsat. In any event, ASC states that the possibility of economic harm to Comsat or ESOC as a result of construction of new and independent earth stations is an issue that the Commission should consider before authorizing the new earth stations.

9. Western Union International (WUI). WUI argues that, because or our *Authorized User Revisited* and *Comsat Structure* orders, Comsat is no longer neutral and dedicated to the success of INTELSAT and ESOC. WUI concludes that Comsat can no longer fulfill the fiduciary role of manager of the earth stations representing carriers with whom it competes. Further, WUI argues that many carriers now have the expertise to own and operate their own stations.

WUI argues that there would be an unlawful preference for Comsat under the Satellite Act if Comsat were to continue to own and operate existing and future stations. WUI instead wants wide diversification of ownership. Further, WUI states that the public interest would not be served if a single carrier, such as AT&T, were substituted for Comsat as the dominant earth station entity.

WUI believes that Comsat has overbuilt and overspent in its ESOC role. It believes this situation can be remedied by extending competition in all types of earth stations. WUI sees no useful purpose in applying the general/special purpose dichotomy, except in the

following sense. As to existing general purpose stations WUI wants the Commission to require the ESOC members to negotiate a dissolution of the consortium and a reassignment of those stations owned by the consortium. Future U.S. INTELSAT stations would be independently licensed on a case-by-case basis, subject to the new regulatory policies to be formulated in this docket. Further, WUI advocates that carriers be given the option to either lease earth station capacity or acquire such capacity on an indefeasible right of use (IRU) basis from other carriers.

As to the operational aspects of such a policy, WUI believes that independently owned U.S. earth stations will be compatible with INTELSAT's operations and organization. WUI cites the high number of earth stations in the Western Europe Region. WUI argues that each member nation is entitled to an earth station ownership policy in conformity with its political, social, economic and geographical needs. WUI argues that most nations have a single INTELSAT earth station operator only because they have a single international telecommunications entity. WUI believes that since the U.S. has multiple, competitive, international telecommunications entities, it is entitled to multiple INTELSAT earth station operators.

WUI has a specific proposal for coordination of independent stations. WUI suggests that independent U.S. earth station operators be included as Operation Representatives in regional planning sessions. In additon, WUI desires carrier participation in INTELSAT Planning Committee meetings. If participation is not possible, WUI advocates that carriers attend these meetings as observers.

As to technical aspects of such a policy, WUI avers that there are self-executing restraints against inefficient satellite utilization by U.S. earth station operators. These restraints are a keenly competitive environment for carrier services, prevention by the Commission of uncontrolled proliferation, the need for INTELSAT approval, and the need for agreement of foreign earth station operators.

As to economic factors, WUI argues that cost savings will result from a procompetitive ownership policy. WUI reasons that carriers will reap large savings in terrestrial charges through stations located near their operating centers or their customer's premises. Second, WUI claims that competitively stimulated innovations are likely to produce increased satellite demand and lower unit costs, without necessarily resulting in a net loss of traffic to the existing ESOC stations. Third, WUI believes that non-Comsat managed stations will not have to absorb Comsat's corporate overhead expenses and Comsat's research and development costs.

WUI addresses some additional issues. It argues that earth station rates should not be averaged pursuant to regulatory fiat. Instead, marketplace forces should play a role through carrier-initiated rates. It also claims that Comsat's participation in earth station ownership (both general and special purpose) should be through an arm's length subsidiary and not through its World Systems Division. Finally, it avers that if ESOC is retained, Comsat's preferential position of 50 percent ownership should be abolished.

10. TRT Telecommunications Corporation (TRT). TRT argues that the logic of the *Authorized User Revisited* decision mandates that carriers be permitted to own and operate INTELSAT earth stations individually. Otherwise, TRT avers, Comsat will be able to use its INTELSAT monopoly to gain an insurmountable and unfair advantage in the competitive international "retail" market contrary to anti-trust laws.

TRT maintains that allowing the international record carriers (IRCs) to own and to participate in the operation of earth stations to the extent of their use of international satellite circuits will improve the quality of service with no significant adverse effect on the efficiency of the INTLSAT system. TRT reasons as follows. First, TRT maintains that the number and types of earth stations located overseas has increased extensively over the years. Nonetheless, TRT avers, all technical problems associated with these stations have been resolved by INTELSAT. Second, TRT believes that because international communications is growing at a healthy rate, it cannot be expected that the relatively small earth station capacity which the IRCs may wish to install will seriously offload existing U.S. earth stations. Additionally, TRT believes that if ownership interests in the existing U.S. earth stations are held by all carriers in proportion to their use, a better balance of incentives for their continued use would result.

TRT, on the other hand, recognizes that there are technical, economic and "international relations" considerations which impose practical limits on the number of United States earth stations that may be operated within the INTELSAT system. Therefore, TRT advocates that the Commission's policy should be to authorize new earth stations only on a case-by-case showing of economic and technical feasibility. Thus, the Commission would assure that proper trade-offs, are made of the costs and benefits of additional earth stations. Further, TRT maintains, the required operational compatibilities can also be assured through the authorization process.

1. Home Box Office, Inc. (HBO). HBO focuses its comments primarily upon individual carrier ownership of special purpose stations, which it defines as either providing customized services or being located at certain specialized locations (e.g., customer premises).

HBO argues that, as a matter of law, the Commission has broad discretion in licensing the ownership and operation of INTELSAT earth stations. HBO believes that Congress adopted the language in Section 201(c)(7) of the Satellite Act "to make it clear that there is no legislative prejudment as to who shall establish a ground terminal station." HBO also avers that the INTELSAT Agreements also do not constrain the Commission's discretion in changing the current earth station ownership policy.

HBO argues that, as a matter of policy, the FCC should permit individual carrier ownership and operation of INTELSAT earth stations. HBO believes that the development of competition in the telecommunications industry requires a revised ownership-policy which is consistent with the flexible domestic environment. HBO claims that individual ownership will give carriers the opportunity to design and price their service offerings to meet customer requirments quickly and efficiently.

HBO addresses specific technical and operational aspects of the end-to-end communications path which it claims compel revision of the current ESOC policy. HBO believes that the fundamental goal should be end-to-end efficiency and quality of service. HBO argues that earth stations owned and operated by individual carriers and located on or near customer premises will improve efficiency and quality of service. HBO analyzes three elements of the end-to-end path: The terrestrial link, the earth station, and the INTELSAT space segment. As to the terrestrial link, HBO sees customer premise earth stations as eliminating or reducing the need for this link and thus avoiding the problems associated with this link. These problems include the addition of noise to the signal (reducing the signal's quality), the unavailability of the link at critical times due to congestion, and errors in the switching and other aspects of network management. As to the earth station segment, HBO points out that in both the Atlantic and Pacific Regions

many independent earth stations serve populations roughly equivalent to that in the United States. Further, HBO argues that competitive customer premise stations will stimulate technical innovation to meet the specific needs of individual users as to both the type of traffic to be handled and the balancing of signal quality and cost. Finally, as to the INTELSAT space segment, HBO argues that TDMA is becoming the standard method of sharing capacity within INTELSAT and that a TDMA system is not subject to the same problems as an FDMA system (i.e. loss of capacity from multiple earth station access). Further, HBO avers that SCPC/PSK signalling will eventually be used for transmission from Standard B stations and this signalling is also superior to FDMA in promoting satellite efficiency.

HBO also addresses the argument that an increase in the number of U.S. earth stations would adversely affect INTELSAT's ability to control interference among INTELSAT system users and with other systems. HBO claims that INTELSAT and its users have successfully dealt with similar situations in Europe. Further, HBO argues that frequency management and interference issues will be even easier to handle as TDMA use become more prevalent in the system.

HBO discusses both the benefits and operational costs associated with a flexible ownership policy for customer premises stations. The benefits claimed are: (1) The opportunity to design features to meet the requirements of specific users; (2) the opportunity to provide a high level of security; and (3) the improved transmission quality and reliability achievable by eliminating a long terrestrial link to a centralized earth station. HBO states that these benefits are particularly useful for international television transmission. HBO also avers that these benefits can best be achieved by competitive rather than consortium ownership.

HBO believes that the only cost associated with independent ownership is the administrative burden involved in the creation of a new coordination mechanism to assure efficient, nonharmful operation of the stations. Morover, HBO proposes a model of such a coordination mechanism. As a preliminary matter, HBO advocates that the operators of all earth stations would continue to obtain licenses from the Commission pursuant to Title III of the Communications Act. This license would establish the necessary technical operation practices for orderly operation within the INTELSAT system. Further, HBO advocates that the Commission require the establishment of an International Technical Coordination Office ("ITCO") with separate cost accounting. The U.S. Operations Representative to INTELSAT would be a Comsat staff member assigned to ITCO. The ITCO would operate under rules established by the Commission which are designed to ensure non-discriminatory treatment of all U.S. earth station operators. ITCO would perform both short and long term coordination of earth and space segments. In the event of any disagreement between ITCO and one or more of the independent earth station operators, the matter would be referred to the Commission.

HBO also addresses the economic issues associated with revision of our current ESOC policy. HBO believes that users can best decide for themselves whether to continue using ESOC earth stations or to choose stations nearer their premises. HBO believes that such an approach will lead to an optimum economic solution. HBO evaluates total system cost effectiveness and compares three major categories of costs in a centralized ESOC configuration to the same costs in a decentralized individual carrier configuration. These categories are terrestrial transmission costs, earth station costs, and space segment costs. HBO argues that customer premises stations would reduce terrestrial costs in such a manner as to reduce the overall end-to-end cost of a circuit by about 15 percent. As to earth station costs, HBO claims that Standard B stations provide lower per circuit costs than Standard A stations. Also, HBO reasons that large general purpose stations will continue to handle message telephone traffic, and other switched services, which represent the majority of international traffic. HBO also believes that, given the rapid growth rate of international traffic, it is unlikely that any diversion of traffic would result in an actual decrease of traffic through the ESOC network. Finally, as to space segment costs, HBO alleges that any increased costs due to inefficient access would be present only temporarily (until the introduction of TDMA in the mid-1980's) and, in any case, would be offset by cost savings in the terrestrial access.

12. M/A–COM, Inc. M/A–COM is a manufacturer of Single Channel Per Carrier (SCPC) and Time Division Multiple Access (TDMA) earth station equipment. M/A–COM argues that the Commission should permit independent customer premises and other special purpose earth stations to be used in connection with the INTELSAT system because they will help satisfy user needs that are not now being met, will increase competition in the supply of communications equipment and services, and will result in lower prices for new international telecommunications services as demand is stimulated.

M/A–COM claims that the current general purpose ESOC network is either too expensive or technically deficient in statisyfing the needs of certain user groups, such as the energy, banking, newspaper, and video entertainment industries. In particular, M/A-COM believes that the current network is unsuitable because of the need for terrestrial microwave backhaul, which imposes significant technical and economic cost penalties and operational burdens. M/A-COM advocates allowing customers to weight the merits of special purpose versus general purpose stations.

M/A-COM also argues that INTELSAT will benefit from expanded earth station ownership. M/A-COM asserts that INTELSAT may soon have competitors for international communication traffic and therefore must have flexibility to compete. M/A believes that our current earth station policies provide no such flexibility. For instance, M/A-COM argues that the use of Standard A antennas imposes on INTELSAT users costs which are far greater than the benefits in increased space segment capacity created by such antennas. M/A-COM believes that smaller antennas would result in lower costs to users.

M/A-COM also believes that there are many conflicts of interest in Comsat's dual role as U.S. Signatory and 50 percent owner of ESOC. For instance M/A-COM asserts that it is contrary to Comsat's interests to permit INTELSAT to adopt technical standards for small customer premise earth stations because Comsat would lose revenue and the power to control this new earth station investment if INTELSAT were to adopt such standards. These losses would arise because these earth stations would likely be owned by non-Comsat affiliated carriers.

As to technical issues, M/A-COM asserts that special purpose earth stations will not result in technical or economic harm to INTELSAT or its users, M/A-COM reasons that although multiple access of a transponder in the (analog) FDMA mode may reduce satellite efficiency, multiple access in a (digital) TDMA mode should have minimal adverse effect. M/A-COM also asserts that not only will TDMA transmissions from Standard A stations

not reduce capacity significantly, but these transmissions from Standard B stations will also have little negative effect if certain additional equipment is added. This equipment would provide for either forward error correction coding at the earth stations or on-board regeneration of the signals on the spacecraft. Further, M/A-COM believes that even if special purpose earth stations are used in a mode, such as FDMA, that reduces INTELSAT space segment capacity, then INTELSAT could increase its space segment charges proportionately to recover its full costs. In this light, M/A-COM proposes that the Commission instruct Comsat to advocate reasonable INTELSAT charges to users of special-purpose stations.

As to operational issues, M/A-COM believes that implementation of TDMA transmissions through Standard B earth stations can help reduce the complexity of INTELSAT network planning. M/A-COM avers that it is simplier to achieve multi-nation connectivity through TDMA access than through FDMA or SCPC access.

On another matter, M/A-COM asserts that structural controls alone on Comsat will not be sufficient to protect Comsat's competitors under the more open earth station ownership policy it proposes. M/A-COM believes that broader public participation in the instructional process will be necessary.

13. Communications Satellite Corporation (Comsat). Comsat asserts that changes in the way basic earth station facilities are made available would not, as a practical matter, produce meaningful competition. Moreover, Comsat believes independent ownership would cause a number of serious problems. Comsat sees a policy of unrestricted independent ownership as triggering a proliferation of earth stations which would hamper efficient, reliable, and cost-effective operation of the U.S. earth station network, and optimum utilization of the INTELSAT system. Comsat asserts that any increase in the number of U.S. stations must be carried out pursuant to a careful planning process similar to that of the current ESOC arrangement.

Comsat asserts that the existing ESOC arrangement has served the public interest. Comsat believes that it has resulted in the establishment of efficient, cost-effective earth stations capable of satisfying user requirements without the duplicative investment that would have resulted if individual carriers had been authorized to construct their own facilities. Further, the ESOC stations have taken the form of large volume, general purpose earth stations which maximize the useful life of the satellites with which they communicate. Comsat believes that ESOC as a single owner is able to reconfigure the stations to accommodate growth of traffic, transitions to new satellites, and restoration of service when required. Comsat avers that in order to assure the provision of reliable service, there must be centralized coordination among all stations and centralized management of relationships with INTELSAT, foreign earth station operators, and U.S. carriers.

Comsat asserts that independent ownership of general purpose earth stations would not produce competition and would otherwise be undesirable. Comsat does not believe competition in this area is feasible. Comsat states that given the relative market positions of the U.S. international service carriers and the enormous expenditures involved in constructing or acquiring general purpose stations, meaningful competition would not result. Instead, independent ownership would have a substantial number of adverse effects.

First, Comsat avers that independent ownership would reduce significantly the level of technical efficiency of the INTELSAT system. Adverse impacts include inefficient use of existing capacity (by transmitting the same amount of traffic on more carriers); further loss of satellite capacity due to the use of Standard B or non-standard access rather than Standard A or Standard C access; diminished effectiveness of the INTELSAT TDMA system that is about to be implemented; and increased susceptibility to internetwork and intranetwork interference.

Second, Comsat avers that independent ownership would complicate the operation of the international earth station network. Comsat believes that the coordination necessary to perform the myriad of operational activities within the INTELSAT system simply could not be achieved under an independent ownership scheme. Comsat reasons that as long as the particular service requirements of the independent owners were met, these owners would not have the requisite interest in the overall efficiency and reliability of the U.S. network. Further, operations by carriers solely in their individual interests, Comsat maintains, would reduce service performance and cost effectiveness.

Comsat does not believe it is practical for it to represent different owners in Operations Representatives meetings. Even worse, Comsat alleges, would be permitting independent owners to attend and participate in these meetings. Such representation, claims Comsat, would dilute the U.S. position, especially in the areas of transponder utilization, diversity routing and restoration planning, to the advantage of foreign administrations.

Third, Comsat states that independent ownership would impose unnecessary space segment and ground segment costs on the INTELSAT system and its users. As to space segment costs, Comsat believes that additional investment for new satellites will be incurred earlier than would otherwise be necessary. With respect to ground segment costs, Comsat states that the ESOC arrangement has employed various technological advances in modulation techniques that permit aggregation of large volumes of traffic in large, high efficiency RF carriers. This aggregation results in a decrease in the per unit cost of earth segment services. Equally important, Comsat believes, is the fact that if carriers are authorized to construct additional facilities without showing that existing facilities are unable to accommodate the traffic anticipated to be carried through the new stations, there would be an increase in the total investment in U.S. earth stations to handle the same amount of traffic. This overinvestment would increase costs to users. Finally, Comsat asserts that multiple independently owned stations would also increase the equipment requirements of other INTELSAT members. Each foreign correspondent, Comsat states, would be required to buy additional equipment to operate with the new U.S. earth stations.

Finally, Comsat states that independent ownership would raise important foreign policy concerns. Comsat believes that any action taken by the United States that adversely affects the INTELSAT communications system as a whole would inevitably serve to undermine U.S. leadership. For the U.S. now to adopt policies blatantly inconsistent with the principles of conservation of electro-magnetic spectrum and orbital resources, would affect U.S. credibility on these projects and would make it difficult for the U.S. to encourage other countries to conserve these resources, claims Comsat.

On another topic, Comsat advocates that the Commission authorize special purpose stations to independent owners but only in limited, well-defined circumstances where compelling justification exists. In addition, Comsat asserts that it would like to remain the overall System Manager for these stations on such matters as circuit activation, network management, system plans, maintenance, and billings.

Comsat proposes the following regulatory criteria for these special purpose stations:

(1) There should be single service (e.g. television) provided through the station;

(2) There should be a single carrier providing the service;

(3) The service to be provided through a special purpose station should be one that could not be provided by a general purpose station; and

(4) The service should not be priced to the customer below full cost.

If these criteria are not met, Comsat believes that special purpose stations will evolve into general purpose stations and thereby give rise to problems inherent in the ownership of such stations.

On another topic, Comsat discusses its desired role in ESOC (should ESOC continue to exist). Comsat wants to maintain 50 percent ownership interest in ESOC in order to represent the interests of the global satellite system as a whole. Similarly, Comsat believes it is in the best position to perform centralized management functions. Comsat states that the practical effect of the proposals to eliminate Comsat's ownership interest and managerial function would be to turn ownership and management over to AT&T, the preponderant carrier-use of earth station facilities. Comsat avers that this result will not encourage competition in the provision of international communications services.

On the subject of whether the Comsat World System Division or a subsidiary should participate in the ownership of earth stations, Comsat proposes ownership by the World Systems Division. Comsat avers that exclusive ownership through a subsidiary would contravene Section 201(c)(8) of the Satellite Act. Comsat reasons that ownership of each stations is an inextricable part of Comsat's business under the Act and should therefore be in the World Systems Division name.

14. All America Cables and Radio, Inc. [AAC&R] and ITT World Communications, Inc. [ITT Worldcom]. AAC&R and ITT Worldcom, filing jointly, maintain that the Commission should authorize independent earth stations—both general and special purpose—on a case-by-case basis, under the statutory public interest standard. In support of this change of policy, they state that improved technical coordination procedures would be appropriate and can be achieved without a Comsat monopoly. Instead, they advocate creation of an International Technical Coordination Office (ITCO) within the Federal Communications Commission.

Further, they aver that all of Comsat's earth station activities be transferred to a non-monpoly separated subsidiary. They find no policy or legal barrier to prohibit such a transfer.

Finally, they argue that because of the lack of mutual consent among its members, ESOC has been rendered unviable and should be abolished.

Comments and Replies on Comsat's Proposal

1. Home Box Office, Inc. (HBO). HBO indicates that it is not a member of the ESOC consortium and is not primarily interested in issues relating to the dissolution of the present ownership arrangements. rather, HBO is concerned that the benefits of independent ownership be no longer withheld from international satellite service consumers and that the economic and operational arrangements instituted in any new independent ownership environment are reasonable, non-discriminatory, and suitable for an emerging competivite environment.

HBO states argues that the Commission should not establish a moratorium on application for independent earth stations as Comsat suggests. HBO believes that, whatever the merits of a transition period for the dissolution of existing ownership arrangements, the public interest favors immediate consideration of applications for independent earth stations. HBO argues that Comsat's justification for the moratorium is anti-competitive, unnecessary, and illogicial. HBO asks that the Commission accept applications for independent carrier-owned earth stations, either general purpose or special purpose prior to the close of this proceeding. HBO believes that the information which would become available and the experience that would be gained would be helpful in resolving the remaining earth station ownership issues.

Further, HBO avers that the Commission should not accept artificial distinctions between special and general purpose stations. HBO reasons that it is becoming more and more difficult to distinguish between the two. HBO cites the recent application by Comsat for authority to construct and operate an INTELSAT earth station at New York's Teleport Complex as an example of a station having both special and general purpose characteristics.[1]

HBO also discusses the types of operational and economic arrangements it would like to see implemented in a competitive environment. Operationally, HBO advocates creation of an International Technical Coordination Office (ITCO), which would be an independent body, to coordinate such functions as circuit activation, network management and system planning for the emerging network of U.S. earth stations. As a second choice, HBO would accept Comsat as the System Manager for this network of earth stations if certain conditions could be met. These conditions include the establishment by the Commission of procedures to assure that Comsat treats all earth station owners (including itself or its affiliates) in a non-discriminatory manner. Economically, HBO argues that Comsat should unbundle its tariff in a way that would isolate costs of performing coordination of the earth station network. These costs should then be identified as a separate element in addition to the element relating to the provision of the satellite channels themselves. HBO reasons that in the event the Commission ultimately decides that some entity other than Comsat should coordinate the activities of U.S. earth stations, isolation of these costs will make such a transition easier to accomplish.

2. American Telephone and Telegraph (AT&T). AT&T favors independent carrier ownership of U.S. earth stations and the phasing out of the present ESOC arrangement. AT&T objects to the Comsat proposal to the extent that it unnecessarily delays creation of a more competitive environment by imposing operational restrictions on other carriers' construction of general and special purpose stations during an extended transition period.

As to the phasing out of ESOC, AT&T sees alternatives to Comsat's combination earth station approach. In addition to the option of combination stations, AT&T recommends that carriers should be permitted to transfer their ESOC ownership interest so that a single carrier could obtain 100 percent ownership of an ESOC station for its own service requirements to the public. AT&T proposes that these single carrier stations be used both for general and special purpose applications. AT&T also objects to Comsat's proposal on the ground that mandatory use of combination stations during the transition period would continue that aspect of the arrangement under ESOC wherein carriers are required to use facilites owned by others in providing their services.

[1] Communications Satellite Corporation, File No. CSG-83-034-P/L.

AT&T supports unbundling of Comsat's rates prior to any transition period. However AT&T believes that Comsat is not clear with regard to whether it will offer full or partial transponder leases, rather than only individual channels as presently structured. AT&T believes incresed efficiency and lower tariffs to end users will result from availability of transponder leases.

AT&T argues that there is no need for a moratorium on applications for construction of general purpose stations. Rather the Commission should expeditiously decide that independent ownership is allowed as a matter of policy and consider immediately individual applications. In determining whether the public interest is furthered, the Commission could consider the impact on existing ESOC stations, and could also condition approval on non-discriminatory access to all carriers.

3. Western Union (WU). WU claims that the primary effect of Comsat's proposed moratorium on earth station applications would be to enable Comsat to solidfy its dominance of the market. Accordingly, Western Union urges the Commission to reject Comsat's proposal to the extent that it would delay the authorization of U.S. carriers to construct and operate new general purpose and special purpose earth stations.

4. International Communications Association (ICA). ICA is a non-profit business organization of major corporate, educational, and governmental users of telecommunications equipment, facilities, and services. ICS expresses concern that portions of Comsat's proposal, if fully implemented, would not be in the interests of telecommunications users or the public.

5. TRT Telecommunications Corporation (TRT). TRT states that, although it would prefer to see the ownership and operation of the present ESOC earth stations transferred to end-to-end carriers (including Comsat's retail carrier subsidiary) in proportion to use, it believes Comsat's proposal to acquire these stations and operate them exclusively for carriers has sufficient merit to warrant further study. However, TRT opposes Comsat's suggested three year moratorium on authorization of other carriers to construct and operate earth stations. TRT argues that this moratorium is too broad in that it would prohibit competition in the provision of most special purpose earth stations services, including those for INTELSAT's proposed International Business Service. TRT disagrees with Comsat that such a moratorium would help assure continued non-discriminatory access to the INTELSAT system. TRT, instead, believes that the prospects for smaller carriers to obtain access to INTELSAT on fair and equitable terms would be improved if earth station services were available from multiple competitive vendors. In addition, TRT argues that the almost total moratorium on competing earth stations which Comsat seeks is not necessary in order to preserve the viability of the ESOC general purpose stations. TRT states that no party in this proceeding has argued that applications for competing stations should be automatically granted without regard to public interest considerations. TRT agrees with Comsat that the Commission should deny any applications for proposed stations which would jeopardize the continued viability of the existing general purpose stations and thereby jeopardize continued non-discriminatory access to the INTELSAT system for all carriers.

6. RCA Global Communications, Inc. (RCA). RCA argues that the Commission should rule immediately in this docket that the international service carriers may, as a matter of law and policy, construct, own and operate international earth stations.

7. American Broadcasting Companies, Inc. (ABC), CBS, Inc. (CBS), and National Broadcasting Company, Inc. (NBC) [Networks]. The principal purpose of the jointly filed Networks' comments is to urge the Commission not to disturb the policy established in the SIN decision [2] wherein the Commission concluded that Comsat may provide international television service directly to television customers, such as ABC, CBS, and NBC. The Networks believe that they obtain operational and economic benefits from this form of access to the INTELSAT system. In addition, the Networks argue that it would be unfair and unnecessarily disruptive to require abrogation of arrangements that they have made in reliance on this decision.

8. Western Union International, Inc. (WUI). WUI argues that the Commission should order the dissolution of ESOC forthwith following the submission to it of a dissolution plan by the ESOC partners. Further, WUI believes that the Commission should adopt promptly an open entry earth station policy, rather than allow a lengthy transition period as proposed by Comsat.

9. Western Systems, Inc. (Western Systems). Western Systems owns and operates a cable television system in Guam. Although Guam is a territory of the United States, it does not have access to any of the U.S. domestic satellites, but must instead operate with INTELSAT. Western Systems believes that it should be given the authority to own and operate its own general purpose INTELSAT earth station in Guam in order to provide lower rates to its customers. Therefore, Western Systems opposes Comsat's proposal on the grounds that it would delay this necessary modification to Commission policy.

10. All America Cables and Radio, Inc. and ITT World Communications Inc., filing jointly (ITT). ITT maintains that the Commission should reject Comsat's proposal and enter, instead, an immediate declaration that applications for independent earth stations will be entertained under the public interest standard. ITT further argues that such a declaration should not be delayed by any perceived need to issue an NPRM, since there is not a legally binding policy affording exclusivity to ESOC which needs to be repealed or modified. ITT acknowledges that while further proceedings may be appropriate over such issues as an earth station coordination mechanism and the procedures for dissolution of ESOC, these are collateral to a policy of immediately entertaining applications for independent earth stations.

ITT also states that Comsat's investment in INTELSAT earth stations should be reduced to a level reasonably related to Comsat's use. Thus, in connection with any further proceedings respecting dissolution of ESOC, any proposed policy giving Comsat the equivalent of 60 percent of the ESOC assets, as ITT believes would occur under Comsat's combination earth station proposal, would be improperly preferential. ITT also argues that Comsat should not be given a dominant role in the coordination of independent earth stations. Rather, it desires that coordination be established either by a transitional network management committee or by a modified version of the International Technical Coordination Office proposed by HBO.

11. American Satellite Company (ASC). ASC is concerned with three issues raised by Comsat's proposal. First, ASC desires that Comsat include only proper costs in its unbundled space segment tariff. Second, ASC believes that the three year transition period proposed by Comsat is far too long. Finally, ASC argues that development and approval of an ESOC phase-out plan should not delay the progress of the Commission in changing its policy to

[2] Spanish International Network, 70 FCC 2d 2127 (1978) (hereinafter the SIN decision).

permit independent ownership of INTELSAT stations.

12. National Telecommunications and Information Administration (NTIA). NTIA argues that Comsat's concept of a wholesale/retail combination earth station has merit and should be given consideration. It disagrees, however, with Comsat's proposed moratorium, which it believes would give Comsat three years to solidify its markets at both existing facilities and at new ones it constructs.

Instead, NTIA believes that the Commission should immediately accept applications and consider them in the context of the statutory public interest standard. Specifically, the economic impact of a proposed earth station on existing facilities should be considered (among other effects) during the review of these individual applications. NTIA also suggests that applications by AT&T for earth station ownership be given very close scrutiny, as they may raise serious concerns about the maintenance of healthy competition in the U.S. market in international communications services.

13. Hawaiian Telephone Company (HTC). HTC prefers that the ESOC ownership and operating arrangement be continued at the existing stations. HTC states, however, that if the Commission does decide to dissolve ESOC, it should allow the joint owners wide latitude to negotiate on a station-by-station basis appropriate arrangements for future ownership and operation.

HTC is also concerned with other aspects of Comsat's proposal to convert existing stations into "combination" stations. HTC does not support this proposal and believes that Comsat may have no intention of "buying out" the investment interests of other joint owners, but may hope merely to allocate "equipment" at each station among owners. Hawaiian, however, is not interested in becoming an owner of various component parts of a station. Instead, if the Commission dissolves ESOC and approves "combination" stations, it desires to recover its investment from Comsat (or the ultimate owner) at the time of the conversion.

Hawaiian does not believe that Comsat's proposal is aimed at developing a more flexible competitive environment. Rather, it avers that Comsat has developed a scheme to gain almost complete ownership and operating control over all existing stations and to develop a wide array of services at competitive rates so that future earth station competition can be forestalled.

As to Comsat's proposed development of new services and rates, HTC has three concerns. First, HTC believes the aspect of Comsat's proposal advocating revision of the *Authorized User Revisited* decision will unnecessarily delay this proceeding. Second, HTC hopes that the Commission will pay particular attention to the development of rates and allocation of costs for Comsat's "wholesale" services. Third, HTC expresses concern that Comsat's proposal does not address the issue of rate deaveraging. HTC advocates the continuing averaging of rates for high and low density routes.

As to the unbundling aspect of Comsat's proposal, HTC advocates that the Commission should require that this be done immediately. Further, HTC believes that Comsat's space segment charges should include only those costs *directly* associated with providing satellite channels of communications to the end-to-end carriers.

Finally, HTC argues that although there would be need for some transition period to phase in restructured arrangements at existing ESOC stations (if ordered by the Commission,) it does not agree that a moratorium should be placed on independent ownership of INTELSAT earth stations pending reorganization of ESOC.

14. M/A–COM Inc. (M/A–COM). M/A–COM argues that COMSAT's proposal for "combination" earth stations is anticompetitive on its face and would undermine existing Commission policies designed to protect against anti-competitive abuses. It believes that the proposal creates an inherent conflict of interest between the performance of Comsat's role as earth station "wholesaler" and its competitive ambitions. Further, M/A–COM avers that the proposal will limit the range of competitive service options open to users. Specifically, it would not rapidly respond to the requirements for customised capacity to meet unique requirements. M/A–COM also opposes Commission reconsideration of the *Authorized User Revisited* decision because of the delay in the introduction of independent earth stations that would result.

M/A–COM argues that Comsat's concerns over loss of value in existing facilities may be remedied without foreclosing competition in the provision of earth station services. In effect, the Commission, in the exercise of its Section 214 and Title III powers, would act to ensure that the carrier investment in new facilities is justified and would not result in unnecessary or duplicative facilities.

M/A–COM also maintains that Comsat's proposal is antithetical to international service concepts embraced by INTELSAT and is inimical to INTELSAT's long-term interests. M/A–COM believes that INTELSAT contemplates a broad diversity of earth station access arrangements. Also, from a technical standpoint, M/A–COM points to INTELSAT's introduction of new international business services that contemplate multiple earth station scenarios.

Finally, M/A–COM avers that formal rulemaking is not necessary to implement a policy allowing carriers to begin applying immediately for independent earth stations. M/A–COM suggests that where the affected parties as here could clearly foresee that a policy change was due, these parties would not be unfairly prejudiced by an abrupt change in policy as M/A–COM advocates. M/A–COM sees the need for a rulemaking only with respect to the disposition of ESOC.

[FR Doc. 84–12018 Filed 5–3–84; 8:45 am]

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47 CFR PART 73

[MM Docket No. 83–1135; RM–4581, RM–4673; MM Docket No. 84–378; RM–4300 et al.]

Television Broadcast Stations in Cullowhee and Andrews, North Carolina et al; Knoxville, et al.; Kentucky; Dalton, Georgia and Franklin, North Carolina; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to ten separately filed petitions, this consolidated proceeding proposes optional plans for the assignment of UHF TV channels to various Communities in North Carolina, Georgia, Tennessee, Alabama and Kentucky.

DATE: Comments must be filed on or before June 18, 1984, and reply comments on or before July 3, 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.

Further Notice of Proposed Rule Making and Memorandum Opinion and Order

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Cullowhee and Andrews, North Carolina, and Roswell, Georgia[1] MM Docket No. 83–1135, RM–4581, RM–4673. Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Knoxville, Chattanooga, Athens, Tennessee, Opelika and Arab, Alabama, Dalton, Georgia, and Bowling Green, Kentucky), MM Docket No. 84–378, RM–4300, RM–4353, RM–4396, RM–4441, RM–4442, RM–4493, RM–4604; Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Dalton, Georgia and Franklin, North Carolina), RM–4647.

Adopted: April 20, 1984.

Released: April 25, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 50585, published November 2, 1983, proposing the assignment of UHF TV Channel 31 to Cullowhee, North Carolina, at the request of Greg Ryder ("Ryder"), as that community's first local television facility. On November 7, 1983, a petition for rule making was filed by Jess Jimenez ("Jimenez") seeking the assignment of UHF Channel 59 to Roswell, Georgia, as that community's first local television assignment.[2] The assignment of Channel 59 at Roswell could be accomplished if noncommercial educational Channel *24 was substituted for unoccupied and unapplied for UHF TV Channel *59 at Andrews, North Carolina. However, the distance between the Cullowhee and Andrews proposals is not sufficient (23 miles where 60 is required) to permit the assignment of each of their requested channels. Therefore, the Jimenez petition was accepted as a counterproposal in MM Docket 83–1135, Regarding the assignment of Channel 31 to Cullowhee, a site restriction of 24.2 miles northwest is necessary to avoid short-spacing to Station WGGS-TV, Channel 16 at Greenville, South Carolina. Channel 59 at Roswell must be located at least 1.1 miles north to avoid short-spacing to unoccupied and unapplied for educational Channel *57 at Atlanta, Georgia. The site for Channel *24 at Andrews, North Carolina, is restricted to an area at least 5.7 miles north to avoid a short-spacing to Station WGXA, Channel 24 at Macon, Georgia.

2. The Commission also has before it several related petitions for rule making seeking television allocations to various communities in Tennessee, Alabama, Georgia and Kentucky. Due to a pending proceeding concerning an interference problem between Station WVEU (Channel 69), Atlanta, Georgia, and land mobile stations in the same area, these petitions have been held in abeyance. One of the possible resolutions of that interference problem was to move Station WVEU to another TV channel. On February 3, 1984, the Commission adopted a *Memorandum Opinion and Order*, FCC 84–38, which retained Channel 69 at Atlanta and requested WVEU and the affected land mobile licensees to enter good faith negotiations concerning reimbursement of their costs of changing frequencies. WVEU was also requested to submit a list to the Commission as to which licensees has filed or agreed to file applications for new frequencies and those which has not so agreed. Therefore, the following petitions can now be acted upon. As several of these petitions conflict with a proposal in MM Docket 83–1135, all of the requests are being consolidated. Each of the petitioners have expressed their intention to apply for their respective channels, if assigned.

The Individual Petitions

3. On January 6, 1983, David Allen Crabtree ("Crabtree") filed a petition requesting the assignment of UHF TV Channel 63 to Knoxville, Tennessee, as its seventh television assignment (RM–4300). Knoxville (population 175,030)[3], the seat of Knox County (population 319,694), is located in eastern Tennessee, approximately 257 kilometers (160 miles) east of Nashville, Tennessee. Channel 63 would have to be sited at least 1 mile southwest to avoid short-spacing to unused Channel 63 at Bluefield, Virginia.

4. On January 19, 1983, Chattanooga Family Television ("Chattanooga Family") filed a request seeking the assignment of UHF TV Channel 23 to Chattanooga, Tennessee, as that community's sixth television assignment, with the concomitant substitution of noncommercial educational UHF TV Channel *63 for Channel *24 at Athens, Tennessee (RM–4353). Chattanooga (population 169,565), the seat of Hamilton County (population 287,740), is located in southeastern Tennessee, approximately 180 kilometers (112 miles) southeast of Nashville, Tennessee. Although the staff determined that Channel 23 could be assigned to Chattanooga without a substitution of channels elsewhere if the transmitter were sited to the southwest of the community, petitioner has informed us that such a site restriction would necessitate location upon Lookout Mountain. According to Chattanooga Family, this area is not available for transmitter use due to environmental reasons. The preferred alternate site, specified by petitioner, is 8.1 miles north of Chattanooga which require the channel substitution at Athens.

5. Lynn Henley ("Henley") filed a petition on March 8, 1983, requesting the assignment of UHF TV Channel 56 to Opelika, Alabama, as that community's second local television assignment (RM–4396). Opelika (population 21,896), the seat of Lee County (population 76,283), is located in eastern Alabama, approximately 90 kilometers (58 miles) northeast of Montgomery, Alabama.

6. On April 18, 1983, BMTC Systems, Inc. ("BMTC") filed a petition seeking the assignment of UHF Channel 23 to Arab, Alabama, as that community's first local television facility (RM–4442). Arab (population 5, 967), in Marshall County (population 65,622), is located in northern Alabama, approximately 105 kilometers (65 miles) northeast of Birmingham, Alabama.

7. On April 25, 1983, Monroe Television ("Monroe TV") sought the assignment of UHF TV Channel 63 to Monroe, Georgia, as that community's first local television assignment (RM–4441). Monroe (popuplation 8,854), the seat of Walton County (population 31,211), is located in northern Georgia, approximately 65 kilometers (40 miles) east of Atlanta.

8. On May 9, 1983, Family Television ("Family") filed a petition requesting the assignment of UHF TV Channel 23 to Dalton, Georgia, as that community's first local television assignment (RM–4493). Subsequently, a new petition was filed by Family seeking, as an alternative to the assignment of Channel 23, the reassignment and dereservation of unoccupied and unapplied for noncommercial educational UHF TV Channel *56 from Franklin, North Carolina, to Dalton, Georgia (RM–4493). No replacement for the Franklin assignment was proposed. Dalton (population 20,939), seat of Whitfield County (population 65,789), is located in northwestern Georgia, approximately 125 kilometers (78 miles) northwest of Atlanta. Franklin (population 2,640), seat of Macon County (population 20,178), is located in western North Carolina, approximately 105 kilometers (65 miles) southeast of Knoxville, Tennessee. The assignment of Channel 23 at Dalton would require a site restriction of 6.1 miles west to avoid short-spacing to

[1] The communities of Andrews and Roswell have been added to the caption.

[2] Public Notice of the filing was given on November 17, 1983, Report No. 1434.

[3] All population figures are taken from the 1980 U.S. Census.

Station WCLP–TV, Channel *18 at Chatsworth, Georgia.

9. On September 19, 1983, Western Kentucky University ("Western Kentucky") submitted a petition seeking the assignment of UHF TV Channel *24 to Bowling Green, Kentucky, reserved for noncommercial educational use. This proposal would require the substitution of UHF TV Channel *63 for UHF TV Channel *24 at Athens, Tennessee. Bowling Green already has one noncommercial educational television facility. Bowling Green (population 40,450), the seat of Warren County (population 71,828), is located in southwestern Kentucky, approximately 150 kilometers (95 miles) southwest of Louisville, Kentucky. Channel 24 at Bowling Green must be sited at least 14.4 miles northwest to avoid short-spacing to Station WFYZ, Channel 59, Murfreesboro, Tennessee, and to Station WKZT, Channel 23, Elizabethtown, Kentucky.

10. As specified in the *Notice* in MM Docket 83–1135 and paragraph 1 herein, Channel 31 at Cullowhee would have to be located at least 24.2 miles northwest of the city to avoid short-spacing to Station WGGS-TV, Channel 16, Greenville, South Carolina. Ryder was asked to provide a showing that he could provide the required 80 dBu city grade signal to Cullowhee from such a distant sit. Ryder filed comments reiterating his intention to apply for the channel, if assigned, and included a showing that the necessary signal level could be achieved. Opposing comments were filed by the University of North Carolina ("UNC") and SATECH Associates ("SATECH"). Both parties point out that the site restricted area at Cullowhee is within the Great Smoky Mountains National Park. Citing Title 16, Chapter 23, Section 1133(c), "Use of Wilderness Areas," UNC states that it would be extremely difficult, if not impossible, to obtain the necessary permission to locate a transmitter in that area.

11. Reply comments were filed by Roswell Broadcasters ("Roswell B/Cers") and UNC. Roswell B/Cers affirmed its interest in applying for Channel 59 at Roswell, if assigned, and agreed with UNC and SATECH that the restricted site a Cullowhee would place the transmitter within the Great Smoky Mountains National Park. In addition, it states that Ryder failed to file comments in support of his request for Cullowhee or to respond to the coverage question.[4]

[4] Comments were filed by Ryder on December 8, 1983, three days past the stated deadline. Ryder did not file a request for acceptance of late-filed comments nor did he give any reason why the comments were not timely filed. In view of the site problems raised by UNC and SATECH, to which he did not respond, we will not consider his comments as to the signal coverage possible from the 24.2 mile northwest site specified in the Notice. Rather, Ryder is expected to respond, in a timely manner, to the siting problems discussed in paragraphs 10–12 herein. Ryder's response should also show that he could place the requisite 80 dBu city grade signal over the community of Cullowhee should a site be available in the restricted area. We will, however, accept his statement of continuing interest in the Cullowhee assignment.

Roswell B/Cers also requested that if the Commission determined that Channel 31 should be assigned to Cullowhee, it should grant Channel 59 to Roswell by deleting Channel *24 At Andrews with no replacement there. UNC, in its reply comments, opposed the Roswell assignment on the grounds that Channel *24 at Andrews could not be activated. As noted by Jimenez, the transmitter for Andrews would have to be located at least 5.2 miles northwest of the community. UNC states that the only viable site within that restricted area would fall within the Natahala National Forest, and due to the intervening terrain would necessitate and antenna of at least 2400 feet above ground to provide the requisite city grade coverage. An antenna height above 2000 feet, according to UNC, is rarely approved by the Federal Aviation Administration. UNC cites Section 77.17 of the F.A.A. rules, which reads in part:

"[O]only in exceptional cases where the FAA concludes that a clear and compelling showing has been made that it would not result in an inefficient utilization of the airspace and would not result in a hazard to air navigation [would construction be permitted] . . ."

Therefore, on the basis of what it contends to be the lack of a suitable site for either the Cullowhee or Andrews assignment, UNC requests that the petitions of Ryder and Jimenez be denied.

12. In view of the siting difficulties presented by UNC and SATECH, we seek further comments on this issue. Any interested party should provide a showing that a transmitter site is available for the proposed Cullowhee and Andrews channels which could be located outside of the respective Federal reservations and provide the requisite city grade signal, or that the necessary approval of the controlling Federal agency could be obtained so that a tower could be constructed which meets F.A.A. approval requirements. Finally, the possibility of deleting the educational assignment at Andrews, without replacement, violates Commission policy, See *Vancouver, Washington*, BC Docket No. 79–175, 44 FR 43495, published July 25, 1979, and *Kalamazoo, Michigan*, BC Docket 79–170, 44 FR 42731, published July 20, 1979.

13. The Commission has carefully studied each of the above requests. The assignment of Channel 63 to Knoxville conflicts with the assignment of Channel *63 to Athens as a substitute for Channel *24 there, the separation being 52 miles instead of the required 175 miles. The assignment of Channel 63 to Monroe conflicts with the assignment of Channel 63 to both Athens and Knoxville (125 and 150 miles, respectively, instead of the required 175 miles). As discussed in paragraph 1, *infra*, the assignment of Channel 31 at Cullowhee and *24 at Andrews would be only 23 miles apart, instead of the required 60 miles. The assignment of Channel *24 at Andrews is also contingent upon the removal of that channel from Athens, as requested by Chattanooga Family and Western Kentucky. The assignment of Channel 23 to Dalton would be short-spaced by 142 miles (32 miles instead of 175 miles) to the assignment of Channel 23 at Chattanooga. Additionally, a Channel 23 assignment at Arab conflicts with the requested assignments of Channel 23 at Chattanooga, Tennessee, and Dalton, Georgia (89 and 87 miles, respectively, instead of the required 175 miles).

14. The staff has determined that Channel 50 could be assigned to Opelika, Alabama. This would then permit the assignment of Channel 56 to Arab, Alabama, as a drop-in. As for the assignment of Channel 56 to Dalton and the deletion of a noncommercial educational assignment at Franklin, North Carolina, without replacement, the Commission has traditionally refrained from such action. See *Vancouver, Washington, supra*. Even if Channel 56 were proposed to be reassigned to Dalton, it would have to be comparatively considered with our proposed Arab assignment as the communities are separated by only 93 miles instead of the required 175 miles. Rather, since an alternate channel (Channel 23) can be assigned to Dalton without requiring the deletion of an educational assignment, and also permit the assignment of Channel 56 to Arab, we will dismiss the request of Family Television for Channel 56 at Dalton.

15. The Commission has determined that no other channels are available for assignment to resolve the conflict noted in paragraph 13, *supra*. Therefore, assignment options were found by listing groups of compatible rule makings, with each group containing the maximum number of possible allocations. The proposed assignment plans are predicated on the site

restrictions contained herein. It should be noted that Plans I and II would provide four communities with their first local service; Plans III and IV would provide first local service to three communities; Plans V and VI would provide first local service to two communities and a second noncommercial educational service to one community; and Plans VII and VIII would provide three communities with first local service and one community with its second noncommercial educational service.

16. We believe that the public interest would be served by seeking comments on the proposed assignments plans listed below. As stated in paragraph 12 herein, those parties seeking assignments at Cullowhee and Roswell are specifically directed to respond to the transmitter site and tower height issues raised therein. Additionally, we request all interested parties to provide the Commission with pertinent information about their communities to aid us in arriving at a final decision. Accordingly, we propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as concerns the communities listed below:

City	Channel No.	
	Present	Proposed
Plan I		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Dalton, Ga.		23.
Monroe, Ga.		63.
Cullowhee, N.C.		32−.
Plan II		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Dalton, Ga.		23.
Monroe, Ga.		63.
Roswell, Ga.		59.
Andrews, N.C.	*59	*24.
Plan III		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Dalton, Ga.		23.
Cullowhee, N.C.		31−.
Knoxville, Tenn.	6, 8, 10+, *15−, 26−, and 43+.	6, 8, 10+, *15−, 26−, 43+, and 63.
Plan IV		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Dalton, Ga.		23.
Roswell, Ga.		59.
Andrews, N.C.	*59	*24.
Knoxville, Tenn.	6, 8, 10+, *15−, 26−, and 43+.	6, 8, 10+, *15−, 26−, 43+, and 63.
Plan V		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Bowling Green, Ky.	13, 40+, *53−, and 59+.	13, *24−, 40+, *53−, and 59+.
Cullowhee, N.C.		31−.
Athens, Tenn.	*24	*63.
Chattanooga, Tenn.	3+, 9, 12+, *45, and 61−.	3+, 9, 12+, 23, *45, and 61−.
Plan VI		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Roswell, Ga.		59.
Bowling Green, Ky.	13, 40+, *53−, and 59+.	13, *24−, 40+, *53−, and 59+.
Andrews, N.C.	*59	*24.
Athens, Tenn.	*24	*63.
Chattanooga, Tenn.	3+, 9, 12+, *45, and 61.	3+, 9, 12+, 23, *45, and 61−.
Plan VII		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Dalton, Ga.		23.
Bowling Green, Ky.	13, 40+, *53−, and 59+.	13, *24−, 40+, *53−, and 59+.
Cullowhee, N.C.		31−.
Athens, Tenn.	*24	*63.
Plan VIII		
Arab, Ala.		56−.
Opelika, Ala.	66	50 and 66.
Dalton, Ga.		23.
Roswell, Ga.		59.
Bowling Green, Ky.	13, 40+, *53−, and 59+.	13, *24−, 40+, *53−, and 59+.
Andrews, N.C.	*59	*24.
Athens, Tenn.	*24	*63.

17. 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.

18. Interested parties may file comments on or before June 18, 1984, and reply comments on or before July 3, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, as follows:

Edward M. Johnson & Associates, Inc., One Regency Square, Suite 450, Knoxville, Tennessee 37915
(Consultant to David A. Crabtree—Knoxville; Lynn Henley—Opelika; Family Television—Dalton; and Greg Ryder—Cullowhee)

A. G. Thiessen, Sterling Communications, Inc., Uptain Bulding, Suite 418, Chattanooga, Tennessee 37411
(Consultant to Chattanooga Family Television, Inc.—Chattanooga; and Jess Jimenez—Roswell, Georgia)

Vincent A. Pepper, Pepper & Corazzini, 1776 K Street, N.W., Suite 700, Washington, D.C. 20006
(Counsel to Monroe Television, Inc.—Monroe, Georgia)

Brian M. Madden, Cohn and Marks, 1333 New Hampshire Avenue, N.W., Suite 600, Washington, D.C. 20036
(Counsel to Western Kentucky University—Bowling Green, Kentucky, and Athens, Tennessee)

George R. Borsari, Jr., Robert G. Allen, Daly, Joyce & Borsari, 1830 Jefferson Place, NW., Washington, D.C. 20036
(Counsel to BMTC Systems, Inc.—Arab, Alabama)

19. 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), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

20. It is ordered, that the petition of Family Television to delete the noncommercial educational reservation from Channel 56 at Franklin, North Carolina, and reassign it to Dalton, Georgia as a commercial channel (RM-4647) is denied.

21. 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, NW., Washington, D.C.

[FR Doc. 84-12021 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 84-279; FCC 84-80]

Narrowband Technologies for Base and Mobile Communications in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission proposes to adopt rules which would permit the use of narrowband technologies to increase the number of radio channels available for use in the Private Land Mobile Radio Services. The rules, if ultimately adopted, would help relieve the increasing congestion currently experienced by licensees in the Private Land Mobile Radio Services.

DATES: Comments are due by June 11, 1984 and replies by July 11, 1984.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Kennedy, Herb Zeiler, Keith Plourd, Private Radio Bureau, Rules Branch, Washington, DC 20554, (202) 634-2443.

List of Subjects in 47 CFR Part 90

Administrative practices and procedure, Business and industry, Industrial radio services, Land transportation radio services, Public safety radio services.

Proposed Rulemaking

In the matter of Amendment of part 90 of the Commission's rules and regulations to authorize narrowband technologies for base and mobile communications in the private land mobile radio services; PR Docket No. 84-279.

Adopted: March 15, 1984.

Released: April 4, 1984.

By the Commission.

Introduction

1. The Commission is initiating this proceeding to propose the introduction of narrowband technologies to the Private Land Mobile Radio Services. Our objective is to allow greater use within a limited amount of spectrum. Presently, frequency modulation (FM) is the dominant technology employed in the Private Radio Services. Through frequent channel splitting and the introduction of more efficient FM technology in the land mobile services, FM radio systems generally have been able to keep pace with the increasing spectrum demands of our society. However, FM radios in use today require at least 20 kHz of spectrum for voice communications. The increased demand for spectrum in recent years has stimulated the interest of both the Commission and the communications industry in the development of technologies that are more spectrum efficient. To date, single sideband technology appears to be the most promising. In light of our experience with sideband radio equipment and the developmental authorizations that we have issued for systems using this technology, we now propose a channel structure and licensing plan to authorize narrowband systems on a regular basis in the Private Land Mobile Radio Services in the 150 MHz band, where narrowband equipment is available. The introduction of narrowband technologies in other bands will be considered in the future.

Background

2. The use of the 150 MHz band by Private Land Mobile Radio Services dates back to 1937. At that time the Commission established 60 kHz channel spacing based on the state-of-the art FM technology. As private land mobile users increased, the need for additional channels became apparent. Based on advances in FM, technology, in 1956 the Commission revised the technical standards for operating in the 150 MHz band to permit operation every 30 kHz. While this doubled the number of 150 MHz channels, it provided only limited and temporary relief. By the end of the 1960's, the Commission was again faced

with a congestion problem in the Private Land Mobile Radio Services, especially in and around large urbanized areas. As a result of continuing advances in FM technology, the Commission in 1971 again made additional channels available for private land mobile users by reducing the channel spacing in the 150 MHz band. Under this new channeling plan the separation between 150 MHz channels in coordinated services and in the Special Emergency Radio Service was reduced to 15 kHz. [1] However, in light of the reduced protection provided with 15 kHz spacing, the Commission established a geographic separation requirement.[2] In the Business Radio Service, frequencies are not coordinated and channels are generally spaced every 30 kHz with no mileage separation required between adjacent channels.

3. Despite our previous efforts to accommodate past demand for private land mobile spectrum, current demand exceeds the number of channels available. In the past we have taken advantage of advances in the state-of-the-art to make more efficient use of the spectrum by channel splitting. Historically the Private Land Mobile Radio Services have been in the forefront of developing and implementing spectrum saving technologies. It appears with the development of single sideband technology that we can make more significant advances.

4. The accelerated use of mobile communications since the 1960's has led to increased demands for and congestion in the land mobile frequency bands. This trend is expected to continue as the business and public service communities become more aware of the potential of radio technologies to enhance their operations. This increasing demand for spectrum by private land mobile users led the Commission recently to investigate options available to alleviate the growing congestion in the frequency bands now available for private land mobile operation.[3] A combination of more efficient technologies and additional spectrum allocations was identified as the best available means for providing spectrum relief for these services. Narrowband technologies are expected to play an important role in satisfying part of the future land mobile spectrum requirements.

5. More that three years ago, in a Notice of Inquiry on spectrum efficient technologies, the Commission identified amplitude compandored single sideband as a possible means of increasing the number of radio channels available from current land mobile spectrum.[4] We noted that in certain circumstances this technology might be able to provide a communications capability comparable to FM while utilizing an assigned channel width of only 5 kHz. The comments received on the Inquiry, however, are now over two years old. Since that time, we have gained considered experience with amplitude compandored single sideband through developmental licensing and by equipment tests. In view of this, we will terminate that proceeding and make specific proposals for authorizing narrowband assignments in the Private Land Mobile Radio Services.[5]

6. Amplitude compandored single sideband systems modify an amplitude modulated (AM) radio frequency signal in several ways to narrow the emission bandwidth. One of the two AM sidebands is eliminated since it is superfluous to the AM signal and the carrier is suppressed to obtain a conventional single sideband suppressed carried emission. The dynamic range of the modulating signal is reduced through successive stages of amplitude compression. This reduces the amplitude of loud speech passages and increases the amplitude of quiet speech passages resulting in a more uniform speech waveform at the transmitter. At the receiver, amplitude expansion restores the amplitudes of the speech waveform to their original levels. A pilot frequency is added to the composite radio emission to provide a frequency and amplitude reference. The end result is that this technology limits its emmission bandwidth to a fraction of that necessary for FM technology in use today, while yielding roughly comparable audio quality. The emission appears to fit into a 5 kHz channel compared to the 25 or 30 kHz channels commonly used for FM equipment today. The amplitude compandored single sideband receiver also silences interfering signals under certain conditions, an effect similar to the "capture effect" in FM communications.

7. Amplitude compandored single sideband equipment already has been placed into service in one of the most congested land mobile radio bands, the 150 MHz private radio band. Under our developmental rules, we have issued more than 275 authorizations of this type of equipment in order to test its effectiveness for land mobile communications. Developmental licenses have been granted in the Forest Products, Business, Special Industrial, Manufacturers, Telephone Maintenance, Automobile Emergency, Local Government, and Police Radio Services. Most of these systems are operating between channels assigned to FM licensees at spacings less than 15 kHz. Repeater operation for voice transmissions is the predominant operating mode. This equipment is also being used to transmit radio facsimile and digital data at 1200 bits per second. There have been few reported interference problems. Developmental licensees claim that amplitude compandored single sideband can be used in the 15 kHz private land mobile channel spacing environment without causing or receiving interference, that its audio performance is comparable to that of FM equipment, and that the radios appear to provide a range advantage over similarly powered FM units.[6] However, we would caution that most developmental systems are not operating in congested urban areas where future spectrum shortages are anticipated and where interference problems may be more severe.

8. Some developmental licensees state that permanent frequency allocations and 5 year license terms are needed to provide for large scale implementation of narrowband systems.[7] Investments in large narrowband systems are not likely to occur if they remain secondary to regulary licensed users. We believe we now have sufficient information to propose rule changes to allow regular operation and licensing of narrowband systems.

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[1] In the 150 MHz band frequency coordination is required in the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab, and the Automobile Emergency Radio Service. The procedures for coordination are specified in § 90.175 and are being considered in a *Notice of Inquiry* in Docket No. 83-737, 48 FR 35149, August 3, 1983.

[2] In all the Private Land Mobile Radio Services except the Taxicab Radio Service, a minimum separation of 10 miles is required between 15 kHz adjacent frequencies. In the Taxicab Radio Service the minimum separation is 7 miles. 47 CFR 90.173(f).

[3] *Future Private Land Mobile Telecommunications Requirements*, Final Report, August 1983, prepared by the Planning Staff, Private Radio Bureau, Federal Communications Commission, Washingon, D.C. 20554.

[4] *Notice of Inquiry*, PR Docket 80-440, 45 Fed. Reg. 63305, September 24, 1980.

[5] See *Order*, PR Docket 80-440, adopted March 1, 1984.

[6] Developmental Reports of Standard Oil Company of Indiana, station call sign WRV 776, July 14, 1962 and City of San Diego, station call sign KNDT 255.

[7] Developmental Report of Crown Zellerbach Corporation, station call signs KA 84689 and KNCF 758 through KNCF 764, November 22, 1983.

9. The Commission's staff recently completed an investigation of the interference potential between amplitude compandored single sideband and FM systems. The Office of Science and Technology (OST) evaluated the intelligibility of voice signals at various frequency separations and documented its findings in a report released in October of 1983.[8] The OST Report concluded that the interference potential of an amplitude compandored single sideband transmitter to an FM receiver is determined in large part by the comparatively broad frequency response of the FM receiver. This is supported by the close match of the data points of the FM test receiver frequency response curve and the data points of the amplitude compandored single sideband into FM disruptive interference curve.[9] [10] The potential for interference slowly diminishes as the FM receiver and amplitude compandored single sideband transmitter are separated in frequency.[11]

Proposal

10. In order to take maximum advantage of the potential spectrum efficiency of narrowband technologies, we are proposing a 5 kHz channeling plan. We recognize the OST Report concluded that collocated adjacent channel amplitude compandored single sideband systems using currently available equipment seem to require a wider separation than 5 kHz to minimize mutual interference. It noted that the protection ratio between collocated systems spaced 5 kHz apart is approximately –40 to –50 dB for disruptive interference.[12] This falls short of the measured protection ratio of approximately –70 dB for just noticeable interference between collocated FM systems separated by 30 kHz.[13] Based on these tests, a spacing wider than 5 kHz between narrowband channels would be required to maintain the level of interference protection presently afforded adjacent channel, collocated FM users. However, protection ratios are determined largely by equipment design rather than modulation type. The ratios measured by OST are based on early amplitude compandored single sideband equipment. We expect that as equipment design is refined, the protection between collocated, adjacent channel amplitude compandored single sideband systems will improve significantly and make our 5 kHz spacing proposal achievable.[14]

11. FM stations in the 150 MHz band currently are assigned frequencies spaced at 15 kHz intervals in all services except the Business Radio Service, where frequencies are spaced every 30 kHz. These frequencies designate the center of the FM emission. We intend to follow the same procedure with narrowband channels, that is, the assigned frequency designates the center of the narrowband emission. To minimize the chance that amplitude compandored single sideband receivers will "lock on" to the strong FM carriers situated in the center of the FM emission, we proposed to offset the center of the narrowband emission 2.5 kHz from the center of the FM emission. We propose then to establish narrowband channels every 5 kHz referenced to the 2.5 kHz offset channel.[15]

12. In the Private Land Mobile Radio Services which presently require frequency coordination, this channeling plan results in a total of three narrowband channels between every two 15 kHz FM channels. The narrowband channels would be located ±2.5 and ±7.5 kHz from each regularly assignable 150 MHz band FM channel (see Figure 1). In the Business Radio Service where the separation between channels in the 150 MHz band is 30 kHz, narrowband channels would be ±2.5 kHz, ±7.5 kHz, and ±12.5 kHz from FM assigned frequencies (see Figure 2).

---

[8] *Amplitude Compandored Sideband Compared to Conventional Frequency Modulation for VHF Mobile Radio, Laboratory and Field Testing Results*, Ralph Haller and Hank Van Deursen, Federal Communications Commission, Office of Science and Technology, Washington, D.C. 20554 October 1983. FCC/OST TM 83–7.

[9] See OST Report, Figures 2–2 and 3–3.

[10] The OST Report defines just noticeable interference as interference which is detectable but would not be observed if the interfering signal was reduced slightly in level and disruptive interference as interference which caused some words to be garbled, requiring occasional repeated message transmissions.

[11] The OST Report characterizes the potential for interference in terms of protection ratio. The protection ratio is the measure of the relative strength of the desired and undesired signals at the point that interference occurs.

[12] See OST Report, Figure 3–2.

[13] See OST Report, Section 3.5.3.

[14] Since the OST tests were conducted, one manufacturer has reported improvements in amplitude compandored single sideband power amplifier design which provide an additional 9 dB of protection

[15] We recognize that there are alternative band plans which may offer other advantages. One example is a zero offset scheme. We request comments on the relative merits of this and other plans.

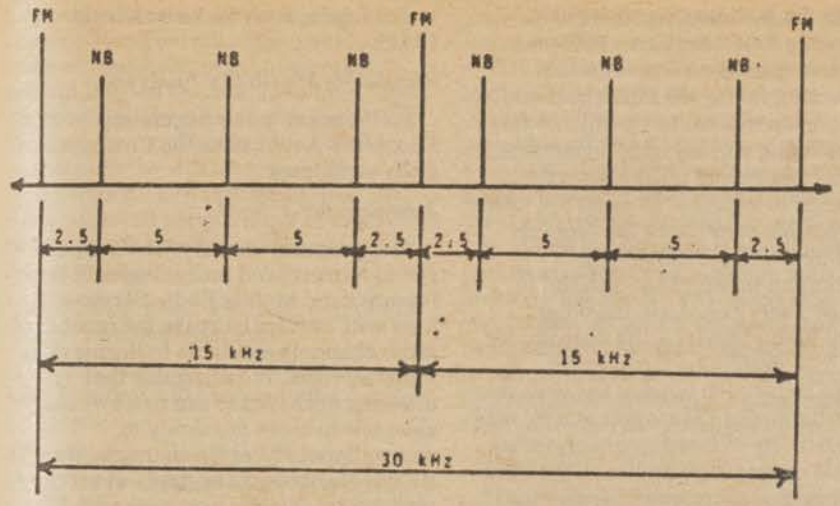


Figure 1

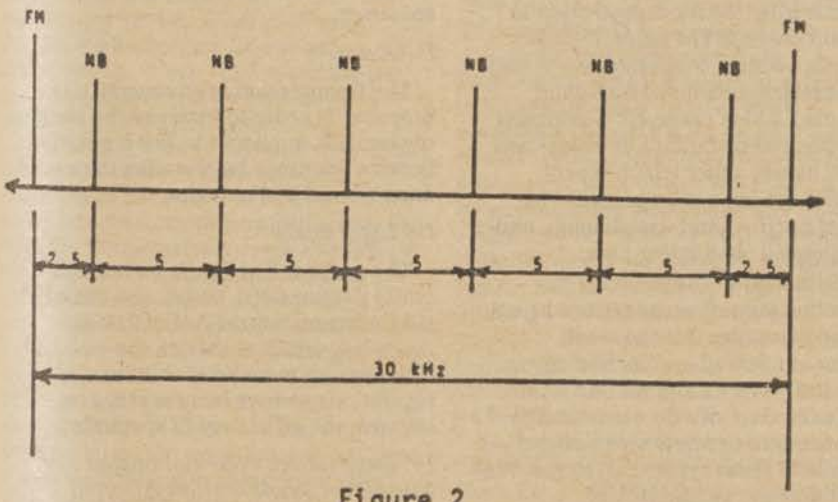


Figure 2

13. Appendix B lists the center frequency of all new channels that would be allocated to each Private Land Mobile Radio Service. All channels would generally be available for base and mobile operations. Narrowband channels located between two FM channels allocated to the same service would be allocated to that service. If the narrowband channels are located between FM channels allocated to different services, the channel 2.5 kHz removed would be considered to be in the same service or services as the FM channel. The narrowband channel midway between the two FM frequencies would be shared by the two services.

14. We are proposing to require frequency coordination for all applications for narrowband channels allocated to services presently requiring coordination in the 150 MHz band. Channels 2.5, 7.5, and 12.5 kHz removed from an FM assignment in the same service would have to be coordinated with the FM assignments and vice versa. If a narrowband channel is 12.5 kHz or less removed from an FM frequency allocated to a different radio service, the use would have to be coordinated between services. The coordination procedure would have to be coordinated between services. The coordination procedure would also apply to an FM frequency 12.5 kHz or less removed from a narrowband channel.

15. Over 90 percent of the narrowband developmental licenses granted to date have been for mobile relay operation.[16] However, in the Business Radio Service, which generally has the most users and the most congestion, mobile relay operations currently are not permitted because of the limited number of channels available.[17] We are proposing to modify our present rules and allow mobile relay operations on the newly created channels allocated to the Business Radio Service. Mobile relay operation will require channels available for pairing. We have identified nine frequencies which would provide the needed separation for repeater operation and we propose to add these to the Business Radio Service.[18] In order to minimize possible interference we are proposing to reserve these channels for mobile operations and to limit the output power to 25 watts peak envelope power. We are not proposing at this time to pair these channels with a specific base frequency as is done above 450 MHz. Instead we believe it best to have a "frequency pool" and let the user pick the frequency which would minimize possile interference.

Impact on FM Systems

16. Frequency molulation (FM) is the dominant technology employed in the

[16] A mobile relay station receives signals transmitted by mobile units and automatically retransmits these signals. Because it receives and transmits simultaneously, two different frequencies with a minimum separation are required. For design purposes the minimum ferquency separation is usually assumed to be 600 kHz.

[17] Mobile relay is currently permitted on frequencies above 450 MHz. We have proposed to permit mobile relay below 450 MHz on reguarly assignable FM business channels. See *Notice of Proposed Rule Making*, Docket 83-755, 48 FR 34782, August 1, 1983.

[18] The nine frequencies are 152.2575, 152.4925, 152.8575, 154.5025, 154.5275, 154.5525, 157.7525, 158.1175, and 158.4725 MHz. The frequency 152.2575 MHz is 12.5 kHz removed from a frequency in the Taxicab Radio Service and 17.5 kHz removed from a radio common carrier paging channel. The frequency 152.4925 MHz is 12.5 kHz removed from a business paging channel and 17.5kHz removed from a wireline common carrier base/mobile ferquency. The frequency 152.8575 Mhz is 12.5 kHz removed from a base/mobile frequency available in the Motion Picture and Special Industrial Radio Service and 17.5 kHz removed from a wireline common carrier paging channel. the fequency 154.5025 MHz is 12.5 kHz removed from a Special Industrial base/mobile frequency and 12.5 kHz removed from a frequency allocated to the Business Radio Service. The frequency 154.5275 is between two Business Radio Service base/mobile channels, 12.5 kHz removed from each. The frequency 154.5525 MHz is 12.5 kHz removed from a business base/mobile frequency and 17.5 kHz removed from a frequency allocated to both the Forest Products and Business Radio Services for low power operations. The fequency 157.7525 MHz is 12.5 kHz removed from Business Radio Service paging channel and 17.5 kHz from a wireline common carrier channel. The frequency 158.1175 MHz is 12.5 kHz removed from base/mobile frequency in the Power Radio Service and 17.5 kHz from a wireline common carrier paging channel. The final frequency, 158.4725 MHz, is12.5 kHz removed from a business paging channel and 17.5 kHz removed from a base/mobile radio common carrier channel.

Private Land Mobile Services today. It provides a good quality of service and we expect the widespread use of FM to continue. Therefore, while we are eager to introduce more efficient technologies, we also seek to ensure that the introduction of narrowband technologies does not disrupt the operations of existing systems. In particular, we are concerned that our narrowband channeling plan not significantly increase interference potential to present FM users.

17. The amount of adjacent channel protection realized between radio systems is directly related to the frequency separation and distance between them. The isolation between present FM equipment separated by 30 kHz is sufficient to permit "same area" adjacent channel operation. With a 15 kHz separation, however, the adjacent channel protection provided by present FM equipment is reduced to approximately –35 to –40 dB. In these cases a geographic separation is needed in order not to degrade communications quality below that obtainable with 30 kHz spacing.

18. Under our proposed channeling plan, the separation between an FM assignment and a narrowband assignment could be less than 15 kHz either 2.5, 7.5 or 12.5 kHz). In the case of an amplitude compandored single sideband radio operating on a frequency assignment 2.5 kHz removed from an FM assignment virtually no protection is provided. Accordingly, for assignment and coordination purposes, narrowband frequencies 2.5 kHz removed will be treated as co-channel with FM. Narrowband assignments 7.5 and 12.5 kHz removed present a problem similar to 15 kHz FM operations. These separations provide some protection relative to co-channel operation. However, the protection provided may not be sufficient to permit same area operation with an FM station. One way to compensate for this reduction in adjacent channel protection is to separate the assignments geographically. The exact mileage separation needed would depend upon a number of system parameters, such as power, antenna height, frequency separation, and terrain. These factors may vary substantially between systems just as the communications quality needed may vary between users. In radio services where coordination is required the specific mileage separation needed between assignments can be determined by the coordinators on a case by case basis. Comments are requested on this matter.

19. In the Business and Special Emergency Radio Services, however, there is presently no coordination requirement in the 150 MHz band and, therefore, no mechanism available for implementing a geographic separation plan to compensate for the reduced protection to adjacent channel FM users. One possible solution to the problem would be to require frequency coordination in the 150 MHz band in these two services. As in the other Private Radio Services, the coordinator could then determine the specific mileage separation needed between the narrowband and FM station to minimize the possibility of interference. Another possible approach to minimize the effect of introducing narrowband technology in this FM environment would be a phased implementation plan. Under such an approach, assignments would be made initially only on narrowband channels 12.5 kHz removed, since these channels offer the most protection to adjacent channel FM users. If these channels become congested, we would make assignments on narrowband channels 7.5 kHz removed. Comments are requested on both of these options as well as any other which would minimize the impact on present FM users of narrowband assignments under our proposed channeling plan.

20. Although we have based our channeling plan on compandored single sideband because it is the most prominent narrowband technology in use in the Private Land Mobile Radio Services to date, we do not intend to limit access to our new narrowband channels to these types of systems. We expect that the availability of narrowband channels in the Private Radio Services will stimulate interest in other narrowband technologies. To this end, our technical standards are designed to limit the interference potential of narrowband systems while allowing licensees maximum flexibility within their authorized channels. We will authorize any technology that complies with these technical standards.[19] We request comments on the ability of our proposed standards to accommodate other narrowband technologies, such as, narrowband FM.[20]

Regulatory Flexibility Analysis

21. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. Reason for Actions

This proposal would provide for the use of narrowband technologies in the Private Land Mobile Radio Services. This will, in turn, increase the number of radio channels available to licensees in these services. We recognize that by allowing licensees to use narrowband channels in close proximity to conventional FM radio channels, we may be decreasing the grade of service realized by existing licensees with FM systems. Nevertheless, we believe on balance that adverse effect must give way to the need to accommodate the ever increasing number of Private Radio Service licensees in their limited spectrum.

II. Objective

The Commission is advancing this proposal in order to increase the number of channels available to Private Radio Service licensees by allowing the use of narrowband technologies.

III. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), and 331(a) of the Communications Act of 934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use.

IV. Description, Potential Impact and Number of Small Entities Affected

While it is conceivable that this proposal, if adopted, may increase interference among licensees in the Private Radio Services, the incidence of interference and the cost of increased interference are not quantifiable. Our proposal attempts to minimize the likelihood of interference by careful placement of new narrowband systems relative to existing FM systems by frequency coordinators and assignment procedures. The additional radio channels will provide less congested channels and the ability to expand present radio systems. We expect that this ultimately will result in increased business efficiency and a cost savings for both large and small users. This

[19] Generally, all transmitters used for operations licensed under Part 90 of the rules must be type accepted by the Commission. We request comments on the suitability of using the measurement procedures specified in Part 2, Subpart J of the rules for transmitters employing an A3J emission (authorized bandwidth 3.5 kHz) to type accept amplitude compandored single sideband transmitters. In addition, we seek comments suggesting appropriate procedures for type accepting other narrowband modulation equipment.

[20] We also request comments on the ability of our present FM channel structure to accommodate technologies such as narrowband FM. In particular, could we authorize narrowband FM systems spaced at 15 kHz intervals without a mileage separation?

proposal will also expand market opportunities for radio manufacturers, some of which are small businesses. Beyond this we are unable to quantify the potential effects on small entities. We therefore invite specific comments on this point by interested parties. Additionally, IT IS ORDERED that the Secretary shall serve a copy of this Notice on the Small Business Administration.

V. Reporting, Recordkeeping and Other Compliance Requirements

No new requirements will be imposed upon Private Land Mobile Radio Service licensees.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Significant Alternatives

There are no significant alternatives which would accomplish our stated objective of increasing the communications flexibility afforded Private Radio Service licensees. Additionally, in our view retaining the *status quo* represents a continuing burden on those licensees.

22. For purposes of this non-restricted notice and comment rule making, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

23. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on this proposal on or before June 11, 1984, and reply comments on or before July 11, 1984. All relevant and timely comments filed in accordance with Sections 1.415 and 1.419 of our rules and regulations (47 CFR 1.415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information is noted in its final decision.

24. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

25. For further information concerning this rule making contact Keith Plourd, Herb Zeiler, or Michael Kennedy of the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (202) 634–2443.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—[AMENDED]

1. The table appearing in the following §§ 90.17(b), 90.19(d), 90.21(b), 90.23(b), 90.25(b), 90.53(a), 90.63(c), 90.65(b), 90.67(b), 90.69(b), 90.73(c), 90.75(b), 90.79(c), 90.81(c), 90.89(b), 90.91(b), 90.93(b), and 90.95(c) are amended by adding the frequency band 150–170 MHZ and a footnote at the end of each table to read: For narrow band operations see § 90.271.

* * * * *

2. Section 90.173 is amended by revising paragraph (f) as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(f) In the 150–170 MHz band, except in the Taxicab Radio Service, applications will not be granted in situations in which the proposed base station is located less than 16 km (10 miles) from an existing base station on a frequency 15 kHz removed, unless the application is accompanied by a signed letter of concurrence from the licensee of each base station located within 16 km (10 miles) of the proposed base station that is operated on a frequency 15 kHz removed from the proposed frequency assignment. In the Taxicab Radio Service, applications will not be granted in situations in which the proposed base station is located less than 12 km (7 miles) from an existing base station on a frequency 15 kHz removed, unless the application is accompanied by a signed letter of concurrence from the licensee of each base station located within 12 km (7 miles) of the proposed base station that is operated on a frequency 15 kHz removed from the proposed frequency assignment. These restrictions do not apply to applicants for narrowband assignments proposed to operate pursuant to Section 90.271.

* * * * *

3. Section 90.175 is amended by revising paragraphs (a) (1) and (2) as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) For frequencies below 470 MHz: (1) A report based on field study indicating the degree of probable interference to all existing stations operating less than 5 kHz from the proposed station and within 120 km (75 miles) of the proposed station, together with a statement that all such licensees have been notified of the applicant's intention to apply. In addition, for frequencies in the range 150–170 MHz, a report based on a field study indicating the degree of probable interference to existing stations located within 56 km (35 miles) of the proposed station operating on a frequency 15 kHz or less removed and a statement that the licensees of such stations have been notified of the applicant's intention to apply. The field study report required by this section need not address the degree of probable interference to existing stations 15 kHz or less removed within

the prescribed mileage limits when evidence of consent set forth in § 90.173(f) is included with the application; however, all other provisions of the field study requirement must be satisfied. This second report is not needed, however, for narrowband stations proposed to operate 5 kHz or more removed from other narrowband stations; or,

(2) A statement from a frequency coordinating committee recommending the frequency which, in the opinion of the committee, will result in the least amount of interference to all existing stations operating in the particular area. The Committee's recommendations may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any contemplated interference. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for radio facilities in the service concerned in the area the committee purports to serve. The functions of such committees are purely advisory in character, and their recommendations cannot be considered as binding upon either the applicant or the Commission, and must not contain statements which would imply that frequency advisory committees have any authority to grant or deny applications. If the frequency recommended is in the 150–70 Mhz band, is 15 kHz or less removed from a frequency which is available to another radio service, and is assignable only after coordination, the committee's statement shall affirmatively show that coordination with a similar committee for the other service has been accomplished. Coordination with another service is not required, however, for narrowband assignments as applied to other narrowband assignments 5 kHz or more removed.

* * * * *

4. Section 90.176 is amended by revising paragraphs (a)(3) and (b)(3) as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

(a) * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned. In uncoordinated services or bands, in lieu of the foregoing, a statement from all users operating less than 5 kHz from the proposed station within 75 miles and in the 150–170 MHz band from all licensees within 35 miles of the proposed station on a frequency 15 kHz or less removed that they concur in the assignment of the requested frequency; and

* * * * *

(b) * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned. In uncoordinated services or bands, in lieu of the foregoing, a statement from all co-channel users within 75 miles and in the 150–170 MHz band from all licensees within 35 miles of the proposed station on a frequency 15 kHz or less removed that they concur in the assignment of the requested frequency (this statement is not needed for narrowband assignments proposed to operate 5 kHz or more removed from other narrowband assignments); and

* * * * *

5. In § 90.205, paragraph (b), the maximum authorized power table is amended by adding footnore 11 to column 2, maximum output power at the frequency range 100–216 MHz to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

[11] Stations with suppressed carrier emissions may be authorized up to 350 W peak envelope power.

* * * * *

6. Section 90.207 is amended by adding new paragraph (l) to read as follows:

§ 90.207 Types of emissions.

* * * * *

(l) For narrowband operations in a 3.6 kHz maximum authorized bandwidth, any modulation type may be used which complies with the emission limitations of § 90.209.

§ 90.207 [Amended]

7. § 90.209(b)(7) is redesignated as § 90.207(b)(8).

8. Section 90.209 is amended by adding new paragraph (b) (7) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(7) For narrowband operations granted under Section 90.271, the maximum authorized bandwidth shall be 3.6 kHz.

* * * * *

9. Section 90.209 is further amended by revising paragraph (c) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(c) Except as noted in paragraphs (d), (f), (g), and (h) of this section, the mean power of any emission shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

10. Section 90.209 is further amended by adding a new paragraph (h) to read as follows:

* * * * *

(h) For transmitters that operate on channels spaced 5 kHz apart in the 150–170 MHz band, the power of any emission shall be attenuated below the peak envelope power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kilohertz) of more than 2 kHz up to and including 5 kHz: At least 29 Log_{10} ((25/11) f_d^2) decibels or 50 decibels, whichever is the lesser attenuation;

(2) On any frequency removed from the center of the authorized bandwidth by more than 5 kHz: At least 43 plus 10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

§ 90.211 [Amended]

11. Section 90.211(d)(2) is amended by changing in two places the phrase "paragraphs (f) and (g) of § 90.209" to read "paragraphs (f), (g), and (h) of § 90.209".

12. The Frequency Tolerance table of § 90.213 is amended by revising the following entries and by adding footnote 17 to § 90.213 as follows:

§ 90.213 Frequency tolerance.

(a) * * *

FREQUENCY TOLERANCE

Frequency range	Fixed and base stations		Mobile stations	
	Over 200 W output power	200 W or less output power	Over 2 W output power	2 W or less output power
* * * *	*	*	*	
25 to 50	.002	.002	.002	.002
50 to 450	[5 6 17] .0005	[5 6 17] .0005	[5 17] .0005	[7 17] .0005
450 to 470	[8 9 10] .00025	[8 9 10] .00025	.0005	.0005

* * * * * * *

[17] In the 150–170 MHz band, stations operating on 5 kHz channels shall maintain the carrier frequency to within .0002 percent.

* * * * * * *

13. Section 90.243 is amended by revising paragraph (b)(2) as follows:

§ 90.243 Mobile relay stations.

* * * * *

(b) * * *

(2) In the Business Radio Service, mobile relay stations may be authorized on frequencies below 450 MHz when those frequencies are reserved for low power operation (2 watts or less) or for narrowband operation. (See Section 90.271) For systems using low power frequencies the maximum output power shall not exceed 1 watt and the mobile relay antenna system shall not be more than 13 m (40 ft) above ground.

* * * * *

14. In this proceeding we have listed all the new narrowband channels in Appendix B by radio service in order to facilitate the filing of comments. However, if ultimately adopted we envision adding a new rule section (90.271) following a format similar to that in Section 90.267 where the narrowband channels would be listed numerically.

APPENDIX B

Local Government Radio Service

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Police Radio Service

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Fire Radio Service

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Highway Maintenance Radio Service

150.9875
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Forestry-Conservation Radio Service

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Special Emergency Radio Service

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Power Radio Service

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Petroleum Radio Service

150.9725
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153.0275
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Forest Products Radio Service

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Motion Picture Radio Service

152.8725
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Special Industrial Radio Service

151.4825
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Business Radio Service

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Manufacturers Radio Service

153.0425
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Motor Carrier Radio Service

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Railroad Radio Service

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Automobile Emergency Radio Service

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[FR Doc. 84-11352 Filed 5-3-84; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 88
Friday, May 4, 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

Animal and Plant Health Inspection Service

[Docket No. 84-322]

Cooperative Gypsy Moth Suppression and Regulatory Projects—1984; Decision Notice

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This gives notice that a decision has been made to cooperate with the States of Illinois, Indiana, Minnesota, North Carolina, Oregon, Tennessee, Washington, and Wisconsin in gypsy moth eradication projects. The State Departments of Agriculture for North Carolina, Oregon, Tennessee, and Washington have decided to use *Bacillus thuringiensis* (*B.t.*) for the proposed treatment areas in Watauga County, North Carolina; Benton, Marion, and Multnomah Counties, Oregon; Johnson County, Tennessee; and King, Pierce, and Snohomish Counties, Washington. The State Departments of Agriculture for Illinois, Indiana, Minnesota, and Wisconsin have decided to use a combination of *B.t.* and mass trapping for the proposed treatment areas in Kane and Lake Counties, Illinois; Bartholomew, Elkhart, Marion, and St. Joseph Counties, Indiana; Benton, Hennepin, and Washington Counties, Minnesota; and Dane and Waukesha Counties, Wisconsin. Based on an evaluation of the Environmental Impact Statement prepared by USDA on gypsy moth eradication projects, and a site-specific environmental analysis prepared for the treatment proposed areas in each State (Illinois, Indiana, Minnesota, North Carolina, Oregon, Tennessee, Washington, and Wisconsin), the Animal and Plant Health Inspection Service (APHIS) has determined that these treatment methods pose no significant adverse impact on the environment of these areas.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION: The USDA final Environmental Impact Statement (EIS) for the Cooperative Gypsy Moth Suppression and Eradication Projects was filed with the Environmental Protection Agency (EPA) on March 16, 1984, and a notice of availability of this document was published in the **Federal Register** on March 23, 1984 (49 FR 10963). The EIS states that annual decisions concerning the Animal and Plant Health Inspection Service (APHIS) participation in eradication projects are made based on the results of site-specific environmental analysis prepared for the proposed treatment areas.

A notice of the availability of a site-specific environmental analysis prepared for the proposed treatment areas in Kane and Lake Counties, Illinois; Bartholomew, Elkhart, Marion, and St. Joseph Counties, Indiana; Benton, Hennepin, and Washington Counties, Minnesota; Watauga County, North Carolina; Benton, Marion, and Multnomah Counties, Oregon; Johnson County, Tennessee; King, Pierce, and Snohomish Counties, Washington; and Dane and Waukesha Counties, Wisconsin, in cooperation with USDA under the USDA Cooperative Gypsy Moth Suppression and Regulatory Projects was published in the **Federal Register** on May 1, 1984 (49 FR 18584).

On or about May 4, 1984, the State Departments of Agriculture for Illinois, Indiana, Minnesota, North Carolina, Oregon, Tennessee, Washington, and Wisconsin decided to conduct ground or aerial spray treatment projects using *Bacillus thuringiensis* (*B.t.*) or mass trapping, or both, in the proposed treatment areas.

Specifically, the State Departments of Agriculture for Illinois and Indiana have decided to conduct mass trapping and ground spray treatment projects using *B.t.;* the State Departments of Agriculture for Minnesota and Wisconsin have decided to conduct mass trapping and aerial spray treatment projects using *B.t.;* and the State Departments of Agriculture for North Carolina, Oregon, Tennessee, and Washington have decided to conduct aerial spray treatment projects using *B.t.*

Based on the Department's review of the EIS and the site-specific analyses, and in accordance with the National Environmental Policy Act, the Department has decided to cooperate with the States of Illinois, Indiana, Minnesota, North Carolina, Oregon, Tennessee, and Washington in the conduct of these projects.

The Organic Act of September 21, 1944, as amended (7 U.S.C. 147a) authorizes APHIS to cooperate with States to retard the artificial, long-range spread of the gypsy moth and to eradicate isolated infestations of the pest.

Gypsy moth egg masses were expected to have reached peak hatching in Illinois, Indiana, Minnesota, North Carolina, Oregon, Tennessee, Washington, and Wisconsin by the end of April 1984. The State Departments of Agriculture for each of these States have notified the Department that if a spraying program for gypsy moth in Illinois, Indiana, Minnesota, North Carolina, Oregon, Tennessee, Washington, and Wisconsin is to be effective, they must be prepared to commence spraying as close to the peak hatching time as possible. Therefore, implementation of the program may take place immediately after the date of publication of this decision.

Done at Washington, D.C., this 1st day of May 1984.

Elliott E. Crooks,

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

[FR Doc. 84-12122 Filed 5-3-84; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Assignment of Geographic Area in the Decatur, Indiana, Area to Winchester Grain Inspection (IN) and Amendment to Lima Grain Inspection Service, Inc.'s Geographic Area (OH)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the assignment of geographic area in the Decatur, Indiana, area to Winchester Grain Inspection, and also announces the amendment of Lima Grain Inspection Service, Inc's geographic area.

EFFECTIVE DATE: May 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The October 28, 1983, issue of the **Federal Register** (48 FR 49897) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that William F. Christen Grain Inspection (Christen), Decatur, Indiana, requested voluntary cancellation of its designation, effective November 15, 1983. On that date, Winchester Grain Inspection (Winchester), Farmland, Indiana (which had purchased the Christen Agency's assets) began providing official inspection services in the Decatur area on an interim basis until April 30, 1984, when an official agency could be designated.

We requested applications for designation as the agency to provide official services within the Decatur area. Applications were to be postmarked by November 28, 1983. Winchester was the only applicant for this designation.

FGIS announced the name of this applicant and requested comments in the January 3, 1984, issue of the **Federal Register** (49 FR 129). Comments were to be postmarked by February 17, 1984. No comments were received regarding designation of the Winchester Agency in the Decatur Area.

However, a question was raised about geographic area assignment at Payne Cooperative Association (PCA), Payne, Ohio, which is within the geographic area assigned to Lima Grain Inspection Service, Inc. (Lima), Lima, Ohio. After a review of this matter, FGIS determined that official grain inspection services historically had been provided by the Christen Agency at PCA, rather than the Lima Agency. Accordingly, upon evaluation of all available information, Winchester's geographic area is amended to include PCA as part of its assigned area and Lima's geographic area is amended have accordingly to note this exception to its assigned area. These amendments been mutually assented to by Winchester and Lima.

FGIS has evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), has determined that Winchester is able to provide official services in the geographic area for which it is being selected. As a result of this action, Winchester's designation is being amended. The assigned geographic area is the entire Decatur area, as previously described in the October 28 **Federal Register** issue. In addition, Payne Cooperative Association, Payne, Ohio, outside of this contiguous area is assigned to Winchester and is part of its geographic area.

Effective May 1, 1984, and terminating March 31, 1986, the responsibility for providing official inspection services in the Decatur area is assigned to the Winchester Agency.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service point within this assigned geographic area, the agency will provide official services not requiring a licensed inspector to all locations within its geographic area. Service in the Decatur area may be obtained from the Winchester Agency at the following address: Winchester Grain Inspection, 209 South Fifth Street, P.O. Box 544, Decatur, IN 46733.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: April 20, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84–12121 Filed 5–1–84; 5:01 pm]

BILLING CODE 3410–02–M

Forest Service

Sequoia National Forest, Fresno, Tulare, and Kern Counties, California; Availability of the Peppermint Mountain Resort Draft Environmental Impact Statement

The Sequoia National Forest announces the availability of the Peppermint Mountain Resort Draft Environmental Impact Statement (DEIS) for public and agency review. This draft environmental impact statement analyzes the physical, biological, esthetic, social, and economic consequences of a range of alternative actions proposed for Slate Mountain, Sequoia National Forest. These alternatives range from No Action, i.e., no change in present management; to a winter day-use ski area accommodating 500 people at one time; to a year round resourt accommodating 10,500 people at one time. Since part of the project study area lies in the Slate Mountain Roadless Area, an analysis of impact on potential wilderness attributes is also included.

Copies of these documents are available for review in public and university libraries throughout California. Loan copies are available through the Sequoia National Forest, 900 West Grand Avenue, Porterville, CA, 93257. Individual copies are also available by written request directed to the latter address.

The review period begins on the date of this publication and extends for 90 calendar days. Written comment from agencies and the public is requested. To be most effective, this input must be postmarked by the last day of this review period. Comments should be directed to Sequoia National Forest, Attention: Office of Information, 900 West Grand Avenue, Porterville, California 93257.

For further information about this DEIS, please contact Julie Allen, Peppermint Project Coordinator, at the above address or by phone at (209) 784–1500.

Dated: April 23, 1984.

James A. Crates,

Forest Supervisor.

[FR Doc. 84–11711 Filed 5–3–84; 8:45 am]

BILLING CODE 3410–11–M

CIVIL RIGHTS COMMISSION

Mississippi Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 3:00 p.m. and will end at 7:00 p.m., on May 30, 1984, at the Holiday Inn Downtown, Hickory Room, 200 East Amite Street, Jackson, Mississippi 39201. The purpose of this meeting is to discuss program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mary Ramberg, at (601) 982–2432 or the Southern Regional Office at (404) 221–4391

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 30, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-12002 Filed 5-3-84; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m., on May 26, 1984, at the Desert Inn Country Club, 3145, Las Vegas Boulevard South, Las Vegas, Nevada 89109. The purpose of the meeting is to plan proposed Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Susan L. Deluca, at (702) 649-4270 or the Western Regional Office at (213) 688-3437

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-12004 Filed 5-3-84; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 8:00 p.m., on June 1, 1984, at the Marriott Hotel, Jackson Room, 1 Marriott Drive, Nashville, Tennessee 37210. The purpose of this meeting is to discuss program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mattie R. Crossley, at (901) 386-0550 or the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 30, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-12003 Filed 5-3-84; 8:45 am]

BILLING CODE 6335-01-M

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 3:00 p.m. and will end at 5:00 p.m., on May 30, 1984, at the Madison Hotel, Executive Chambers one and two, 15th and M Sts. NW., Washington, D.C. 20036. The purposes of the meeting are: to hear the Regional Director's report of the Commission's status and the current role of State Advisory Committees; to discuss specific civil rights issues of housing discrimination against women based on gender, source of income, or family responsibility; and to discuss follow-up plans related to the Advisory Committee's report *Police-Community Relations in D.C.*

Persons desiring additional information, or planning a presentation to the committee, should contact the Chairperson, Walter E. Washington, at (202) 659-3300, or the Mid-Atlantic Regional Office at (202) 254-6670.

The meeting will be conducted pursuant to the Provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 30, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-12125 Filed 5-3-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No. 84-131. Applicant: Columbia University, College of Physicians & Surgeons, Department of Anatomy and Cell Biology, 630, West 168th Street, New York, NY 10032. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: Joel Ltd., Japan. Intended use: Studies of the following problems:

(1) Structure and interactions of blood cells, cancer cells and endothelial cells,

(2) Molecular achitecture and biogenesis of cellular membranes and

(3) Development and function of the vertebrate nervous system. Specimens to be studied will be of biological origin from experimental animals and human blood cells. The instrument will also be used in the training of pre-doctoral candidates and post-doctoral fellows requiring fine structural and analytical techniques in their research investigations. Application received by Commissioner of Customs: March 20, 1984.

Docket No. 84-132. Applicant: University of Puerto Rico, Mayaguez Campus, College Station, Mayaguez, PR 00708. Instrument: Nanosecond Fluoresence Spectrophotometer, Model 2000. Manufacturer: Photochemical Research Associates, Inc. Canada. Intended use: Studies of flourescence decay kinetics and photophysical reactions. These fluorescence studies will be conducted on chemical samples such as derivatized thiazine dyes and biological samples such as fluorescein and other dyes bound to biological membranes. The investigations will be carried out mainly on samples in solution although the occasional solid state sample will also be investigated. The objectives of these investigations are to elucidate and demonstrate the photophysical phenomena involved in electrontransfer quenching of excited states and to use the information to build models for chemical and biological systems. Application received by Commissioner of Customs: March 20, 1984.

Docket No. 84-133. Applicant: The University of Wyoming, Department of Chemistry, P.O. 3838, University Station, Laramie, WY 82071. Instrument: Ionization sources for Mass Spectrometer. Manufacturer: VG Instruments Inc., United Kingdom. Intended use: Instruments are

accessories to an existing mass spectrometer needed to enhance both current and future research efforts. Proposed research includes the following studies:

(1) Characterization of "small" organic molecules in fossil water;

(2) Photooxygenation reactions;

(3) Separation and identification of components in coal-derived samples;

(4) Preparation, characterization, and application of novel surfactants;

(5) Synthesis of steroids.

Application received by Commissioner of Customs: March 20, 1984.

Docket No.: 84–134. Applicant: St. Louis University Medical Center, Department of Biochemistry, 221 North Grand Boulevard, St. Louis, MO 63104. Instrument: Pulsating Bubble Surfactometer. Manufacturer: Surfactometer International, Canada. Intended Use: Study of alterations of the Pulmonary Surfactant System in Adult Respiratory Distress Syndrome in humans. Instrument will be used to determine the surface tension of alveolar surfactant or components thereof by alveolar lavage of both human and animal lungs. The instrument is capable of carrying out such measurements under physiological conditions utilizing the very small amounts of surfactant available to the Medical Center. Application received by Commissioner of Customs: March 20, 1984.

Docket No. 84–135. Applicant: University of California, Lawrence Livermore National Laboratory, 7000 East Avenue, Livermore, CA 94550. Instrument: (2) Excimer Lasers, KRF, Model EMG 150ES with Accessories. Manufacturer: Lambda Physik, GmbH, West Germany. Intended use: research into the physics of photo ionization-produced guiding channels. The high energy of this instrument will be used to ionize a background gas in a particle beam accelerator. The low divergence of the laser light is required to maintain a precise beam diameter for the length of the channel guiding experiment (~100m). Ions or organic molecules produced by high energy irradiation with ultraviolet light in a small, low divergence beam will be used to study and enhance stable propagation of very high energy particle beams. Application received by Commissioner of Customs: March 21, 1984.

Docket No. 84–143. Applicant: The Regents of the University of California, Riverside, Material Management Department, Riverside, CA 92521. Instrument: Mass Spectrometer, Model VG Micromass 7070E/HF with Accessories. Manufacturer: The Vacuum Generators Micromass Company, United Kingdom. Intended use: The variety of intended uses include: (1) Analytical applications for compound identification; (2) ion structure determination; (3) elucidation of fragmentation pathways; (4) measurement of kinetic energy release via the IKE technique; and (5) analyses of complex mixtures. A variety of samples related to the fields of entomology and the soil sciences are expected to be investigated including termite secretions and extracts of cockroach wastes. Application received by Commissioner of Customs: March 21, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–12078 Filed 5–4–84; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–80. Applicant: Solar Energy Research Institute, 1617 Cole Boulevard, Golden, CO 80401. Instrument: Quadrupol Mass Analyzer, Model Spectralab 200. Manufacturer: Vacuum Generators Instruments, United Kingdom. Intended use: Studies of corrosion of alloy, ceramic, and inorganic materials in contact with molten salts. The primary sets of experiments include: (1) Finding materials resistant to corrosion by molten salts, (2) Finding methods by which the rate of corrosion can be controlled chemically, and (3) Testing ideas for adapting molten salts for heat storage in solar concentrators. The main objective of these experiments is to find an economical configuration having an operational lifetime of 20 years which will heat a molten salt by concentration of solar light and storing the 1000°C+ salt until the heat is released to produce electricity. Application received by Commissioner of Customs: March 22, 1984.

Docket No. 84–116. Applicant: Baylor College of Dentistry, 3302 Gaston Avenue, Dallas, TX 75246. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Japan. Intended use: Study of cells, tissues and macro-molecular structures in a variety of biolgical systems and various dental materials. Educational purposes—Individual instruction in electron microscopy provided by professional staff to graduate students and post-doctoral fellows. Application received by Commissioner of Customs: March 20, 1984.

Docket No. 84–128. Applicant: NKC, Inc., 200 East Chestnut Street, P.O. Box 35070, Lousiville, KY 40232. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Ultrastructural analysis of liver biopsies while conducting ongoing research in the area of metabolic liver disease. In addition to the research projects the instrument will be used in the education of medical students, pathology and pediatric residents, during which the students will be exposed to the application of electron microscopy as both a diagnostic aid in medicine and a research tool. Application received by Commissioner of Customs: March 20, 1984.

Docket No. 84–129. Applicant: Wayne State University, Biological Sciences, 5050 Cass Avenue, Detroit, MI 48202. Instrument: Nanosecond Fluorometer System, Model 2000. Manufacturer: Photochemical Reserach Assoicates, Inc., Canada. Intended use: Studies of fluorescence lifetimes (nanosecond and phosphorescence), quantum yields, and fluorescence depolarization—properties especially important in determining the rotation correlation times ("fluidity") of biological membranes. Experiments to be conducted will include:

1. Measurement of phosphorescence lifetimes in membranes,

2. Measurement of properties of proteins in chromaffin granule membranes,

3. Studies of lifetime of porphyrins,

4. Measurement of membrane fluidity of erythrocytes (normal and sickle cell leukemia) and

5. Assessment of protein-protein interactions relevant to cell organelle translocation.

Educational purposes—Training students to become competent in the use of the fluorescence instrumentation. Application received by Commissioner of Customs: March 20, 1984.

Docket No. 84–130. Applicant: Universities Research Association, P.O. Box 500, Batavia, IL 60510. Instrument: Scintillation Glass Blocks, Type SCG–1. Manufacturer: Ohara Optical Glass, Inc., Japan. Intended use: Studies of fundamental particles and forces of nature—W,Z bosons, gluons, quarks, etc. The forces acting between the fundamental objects—weak, electromagnetic, and strong forces will be investigated. Application received by Commissioner of Customs: March 20, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–12079 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–DS–M

Datasaab Contracting, A.B.; Order

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (Department), Veddestavagen 13, S–175 62 Jarfalla, Sweden, having determined to initiate an administrative proceeding pursuant to section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. section 2401, *et seq.* (Supp. V 1981)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Part 368, *et seq.* (1983)) (the Regulations) against Datasaab Contracting, A.B. (Datasaab) based on allegations that Datasaab violated §§ 387.2, 387.4, 387.6 and 387.10 of the Regulations; and

The Department and Datasaab having entered into a Consent Agreement whereby Datasaab has agreed to settle this matter by its payment to the Department of a civil penalty and by a denial to Datasaab of all U.S. export privileges for an indefinite period; and

The terms of the Consent Agreement having been approved by me in complete settlement of the matter;

It is therefore ordered,

First, Datasaab shall pay to the Department a civil penalty consisting of the difference between one million dollars ($1,000,000) and the amount of any criminal fine imposed by the United States District Court pursuant to the plea agreement entered into between Datasaab and the United States which is attached hereto as appendix I and incorporated herein by reference.

Second, Datasaab is denied, for an indefinite period, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data, including any direct product of U.S.-origin technical data, from the United States or abroad, which are subject to the Act and the Regulations. This denial of export privileges specifically includes barring Datasaab from engaging in those transactions identified in paragraphs 7,8,9 and 10 of the plea agreement entered into between Datasaab and the United States of America, attached hereto as appendix I.

A. Without limiting the generality of the foregoing paragraph, participation prohibited in any transaction described above, either in the United States or abroad, shall include, but not be limited to participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. Such denial of export privileges shall extend not only to Datasaab but also to its agents and employees acting in their official capacity on behalf of Datasaab, and to its assignees, licensees and successors.

C. All outstanding validated export licenses in which Datasaab appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

Third, that the proposed Charging Letter, the Consent Agreement and this Order be made available to the public.

This Order is effective immediately. It shall remain in effect so long as Datasaab complies with the terms and conditions of the Consent Decree approved by U.S. District Court Judge Gerhard Gesell on April 27, 1984 in *United States v. Datasaab Contracting, A.B.*, Criminal No. 84–130.

Entered this 30th day of April, 1984.

Theodore Wai Wu,

Deputy Assistant Secretary for Export Enforcment.

Plea Agreement Between the United States of America and Datasaab Contracting, A.B., of Sweden

The United States of America, represented by Assistant United States Attorney Raymond Banoun, and Datasaab Contracting, A.B., of Sweden, represented by its President, Sven Fagerlind, and its Attorneys, Edward Bennett Williams, Richard L. Cys, and W. Clark McFadden II, have entered into the following agreement on the 6th day of April 1984:

1. The United States shall file with the Court an information charging Datasaab Contracting, A.B. (hereinafter Datasaab) with one count of having violated the Export Administration Act, 50 U.S.C. App. § 2410(a).

2. The United States reserves the final decision as to the details of the charges to be set forth in the information to be filed with the Court. However, Datasaab's attorneys will be given an opportunity to review the information and proposed changes.

3. Datasaab shall waive indictment by a grand jury and agree to proceed by way of said information;

4. Datasaab will urge the Court to accept a *nolo contendere* plea to the above-mentioned information. The United States will take a position on that matter. Datasaab, however, agrees that it will enter a plea of guilty to the information if the Court rejects its *nolo contendere* plea.

5. The United States retains the right to correct any factual error contained in any pleading submitted, or oral argument or representation made on behalf of Datasaab.

6. While both Datasaab and the United States recognize that the Court has the sole discretion in determining the fine which may be imposed in the instant case, both Datasaab and the United States agree that an appropriate criminal fine in the instant case would be one million dollars ($1,000,000).

7. Datasaab will not enter into any agreement or contract with V/O Electronorgtekhnika, a foreign trade organization of the Government of the Union of Soviet Socialist Republics (USSR), or with any other party, either directly or indirectly, to provide any maintenance or service for the TERCAS (Terminal and En-Route Traffic Control Automated System) air traffic control system operated by the USSR's Civil Aviation Ministry. This agreement encompasses both maintenance and service and covers both hardware and software for the TERCAS system.

8. Datasaab will not supply parts, components, or technical data, subject to the United States Commodity Control List, to V/O Electronorgtekhnika, or to any other party, either directly or indirectly, for the TERCAS air traffic control system.

9. Datasaab will not supply parts or components which are manufactured in any foreign or domestic location from United States origin technology, whether or not such parts and components are subject to the United States Commodity Control List, to V/O Electronorgtekhnika, or to any other party, either directly or indirectly, for the TERCAS air traffic control system.

10. Datasaab will supply to attorneys for the United States, within sixty days of execution of this plea agreement, a list of parts and components which it reasonably believes V/O Electronorgtekhnika, or any other party, may order for the said TERCAS air traffic control system and which may be manufactured from United States origin technology. Datasaab will make a good faith effort to determine from the manufacturers or suppliers of said parts and components whether said parts and components are manufactured from United States origin technology. If Datasaab is unable to ascertain said information through good faith efforts, it will request a determination from the United States Government as to whether said parts or components are manufactured from United States origin technology. The prohibition in paragraph nine (9) applies to all parts and components on the above-mentioned list unless it is determined that said parts and components are not manufactured from United States origin technology;

11. The restrictions concerning the supply of parts and components outlined in paragraphs seven (7) to ten (10) above, shall not apply to parts and components which are exclusively of Swedish origin.

12. Nothing in the instant agreement shall be construed as relieving Datasaab from otherwise complying with the export laws and regulations of the United States;

13. Datasaab will enter into a Consent Agreement with the Department of Commerce in which the corporation will be denied export privileges for an indefinite period of time. Datasaab will prevent Sven Skaraeus and Bengt Johansson from engaging in any transaction involving United States exports. Datasaab will immediately notify the Department of Commerce if any of the above-named individuals leave the employment of Datasaab. If any of these individuals do leave such employment, the Department of Commerce reserves the right to deny them export privileges.

14. The instant agreement shall resolve all of Datasaab's potential criminal liability arising from the application for, the issuance of, or action taken with respect to export license number A266444. Additionally, no further proceedings, sanctions, penalties, or disqualifications shall be initiated by any agency or department of the United States for violations of said license A266444.

15. This agreement constitutes the entire and complete agreement between the United States of America and Datasaab and cannot be modified other than in writing signed by both parties.

For Datasaab Contracting, A.B.:
Sven Fagerlind,
President.
Edward Bennett Williams,
Counsel for Datasaab.
Richard L. Cys,
Counsel for Datasaab.
W. Clark McFadden II,
Counsel for Datasaab.

For the United States of America:
Joseph E. Digenova,
United States Attorney, District of Columbia.
Raymond Banoun,
Assistant United States Attorney.

[FR Doc. 84-12077 Filed 5-3-84; 8:45 am]
BILLING CODE 3510-25-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Export Trading Company ("ETC"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. 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 the certificate as "Export Trade Certificate of Review, application number 84-00007."

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 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-604 (March 11, 1983) (to be condified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct 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 meets 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).

Description of Certified Conduct

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from ETC on January 26, 1984. The application was deemed submitted on February 1, 1984. A summary of the application was published in the **Federal Register** on February 15, 1984 (49 FR 5803). Based on analysis of the information contained in the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by ETC meet the four standards of the Act:

Export Trade

Products

1. Nonperishable foodstuffs.

2. Equipment, equipment parts, and supplies with respect to:

a. health care.

b. education.

c. communication.
d. transportation.
e. agriculture.
f. computer hardware and software.
g. pharmaceutical production and packaging.

Related Services

1. Equipment maintenance and use training.
2. After-sales servicing of equipment.
3. Consulting.
4. International market research.
5. Transportation.
6. Freight forwarding from point of origin to destination abroad.
7. Documentation of international traffic.

Export Markets

The Export Markets include all parts of world (particularly the Middle East, Sub-Saharan Africa, North Africa, Latin America, the Carribean, Asia and "underdeveloped" countries) except Canada and the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. ETC may enter into nonexclusive agreements with individual suppliers to act as a broker and/or sales representative for Products and Related Services in Export Trade.

2. ETC may enter into agreements with individual suppliers wherein:

(a) ETC agrees to serve as the exclusive sales representative or agent and, in addition, may agree not to represent any competitors of such supplier for Products and Related Services in Export Trade unless authorized by the supplier: and/or

(b) The supplier agrees not to sell, directly or indirectly, through any other intermediary into the Export Markets in which ETC exclusively represents the supplier as sales representative or agent.

3. Acting on its own as a broker for compensation, ETC may bring together individual suppliers of the Products or Related Services in Export Trade with individual Export Intermediaries and end-users, so long as the Export Intermediary does not provide in the United States the same or similar Products or Related Service as the supplier.

4. ETC may enter into agreements with Export Intermediaries, whereby:

(a) ETC agrees to deal in Products and Related Services in the Export Markets only through that Export Intermediary; and/or

(b) That Export Intermediary agrees not to represent ETC's competitors in the Export Markets or not to buy from ETC's competitors for resale in the Export Markets.

The agreements described in this paragraph may contain sales, territorial and price maintenance restrictions for the Export Markets.

Definitions

(a) "Agreements with individual suppliers" means that the negotiations and the agreements are separate from, and are not conditioned upon, negotiations and agreements with other suppliers.

(b) "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Related Services for export sales in the Export Markets.

(c) "Supplier" means a person that produces, provides or sells a Product or Related Service for Export Trade.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Dated: May 1, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–12123 Filed 5–3–84; 8:45 am]
BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

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 seg.).

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, 300 South New Street, Dover, DE 19901, 302–674–2331.

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 Directors, 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. Hill Street, Portland, OR 97201, 503–221–6352.

Jim H. Branson, Executive Director, North Pacific Fishery Management Council 605 W. Fourth Avenue, Anchorage, AK 99510, 907–271–4064.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, 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 April 16, 1984 and April 27, 1984 from the Government(s) shown below.

Dated: May 1, 1984.

Roland Finch,

Director, Office of Fisheries 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.
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.
4	"Joint venture" in support of U.S. vessels.

Nation, vessel name, and vessel type	Application No.	Fishery	Activity
Government of Denmark:			
Ice Flower, Cargo/Transport Vessel	DA-84-0003	NWA	3.
Ice Star, Cargo/Transport Vessel	DA-84-0005	NWA	3.
Iceberg, Cargo/Transport Vessel	DA-84-0001	NWA	3.
Iceblink, Cargo/Transport Vessel	DA-84-0002	NWA	3.
Iceport, Cargo/Transport Vessel	DA-84-0004	NWA	3.
Nordlandia, Cargo/Transport Vessel	DA-84-0006	NWA	3.
Snowdrop, Cargo/Transport Vessel	DA-84-0007	NWA	3.
Vestlandia, Cargo/Transport Vessel	DA-84-0008	NWA	3.
Government of Japan:			
Chitose Maru, Cargo/Transport Vessel	JA-84-0180	BSA, GOA, NWA, SNA	3.
Kasuga Maru, Cargo/Transport Vessel	JA-84-0181	BSA, OOA, NWA, SNA	3.
Koei Maru No. 78, Longline Fishing Vessel	JA-84-1564	ABS	1.
Tenshun Maru, Tanker Fuel/Water	JA-84-0182	BSA, OOA, SNA	3.
Government of the Netherlands:			
Caribic, Cargo/Transport Vessel	NL-84-0004	NWA	3.
North Pole Cargo/Transport Vessel	NL-84-0016	NWA	3.
Government of the U.S.S.R.			
Abinsk, Cargo/Transport Vessel	UR-84-0756	BSA, COA WOC	3.
Sapfirovyi Cargo/Transport Vessel	UR-84-0768	BSA, GOA, WOC	3.

[FR Doc. 84-12111 Filed 5-3-84; 8:45 am]

BILLING CODE 3510-22-M

Pacific Coast Groundfish Fishery; Issuance of Experimental Fishing Permits

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

ACTION: Notice of issuance of experimental fishing permits.

SUMMARY: This notice announces issuance of three experimental fishing permits that allow certain U.S. fishermen to use set nets to harvest groundfish in the fishery conservation zone (3–200 nautical miles offshore) off the coast of Washington in 1984. These permits allow an experimental fishery which otherwise would be prohibited by Federal regulation. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATE: 0001 Pacific Daylight Time, May 1, 1984, to 2400 Pacific Standard Time, October 31, 1984.

ADDRESSES: T. E. (Gene) Kruse, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: T. E. (Gene) Kruse, 206–526–6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the Fishery Management Plan for Pacific Coast Groundfish provide that the Director, Northwest Region, NMFS, Regional (Director) may issue experimental fishing permits (EFPs) to authorize fishing by U.S. vessels which otherwise would be prohibited. These regulations also prohibit use of set nets to harvest groundfish north of 38° N. latitude.

One EFP was issued to fish for groundfish with set nets during 1982 and three were issued in 1983. On December 13, 1983, a notice was published (48 FR 55496) stating that EFP applications to fish for groundfish with set nets during 1984 received prior to December 30, 1984, would be considered. The three applications submitted were summarized in the **Federal Register** (49 FR 8983, March 9, 1984) with requests for public comment.

The commenters and statements received were substantially the same as in 1983. The North Pacific Fishery Management Council recommended denial of the EFPs based on the ability of nets to fish indefinitely if lost or unattended, a history of conflict between mobile and fixed gears when they occur together, and the full utilization by other gear types of the major target species (sablefish) of the set net fishery. The Council felt that if EFPs were granted, rigorous data collection should be required. Similar concerns were raised by the International Pacific Halibut Commission.

The Regional Director continues to believe that a carefully monitored, limited experimental fishery could provide valuable information on the incidental harvest of other species in a set net fishery for sablefish and on the incidence of gear loss or conflicts. Consequently, three EFPs were issued

under the provisions of 50 CFR Part 663 to allow a limited fishery using set nets for groundfish in 1984. Each EFP allows set netting in the fishery conservation zone off Washington from May 1, 1984, to October 31, 1984. Each permit also includes terms and conditions that allow data to be obtained under closely supervised conditions that will provide a quantifiable basis for evaluating whether set nets are acceptable gear for catching groundfish. A NMFS observer will be aboard each vessel whenever possible. The size of this experimental fishery (three vessels) minimizes the risk of unacceptable incidental catches. Further details and information on specific permits may be obtained from the Regional Director at the address above.

Although the EFP conditions were designed to maximize information with the least disruption to normal fishing operations, there is no assurance that the permit holders will in fact choose to operate. If a permit holder withdraws or is terminated from the fishery, another EFP may be issued.

(16 U.S.C. 1801 *et seq.*)

Dated: April 30, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-12103 Filed 5-1-84; 4:34 pm]

BILLING CODE 3510-22-M

Initiation of Preliminary Consultation on Flower Garden Banks as an Active Candidate for Possible National Marine Sanctuary Designation

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is seeking comments on selecting the East and West Flower Garden Banks in the Gulf of Mexico as an Active Candidate for potential designation as a national marine sanctuary. The site, located 123 miles (198 km) due south of Sabine Pass, Texas, was placed on the National Marine Sanctuary Program Site Evaluation List (SEL) on August 4, 1983 (48 FR 35568). The sanctuary study area is approximately 44 square miles which represents the area within the 100-meter isobath (less than 328 feet) surrounding the two banks. Placement on the SEL is a prerequisite to further consideration of a site as a national marine sanctuary. Before a site may be selected as an Active Candidate, Program regulations (at § 922.30(c)) provide that preliminary consultation be undertaken to seek comments and request information on the proposed site.

DATES: Comments will be accepted until June 4, 1984. After the close of the comment period, NOAA's determination whether to select the site as an Active Candidate will be published in the **Federal Register.**

ADDRESS: Send comments to: Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John Epting at (202) 634-4236.

SUPPLEMENTARY INFORMATION:

Selection Procedures

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434, authorizes the Secretary of Commerce to designate ocean waters as national marine sanctuaries to protect their distinctive conservation, recreational, ecological or esthetic values. The final regulations for the National Marine Sanctuary Program (48 FR 24296) (1983), to be codified at 15 CFR Part 922) establish two procedural evaluation stages prior to a site being designated as a national marine sanctuary: the Site Evaluation List (SEL) and the List of Active Candidates. The SEL represents NOAA's preliminary working list, serving as a pool from which sites are drawn for consideration as a marine sanctuary. Each site on the SEL has been identified as a highly qualified marine area by a regional resource evaluation team.

The Gulf of Mexico Regional Resource Evaluation Team consisted of: Dr. Thomas Bright, Department of Oceanography, Texas A&M University, College Station, Texas; Dr. William McIntire, Center for Wetland Resources, Louisiana State University, Baton Rouge, Louisiana; Dr. David Gettleson, Continental Shelf Associates, Tequesta, Florida; and Dr. James Ray, Shell Oil, Houston, Texas. Flower Garden Banks was placed on the SEL on August 4, 1983 (48 FR 35568).

Evaluating a site for placement on the List of Active Candidates represents the next stage in the national marine sanctuary designation process. Selection of a site as an Active Candidate follows preliminary consultation and formally triggers the National Environmental Policy Act (NEPA) environmental impact analysis process. At this stage NOAA begins preparation of a draft management plan and draft environmental impact statement. Subsequent steps include a public hearing, preparation of a final environmental impact statement, and a recommendation of approval to the Secretary of Commerce and the President. Opportunities for comment exist throughout this process and will be announced in the **Federal Register**, the local media, and other appropriate channels.

In evaluating a site Active Candidate consideration, the regulations, at § 922.30(b) (1)-(5), provide that the following five factors be considered:

(1) A primary reason for considering a site for marine sanctuary designation is the area's high natural resource and human use values. When selecting an active candidate, NOAA considers the site's relative contribution to the Program's mission and goals;

(2) A consideration of the immediacy of need for sanctuary designation based on the present or potential threats to resources, and the vulnerability of the resources. Consideration will also be given to the cumulative effect of various human activities that individually may be insignificant;

(3) An evaluation of the benefits to be derived from sanctuary designation, including an assessment of the site's natural resource and human use values, the adequacy of existing management or regulatory regimes for protecting these resources, and the effectiveness of NOAA's proposed management program.

(4) A consideration of the present feasibility of sanctuary designation in light of the sanctuary's size, requirements for managing the site, program staffing, and fiscal constraints; and

(5) An initial consideration of the economic impacts and benefits of sanctuary designation, including a consideration of the range of public and private uses which may be consistent with sanctuary designation.

The importance of the Flower Garden Banks relative to these selection factors is discussed in detail below.

Before a site is selected as an Active Candidate, however, the regulations, at § 922.30(c), provide that NOAA undertake preliminary consultation with relevant local, state and Federal government agencies; the Gulf of Mexico Fishery Management Council; any relevant international agencies; and the public. The purpose of the preliminary consultation is to seek comments as to how the proposed site meets the above five criteria. Relevant information about the site is also solicited.

Past History

On April 13, 1979, NOAA published proposed regulations (44 FR 22081) and a draft environmental impact statement (DEIS) describing the proposed East and West flower garden Banks national marine sanctuary and alternative protection actions. To bring the sanctuary proposal into line with the then revised Program regulations, NOAA placed the Flower Garden Banks on the List of Active Candidates on October 31, 1979 (44 FR 62552).

Due to public comments on the DEIS and input from cooperating agencies (the Department of the Interior, the Environmental Protection Agency, and the Department of Energy), NOAA revised the originally proposed regulations and reproposed them on June 30, 1980 (45 FR 33530). Previous restriction on hydrocarbon operations were revised to conform with the lease stipulations imposed by the Minerals Management Service within the Department of the Interior. As a result of public comments on the reproposed regulations, further action on the site was suspended in late 1980. A final EIS was not prepared.

On April 26, 1982 (47 FR 17845), NOAA announced its decision to remove the site from the List of Active Candicdates and to withdraw the DEIS. One of the major reasons for this action was that a Coral Fishery Management Plan (FMP) for the Gulf of Mexico would be implemented. It was expectred that the FMP would regulate vessel anchoring on the Banks, the one remaining unresolved issue identified in the DEIS and through public comment. The final FMP was approved, but the proposed regulations implementing the FMP (48 FR 39255 (1983)) do not include the "no anchoring" provision for vessels on the Banks. Within the East and West Flower Garden Banks Habitat Area of Particular Concern (the area of each Bank shallower than the 50 fathom (300 foot) isobath), the proposed regulations provide only for the following restrictions: (1) Fishing for coral is prohibited except as authorized by permit and (2) bottom longlines, traps, pots, and bottom trawls may not be fished (see 50 CFR 938.22(a) (1) and (2) at 48 FR 39255, 39260 (1983)).

Natural Resources

The East and West Flower Garden Banks are located 123 miles (198 km) south of Sabine Pass, Texas, on the outer edge of the continental shelf. They are approximately 16 miles (25 km) apart and represent the northernmost thriving, shallow-water, tropical coral reef community in the Gulf of Mexico. The formation of the Banks is related to the upward instrusions of salt plugs from deeply buried deposits. Both Banks are surrounded by clear waters up to 325–390 feet (100–120m) deep. The living reefs rise from a depth of 148 feet (45m) to a crest at 66 feet (20m).

The midpoints of the banks in latitude/longitude are 27°55′ 07.44″ N; 93° 36′ 08.49″ W for the East Bank; and 27° 52′ 14.21″ N; 93° 48′ 54.79″ W for the West Bank. The study area boundary follows the 100-meter (328 ft.) isobath around each midpoint. The study area conforms to the Minerals Management Service's "no activity zoner" (the 100-meter isobath) as agreed to in 1979 in discussions between NOAA and the other Cooperating Agencies. It encompasses a total of 44 mi^2 (114 km^2).

Flower garden Banks support the most ecologically complex and biologically productive reef communities on the Texas-Louisiana Outer Continental Shelf. Over 200 species of benthic invertebrates and more than 100 fishes inhabit the East and West Banks. Many of the inhabitants have not been recorded elsewhere in the northern Gulf of Mexico. Above the 50 meter depth, both Banks are covered with thriving coral reef communities which, except for the lack of shallow-water soft corals, are good examples of the frame building (*Diploria-monastraea-Porites*) coral community so common on reefs in the Caribbean. Because of their prominent relief, the Banks are bathed almost perpetually (at least to depths over 70m) by clear worm ocean waters.

The ecology of Flower Garden Banks is of special interest. The composition, diversity and vertical distribution of benthic communities on the Banks is strongly influenced by the physical environment in which it is found. Epibenthic populations are distinguishable into as many as six (6) interrelated biotic zones, including *Diploria/monastraea-Porites* zone.

The Flower Gardens are relatively pristine and are isolated in the northern Gulf. Commercial fishing is common along the edges of the Banks. Because of its distance from shore, however, the area does not attract many recreational divers.

A great potential for scientific research exists. The majority of research performed thus far has been conducted by Texas A&M University. The first phase of studying the area involving collection dives, transect surveys and submersible reconnaissance is nearing completion. This phase has yielded descriptive, systematic and quantitative data on coral species. Other major groups, such as sponges and seaweeds, remain to be identified. Community structure investigations completed thus far have revealed valuable data on biological zonation. These initial studies are laying the foundation for more comprehensive systems-oriented research.

Sedimentological studies at Flower Gardens are providing an insight into the geological history of the Gulf of Mexico basin and the formation of the land and oceans.

The Banks are believed to be an important nursery area for brown shrimp and, therefore, are important to the commerical shellfishing industry As noted above, the Gulf of Mexico and the South Atlantic Fishery Management Councils have developed a Coral Fishery Management Plan designed to protect the Flower Gardens and other coral resources within the Gulf.

Active Candidate Selection Criteria

These selection criteria are found in the final regulations for the National Marine Sanctuary Program (15 CFR 922.30(b) (1)–(5) at 48 FR 24297 (1983)):

(1) *Site's relative contribution to the Program's mission and goals.*

The Program's mission provides that "designated sancturies should be illustrative of the nation's marine areas" (see § 922.1(a)). The Flower Garden Banks represent a diverse coral reef community within the northern Gulf of Mexico. Thus, not only is the site significant regionally, but since there are no other designated or proposed national marine sanctuaries within the Gulf, the Flower Garden Banks would fill a substantial niche in the national system. Further, while two coral reef areas along the Florida reef tract are already established as sanctuaries, they contain representative outer bank coral reefs that differ substantially from the nonconnected topographical highs represented by the East and West Flower Gardens. The site offers education and research opportunities unlike those of a typical nearshore, shallow water reef so familiar to the general public. By adhering to the existing Minerals Management Service stipulations on hydrocarbon activities, and insuring a balance of human uses, the multiple compatible use goal of the National Marine Sanctuary Program can be fully realized.

(2) *Consideration of the immediacy of need for sanctuary designation.*

Current information indicates that anchor damage by large commercial vessels continues at the Flower Garden Banks resulting in significant damage to the living coral communities. At this time, information on such damage is

only available from various researchers performing monitoring studies for oil and gas companies in the vicinity of the Banks. If a decision is made to select Flower Garden Banks as an Active Candidate and proceed with the designation process, formal documentation of such occurrences and the extent of damage will be prepared as the EIS is developed. Substantial damage to the reefs from large anchors has been reported by Dr. Thomas Bright, Texas A&M University (Personal Communication, March 30, 1984). The continued, cumulative effects of such activities to the resources are also likely to be significant.

Other Federal regulatory authorities are not sufficient to protect the Banks from this type of anchor damage. Existing Minerals Management Service stipulations, which establish a "no anchoring zone" are not applicable to vessels not engaged in actual oil and gas activities at the Banks. Further, as discussed above, the prohibition of reef anchoring by vessels over 100 feet in length has been eliminated from the proposed regulations implementing the final Coral Reef Fishery Management Plan, which applies to the Gulf of Mexico.

Title III of the Marine Protection, Research and Sanctuaries Act provides that sanctuary regulations be applied "in accordance with recognized principles of international law * * *" (16 U.S.C. 1432 (g)). In a letter to Dr. Nancy Foster, Chief of the Sanctuary Programs Division, the Department of State advises: "(t)herefore, the Department [of State] believes that the United States does have jurisdiction to prohibit anchoring in the area, except for anchoring required by *force majeure*" (Letter from Edmund E. Wolfe, Deputy Assistant Secretary for Oceans and Fisheries Affairs to Dr. Nancy Foster, Chief, Sanctuary Programs Division, April 19, 1984).

(3) *Benefits to be derived from sanctuary designation.*

Flower Garden Banks has outstanding natural resource values; these resources may be subject to substantial damage caused by anchors. Establishment of a sanctuary would allow the United States to protect these resources by prohibiting anchoring of the Banks. A natural marine sanctuary at the Flower Garden Banks also offers the opportunity to continue and expand ongoing research at the Banks and to establish a broad-based national and regional educational program focused on the significance of the Banks.

(4) *Feasibility of sanctuary designation in terms of size, requirements for management, staffing, and fiscal constraints.*

The Flower Garden Banks is small (44 mi^2) and geographically discrete. Although the area is relatively distant from the mainland making periodic surveillance difficult, it is unlikely that any proposed management scheme will require intensive onsite efforts. Because of the nature of the proposed sanctuary (*i.e.*, low intensity human use levels), NOAA's staffing requirements and fiscal commitments are not expected to be large. Interagency cooperation with the Departments of State, the Interior, Transportation (the U.S. Coast Guard), and the Environmental Protection Agency will be an important aspect of sanctuary management. Assistance from oil and gas operators in the vicinity will also be solicited.

(5) *Initial consideration of the economic impacts and benefits of sanctuary designation.*

At this initial stage of the evaluation indications are that designation would have no adverse economic impacts. If the proposal does prohibit large vessels from anchoring on the Banks, such vessels currently doing so will be inconvenienced. Other than any inconvenienced vessels, designation of Flower Garden Banks is unlikely to have any adverse economic or regulatory impacts on existing or potential users. NOAA proposes to follow the existing stipulations on oil and gas operators employed by the Minerals Management Service.

Designation would offer certain positive benefits particulary in terms of coordinating and promoting research efforts, enhancing public awareness of the Bank's value and insuring a management framework for long-term protection.

A thorough analysis of the economic impacts resulting from sanctuary designation will be conducted as part of the designation process.

Subsequent Actions

NOAA is considering placing the Flower Garden Banks on the List of Active Candidates. Comments on and information related to this action are requested. Particular emphasis should be placed on the evaluation of the site relative to the Active Candidate selection criteria. The final Program regulations, at § 922.30(d), provide that within 180 days of initiating preliminary consultation, NOAA shall determine whether to select the site as an Active Candidate and publish a notice in the **Federal Register.**

If the Flower Garden Banks area is selected as an Active Candidate, a notice of intent to prepare a draft environmental impact statement and draft management plan will be published in the **Federal Register.** Subsequent steps include: a scoping meeting in the affected area(s), preparation of the draft management plan and draft environmental impact statement, public hearing(s), and preparation of the final environmental impact statement and management plan. After the final environmental impact statement and management plan are completed, NOAA makes a recommendation to the Secretary of Commerce and to the President to designate the sanctuary. The site-specific management plan specifies goals and objectives for the proposed sanctuary; implementation of the plan is analyzed in the environmental impact statement. The opportunity for public and government agency response will be provided throughout the designation process.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: May 1, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-12059 Filed 5-3-84; 8:45 am]

BILLING CODE 3510-08-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will meet to discuss the Surf Clam/Ocean Quahog Fishery Management Plan, as well as other fishery management matters.

The public meeting will convene on May 24, 1982, at approximately 10 a.m., adjourn at approximately 3 p.m., and will be held at the Best Western Airport Inn, Philadelphia International Airport, Philadelphia, PA; phone: 215-365-7000. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901; telephone: 302-674-2331.

Dated: April 30, 1984.

Roland Finch,

Director, Office of Fisheries Management National Marine Fisheries.

[FR Doc. 84-12061 Filed 5-3-84; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The public meeting of the North Pacific Fishery Management Council's Plan Maintenance Team for Gulf of Alaska Groundfish, as published at 49 FR 15013, on April 16, 1984, has been rescheduled from May 2, 1984, to May 9, 1984, at 8:30 a.m. All other information remains unchanged. For further information, contact Jeff Povolny, Plan Coordinator, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK; telephone: (907)–274–4563.

Dated: April 30, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–12080 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–22–M

Cascadia Research Collective (P342); Receipt of Application for Permit

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: Cascadia Research Collective (P342), Waterstreet Building, Suite 201, 218½ West Fourth Avenue, Olympia WA, 98501.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Common harbor seal (Phoca vitulina), 1,000.

4. Type of Take: Potential harassment while conducting census studies.

5. Location of Activity: Southern Puget Sound, Hood, Straits of Juan de Fuca and San Juan Islands, Washington.

6. Period of Activity: 2 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.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, Seattle, Washington 98115.

Dated: April 26, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–12108 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–22–M

Jeffrey D, Goodyear; Receipt of Request for Modification of Marine Mammal Permit No. 415 (P317)

Notice is here given that Mr. Jeffrey D. Goodyear, P.O. Box 223, Moss Landing, California 95039–0223, has requested a modification of Permit No. 415 issued on May 3, 1983 (48 FR 20784) under the authority 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).

Permit No. 415 authorizes the taking of up to one hundred thrity-five (135) humpback whales (*Megaptera novaeangliae)* and ninety (90) fin whales (*Balaenoptera physalus)* by harassment during the course of skin sampling and radio tagging activities. Of the number of whales authorize to be harasses, thrity (30) humpback whales may be radio tagged and skin sampled and twenty (20) fin whales may be radio tagged and skin sampled. Of the number of whales authorized to be taken, fifteen (15) humpback whales and ten (10) fin wahles may be approached once to obtain a skin sample.

The Permit Holder is requesting to increase the number humpback whales harassed during the course of skin sampling and radio tagging activities to one hundred eighty (180), and the number of humpack whales radio tagged and skin sampled increased to forty-five (45).

The Permit Holder is also requesting to extend his study area of the lower Gulf of Maine region to the Great South Channel approximately 120 nautical miles sount, southeast of Stellwagen Bank.

Written data, views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 2035, within thirty (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 request 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 request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, and

Regional Director, Northest Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: April 24, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–12105 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–22–M

Morris Museum of Arts and Sciences; Receipt of Application for Permit

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: Morris Museum of Arts and Sciences (P338), P.O. Box 125, Convent, New Jersey 07961.

2. Type of Permit: Public Display.

3. Name and Number of Animals:

Ringed Seal (Phoca hispida) Unspecified Number.

Beared Seal (Erignathus barbatus) Unspecified Number.

4. Type of Take: To import an exhibit of 112 carvings, miniature figures, hunting gear, garments, prints and drawing and other items made by Inuits of Arctic Quebec.

5. Location of Activity: Morristown, New Jersey.

6. Period of Activity: 1 year.

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.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799.

Dated: April 26, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–12104 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–22–M

Southwest Fisheries Center; Notice of Insurance of Permit

On March 20, 1984, Notice was published in the **Federal Register** (49 FR 10324), that an application had been filed with the National Marine Fisheries Service by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, for a permit to take up to 150 harbor seals (*Phoca vitulina*) for the purpose of scientific research.

Notice is hereby given that on April 23, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to the Southwest Fisheries Center for the above taking 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, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 23, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–12106 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–22–M

State University of New Jersey; Notice of Issuance of Permit

On February 14, 1984, Notice was published in the **Federal Register** (49 FR 5647) that an application had been filed with the National Marine Fisheries Service by Dr. Robert W. Hastings, Associate Professor of Zoology, Department of Biology, Rutgers, The State University of New Jersey, Camden, New Jersey 08102, for a permit to capture, weight, measure, tag, and release and retain shortnose sturgeon (*Acipenser brevirostrum*) in the Delaware River; and to collect eggs and larvae from spawning areas.

Notice is hereby given that on April 26, 1984, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to Dr. Robert W. Hastings, subject to certain conditions set forth therein.

Issuance of the permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not disadvantage 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 Act.

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, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: April 26, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–12107 Filed 5–3–84; 8:45 am]

BILLING CODE 3510–22–M

Small Incidental Takes of Marine Mammals; Receipt of Request

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of receipt of request for rulemaking and request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) has received a request from the Department of the Air Force to allow the taking of marine mammals incidental to space shuttle launches. Section 101(a)(5) of the Marine Mammal Protection Act of 1972 directs the Secretary (Commerce or Interior) to allow the incidental take of small numbers of marine mammals if the Secretary makes certain findings and prescribes regulations relating to permissible methods and requirements for monitoring and reporting. The NMFS is inviting information, suggestions, and comments on the appropriateness, structure and contents of the regulations.

DATE: Comments and information should be received by July 3, 1984.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235, (tel. 202/634–7471).

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 *et seq.*) directs the Secretary to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region. This permission may be granted for periods of five years or less. Such taking may be allowed only if the species involved is not depleted and if the Secretary, after notice and opportunity

for public comment: (a) Finds that the total taking will have a negligible impact on the species, its habitat, and the availability of the species for subsistence uses, (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance, and (c) prescribes regulations pertaining to the monitoring and reporting of such taking.

The NMFS published regulations on May 18, 1982 (47 FR 21248), to implement section 101(a)(5) of the MMPA by establishing a mechanism for the submission and evaluation of requests and establishing requirements for specific regulations and Letters of Authorization to conduct allowed activities (50 CFR Part 228, Subpart A).

Receipt of Request

The NMFS has received a request from the Headquarters Space Division, Department of the Air Force, to allow the taking of small numbers of marine mammals incidental to space shuttle launches. The taking is described as infrequent, incidental and unintentional harassment due to focussed sonic booms generated over the Northern Channel Islands when the shuttle is launched from Vandenberg Air Force Base. Launches are expected to begin in late 1985 and continue through 1994. A maximum of seven shuttle launches are forecast to occur in trajectories that will produce sonic booms over the Northern Channel Islands. The potential harassment of the following six species of pinnipeds is requested:

Harbor seal (*Phoca vitulina*)
California sea lion (*Zalophus californianus*)
Steller sea lion (*Eumetopias jubatus*)
Northern elephant seal (*Mirounga angustirostris*)
Northern fur seal (*Callorhinus ursinus*)
Guadalupe fur seal (*Arctocephalus townsendi*)

The Department of the Air Force has prepared a Final Environmental Impact Statement (January 1978) and a Supplement to the Final Environmental Impact Statement (July 1983) for the Space Shuttle . rogram at Vandenberg Air Force Base.

The information required by 50 CFR 228.4 was provided by the Air Force in its request. Copies of the request can be obtained from the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235.

Information Solicited

The NMFS invites interested persons to submit comments, information, and suggestions concerning the request and the appropriateness, structure and content of regulations to allow the taking. The NMFS will consider this information in developing, if appropriate, proposed regulation allowing the taking of pinnipeds incidental to space shuttle launches over the Northern Channel Islands.

Dated: April 30, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-12109 Filed 5-3-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee; Publication of Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 123. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 123 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: May 1, 1984.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 123 To the Heads of the Executive Departments and Establishments

Subject: Table of Maximum Per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702 (a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 122 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
*Adak [1]	$15.00
Anaktuvuk Pass	140.00
Anchorage	100.00
Atqasuk	215.00
Barrow	139.00
Bethel	138.00
Coldfoot	122.00
College	100.00
Cordova	124.00
Deadhorse	131.00
Dillingham	103.00
*Dutch Harbor	105.00
Eielson AFB	100.00
Elmendorf	100.00
Fairbanks	100.00
Ft. Richardson	100.00
Ft. Wainwright	100.00
Juneau	109.00
Ketchikan	104.00
Kodiak	115.00
Kotzebue	118.00
Murphy Dome	100.00
Noatak	118.00
Nome	103.00
Noorvik	118.00
Petersburg	104.00
Point Hope	100.00
Prudhoe Bay	131.00
Shemya AFB [1]	12.75
Shungnak	118.00
Sitka-Mt. Edgecombe	104.00
Skagway	104.00
Spruce Cape	115.00
St. Mary's	100.00
Tanana	103.00

Locality	Maximum rate
Valdez	112.00
Wainwright	165.00
Wrangell	104.00
Yakutat	100.00
All Other Localities	90.00
American Samoa	91.00
Guam M. I.	74.00
*Hawaii:	
Hawaii, Island of	63.00
All Other Islands	83.00
Johnston Atoll [2]	21.25
Midway Island [1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	124.00
5-16—12-15	99.00
Carolina:	
12-16—5-15	124.00
5-16—12-15	99.00
Fajardo (Including Luquillo):	
12-16—5-15	124.00
5-16—12-15	99.00
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	124.00
5-26—12-15	99.00
Ponce (Incl. Ft. Allen NCS)	72.00
Roosevelt Roads:	
12-16—5-15	124.00
5-16—12-15	99.00
Sabana Seca:	
12-16—5-15	124.00
5-16—12-15	99.00
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	124.00
5-16—12-15	99.00
All Other Localities	99.00
Virgin Islands of U.S.:	
12-1—4-30	120.00
5-1—11-30	88.00
Wake Island [2]	20.00
All Other Localities	20.00

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per dem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Dated: May 1, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-12038 Filed 5-4-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

The DIS Form 1148 is used by the Industrial Security Reps. of the Defense Investigative Service to record the results of their interviews with commercial carrier officers and employees, and examination of contractor equipment procedures and facilities utilized in the safeguarding of classified information. Number of respondents—62. Number of presponses per respondent—2. Number of hours per response—2. Total Burden—248.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Division, 1900 Half Street SW., Washington, DC 20324, telephone (202) 693-0881.

Dated: April 27, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-12039 Filed 5-4-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondents; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

DOD Working Dog Program

Individual donors and veterinarians are required to provide data and overall knowledge concerning the health of the animal prior to acquisition by the DOD for training as a military working dog. It is necessary for the animal to meet acceptable standards for health, color, temperament, age, sex and ancestry prior to acceptance by the DOD.

Individuals with dogs to donate and the examining veterinarian: 15,516 responses: 7,758 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Lt. Col. Tommy C. Stoner, Department of the Air Force, HQ, USAF/LEYS, Pentagon, Washington, D.C., Room 5B269, telephone 202-695-2531, or Mr. Earnest V. Paz, Director of Distribution (DSK), San Antonio Air Logistics Center, Kelly Air Force Base, TX 78241, commercial telephone 512-671-4291.

Dated: May 1, 1984.

M. S. Healy,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 84-12037 Filed 5-3-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Potential Alternatives of the Lake Operations and Outlet Channels Interim, Mississippi, Project To Provide Flood Damage Reduction in the Yazoo River Basin Along the Yalobusha and Little Tallahatchie Rivers and the Panola-Quitman Floodway Below Grenada and Sardis Lakes, Respectively

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY:

1. *Proposed Action:* The proposed action is to provide a more comprehensive solution to flooding problems in the Yazoo River Basin in areas downstream of Grenada and

Sardis Lakes. The purpose of the study is to examine the operating procedures of the lakes and to determine the need for increasing channel capacities below the lakes to relieve downstream flooding problems.

2. *Alternatives:* Several alternatives are being evaluated for providing flood protection to the area. The DEIS will include an evaluation of the environmental, social, economic, and engineering impacts associated with each alternative plan. The following alternatives are being considered:

a. *No-Action:* This alternative will be the "without" project condition as determined by the most probable future in the absence of a Federal project and from which impacts of other alternatives will be measured.

b. *Channel work:* An array of channel alternatives providing varying degrees of protection is being evaluated and consists of channel enlargements and the deposition of dredged material into diked disposal areas.

c. *Levees:* An array of levee alternatives is being evaluated for the Panola-Quitman Floodway levee (east bank) which would provide varying levels of flood protection. This work would consist of the construction of a levee from riverside borrow material and construction of a landside drainage ditch to accommodate interior drainage.

d. *Changes in operating procedures at the Corps lakes:* Possible modification of existing lake operational procedures will be examined.

3. *Scoping Process:*

a. The scoping process as defined in the National Environmental Policy Act-regulations contained in the 29 November 1978 **Federal Register** is being used throughout the study. A plan of study has been coordinated with Federal, state, and local agencies and serves as the initial phase of the scoping process in lieu of a formal scoping meeting.

b. The DEIS will contain in-depth evaluations concerning project effects on bottom-land hardwood forests, wildlife resources, fishery resources, waterfowl resources, cultural resources, prime and unique farmlands, threatened, endangered, or uncommon species, businesses, residences, and other structures, and air and water quality.

c. The principal environmental review and consultation requirements will ensure compliance with applicable environmental protection statutes and other environmental requirements.

4. *DEIS Publication Date:* The current study schedule estimates that the DEIS will be available to the public in January 1985 with a public meeting scheduled for April 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. Marvin Cannon at the following address: U.S. Army Engineer District, Vicksburg, Attn: LMKPD–Q, P.O. Box 60, Vicksburg, Miss. 39180.

Stephen E. Shepard,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 84–12044 Filed 5–3–84; 8:45 am]

BILLING CODE 3710–GX–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

School Construction in Areas Affected by Federal Activity; Cutoff Date Notice for the Transmittal of Applications for Fiscal Year 1984

Applications are invited for new projects under the School Construction Program.

Authority for this program is contained in Pub. L. 81–815, school construction in areas affected by Federal activities.

(20 U.S.C. 631–647)

Notice is given that the Secretary of Education has established a cutoff date for the transmittal of applications for increase periods ending June 1984 or June 1985 for assistance under Sections 5 and 9 of Pub. L. 81–815. (An increase period is a period of four consecutive regular school years during which a school district has experienced a substantial increase in school membership as a result of new or increased Federal activities.) This cutoff date also applies to applications for new projects under Section 14 of Pub. L. 81–815, and to new applications for supplemental assistance under Section 8 of Pub. L. 81–815. (Section 14 authorizes assistance for certain school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property. Section 8 authorizes assistance that supplements certain awards made under Sections 5, 9, and 14 of Pub. L. 81–815.)

Approval of these applications is subject to availability of funds.

Cutoff date for transmittal of applications: Applications must be mailed or hand delivered to the U.S. Secretary of Education from the State educational agencies on or before July 6, 1984.

Applications delivered by mail: Applications sent by mail must be addresed to the Secretary of Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2107A, Washington, D.C. 20202–6272.

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 evidence 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.

(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 for a new project will notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2107A, Washington, D.C. 20202–6272.

Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays. Hand-delivered applications will not be accepted after 4:30 p.m. on the cutoff date.

Program information: Federal funds are provided for the construction or temporary provision of urgently needed minimum school facilities in school districts which have had substantial increases in school membership of children who reside on Federal property with a parent who is either in the Uniformed Services of the United States or who is employed on Federal property. Federal funds provided for construction of needed minimum school facilities in school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property. In applying for fiscal year 1984 funding, school districts may not count as federally connected children those children who are described in sections 5(a)(2) or 5(a)(3) of the Act.

Intergovernmental review: On June 24, 1983, the Secretary published in the

Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

States

Arizona	New Mexico
Arkansas	New York
California	North Carolina
Colorado	Ohio
Connecticut	Oklahoma
Delaware	Oregon
Distr'ct of Columbia	Rhode Island
Florida	South Carolina
Hawaii	South Dakota
Illinois	Tennessee
Indiana	Texas
Kentucky	Utah
Louisiana	Vermont
Maryand	Virginia
Michigan	Washington
Missouri	West Virginia
Montana	Wisconsin
Nebraska	Wyoming
Nevada	Puerto Rico
New Hampshire	Trust Territory
New Jersey	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 4, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.040, 400 Maryland Ave., S.W., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Application forms: Application forms and instructions may be obtained from the appropriate State educational agency which serves the applicant local educational agency.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the progam informaiton package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.

Applicable Regulations: The regulations applicable to the progam are:

(a) Regulations governing the School Construction Program (34 CFR Part 221).

(b) The Education Department General Administrative Regulations (EDGAR) [34 CFR Parts 74, 75, 77 and 79).

(20 U.S.C. 633)

(Catalog of Federal Domestic Assistance No. 84.040, School Assistance in Federally Affected Areas—Construction)

Dated: May 1, 1984.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 84-12080 Filed 5-3-84 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP-76]

Record of Decision and Notice of Issuance of Presidential Permit PP-76 to Vermont Electric Transmission Company for the Construction of a Transmission Line From Comerford, New Hampshire, to Sherbrooke, Quebec

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Publication of the Record of Decision and Notice of the issuance of Presidential Permit PP–76 to the Vermont Electric Transmission Company (VETCO) for the construction of a ± 450 kilovolt (kV), direct current (d.c) international transmission line from Comerford, New Hampshire, to Sherbrooke, Quebec.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has issued Presidential Permit PP–76 to VETCO authorizing the construction, connection, operation, and maintenance of a ± 450 kV d.c. international transmission line from Comerford, New Hampshire, to the Canadian border where it will interconnect with a similar transmission line being constructed by Hydro-Quebec. The Record of Decision appears below.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW, Washington, D.C. 20585 (202) 252–1316

Lise Courtney M. Howe, Office of Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Forrestal Building, Mail Stop 6A–141, 1000 Independence Avenue, S.W. Washington, D.C. 20585 (202) 252–2900

SUPPLEMENTARY INFORMATION: On April 5, 1984, pursuant to Executive Order 10485, as amended, the Administrator of ERA issued Presidential Permit PP–76 to the Vermont Electric Transmission Company for the construction of a ± 450 kV international transmission line extending approximately 60 miles from Comerford, New Hampshire, to the U.S.-Canadian border.

The Record of Decision for this action is issued pursuant to the Regulations of the Council on Environmental Quality (40 CFR Part 1505) and Implementation Procedures of the U.S. Department of Energy (45 FR 20694).

Decision

DOE has decided to issue a Presidential Permit to VETCO to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada. This Permit is being issued pursuant to Executive Order 10485, as amended by Executive Order 12038.

Project Description

VETCO proposes to construct, connect, operate and maintain a ± 450 kV d.c. bipolar overhead transmission line extending approximately 60 miles from the existing Comerford, New Hampshire, generating station to the U.S.-Canadian border near Norton, Vermont, where it will interconnect with a similar line being constructed by Hydro-Quebec. The facilities authorized by this Permit are more specifically shown and described in material on file in ERA Docket PP–76.

Description of Alternatives

DOE issued the Final Environmental Impact Statement (FEIS) titled "New England/Hydro-Quebec ± 450 kV d.c Transmission Line Interconnection," DOE/EIS–0103, on February 10, 1984. Section 2 of this document contains an analysis of the alternatives considered in this Permit evaluation including four principal alternative corridors for routing the interconnection. Other alternatives considered were the purchase of power from other utilities, construction of new conventional or unconventional generating capacity, use of decentralized energy sources, employment of conservation and denial of the VETCO application for a Presidential Permit (no Federal action).

Basis for Decision

DOE is authorized, pursuant to Executive Order 10485, as amended by Executive Order 12038, to grant a Presidental Permit to construct, connect, operate and maintain a transmission circuit crossing an international border. DOE must determine that the isssuance of a Permit is consistent with the public interest.

The Decision

ERA has concluded that the New England/Hydro-Quebec project proposed by VETCO satisfies the four criteria presently used to determine consistency with the public interest, namely: (1) The Department's decisionmaking process must satisfy the requirements of the National Environmental Policy Act of 1969; (2) the project must not impair the reliability of the electric bulk power supply system in the U.S.; (3) the project must receive the favorable recommendation of the Secretary of State, and (4) the project must receive the favorable recommendation of the Secretary of Defense.

On February 10, 1984, the availability of the FEIS was noticed in the **Federal Register** and copies distributed to the public (49 FR 5186). No coments were received. The FEIS analyzed the environmental impacts of VETCO's proposed route, various routing alternatives, and other supply alternatives. It concluded that the route proposed by VETCO is the environmentally preferable route. Additionally, ERA has incorporated into the terms and conditions of the Permit, to the maximum extent practical and reasonable, the mitigation measures specified in the FEIS.

On June 24, 1983, ERA issued a Draft Reliability Determination for the proposed transmission line. At that time, based upon information submitted by the applicant and by the Northeast Power Coordinating Council, it was tentatively determined that the proposed line would not impair the reliability of the electric bulk power supply system in the the U.S.

On June 28, 1983, this finding was issued in the **Federal Register** along with a request for public comments (48 FR 29727). No comments were received. Therefore, on August 26, 1983, ERA adopted, without change, the Draft Reliability Determination as its Final Determination.

Finally, in satisfaction of the final two criteria and pursuant to Executive Order 10485, as amended, the Department of State concurred in the DOE's decision to issue the Permit on March 6, 1984, and the Department of Defense concurred on March 8, 1984.

Copies of the Presidential Permit, Environmental Impact Statement, VETCO's application, and other pertinent material related to Docket PP–76 are available for public inspection and copying at the DOE Freedom of Information Library, Room 1E–190, Forrestal Building, 100 Independence Avenue SW., Washington, D.C. 20585, beween the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 5, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Adminstation.

[FR Doc. 84 12127 Filed 5–3–84 8:45 am]

BILLING CODE 6450–01–m

DEPARTMENT OF ENERGY

Energy Information Administration

National Petroleum Council Committee on Petroleum Inventories and Storage Capacity; Meeting

Notice is hereby given that the National Petroleum Council's Committee on Petroleum Inventories and Storage Capacity will meet in May, 1984. The

National Petroleum Council was established pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), 86 Stat. 770), to provide advice, information, and recommendations to the Secretary of Energy on matters relating to petroleum and natural gas or the oil and gas industries. The Committee on Petroleum Inventories and Storage Capacity will study and update the analysis of minimum operating levels as well as update the estimates of total storage capacity available for use.

The Committee will hold its third meeting on Wednesday, May 16, 1984, 9:30 a.m. in the Monticello Suite of the Jefferson Hotel, 1200 Sixteenth Street, N.W., Washington, D.C.

The tentative agenda for the Committee meeting follows:

1. Review the draft report on Petroleum Inventories and Storage Capacity.

2. Review the schedule for completion of the Committee's assignement.

3. Discuss any other matters pertinent to the overall assignment from the Secretary.

4. Public Comment (10 minute rule).

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Written statements may be filed with the Committee either before of after the meeting. Members of the public who wish to make oral statements should contact Jimmie L. Petersen, Office of Oil and Gas, Energy Information Administration, Forrestal Building—Room 2H–058, Washington, D.C., 202/252–6401, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., 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 April 23, 1984.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 84–12128 Filed 5–3–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA84–1–20–006]

Algonquin Gas Transmission Co.; Rate Reduction Filing Under Rate Schedule S–IS

April 30, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on April 23, 1984 tendered for filing Substitute Fifth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Substitute Fifth Revised Sheet No. 213 is being filed to reflect in Algonquin Gas' Rate Schedule S–IS Payment for Inventory Sale Gas a decrease in Consolidated Gas Supply Corporation's ("Consolidated") underlying Rate Schedule E.

Algonquin Gas request that the Commission accept such tariff sheet to be effective March 1, 1984, to coincide with the proposed effective date of Consolidated's Rate Schedule E rate change.

Algonquin Gas also request that the Commission grant such special permission as may be necessary to allow Algonquin Gas to provide a credit if necessary on the next month's billing subsequent to acceptance by the Commission of the tariff sheet filed hereunder in order to effectuate the result of the proposed effective date.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–12085 Filed 5–3–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–31–003]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

April 30, 1984.

Take notice that on April 24, 1984 Arkansas Louisiana Gas Company (Arkla) tendered for filing 1st Substitute 36th Revised Sheet No. 4 and 9th Revised Sheet No. 4A to its FERC Gas Tariff First Revised Volume No. 1, Rate Schedule No. G–2, to become effective April 1, 1984.

Arkla states that the purpose of 1st Substitute 36th Revised Sheet No. 4 is to revise the amounts of deferred gas cost and interest to include adjustments for the accumulation period ended December 31, 1983 and to reflect a revised surcharge rate to be billed during the PGA period commencing April 1, 1984.

Arkla also states that a copy of the revised tariff sheets and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

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 Commissions Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–12086 Filed 5–3–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–31–002]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

April 30, 1984.

Take notice that on April 24, 1984 Arkansas Louisiana Gas Company (Arkla) tendered for filing 1st Substitute 35th Revised Sheet No. 185 to its FERC Gas Tariff Original Volume No. 3, Rate Schedule No. X–26, to become effective April 1, 1984.

Arkla states that the purpose of 1st Substitute 35th Revised Sheet No. 185 is to revise the amounts of deferred gas cost and interest to include adjustments for the accumulation period ended December 31, 1983 and to reflect a revised surcharge rate to be billed during the PGA period commencing April 1, 1984.

Arkla also states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

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 Commissions Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12087 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-399-000]

Cleveland Electric Illuminating Co.; Filing

April 30, 1984.

The filing Company submits the following:

Take notice that on April 19, 1984, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 40 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of May 14, 1984, and therefore requests waiver of the Commission's notice requirements.

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 May 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12088 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-398-000]

Cleveland Electric Illuminating Co.; Filing

April 30, 1984.

The filing Company submits the following:

Take notice that on April 19, 1984, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of up to 20 MW of power from the interconnection points between CEI and the Toledo Edison Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of February 29, 1984, and therefore requests waiver of the Commission's notice requirements.

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 May 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12089 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6431-001]

Clifford W. Holman; Surrender of Preliminary Permit

April 27, 1984.

Take notice that Clifford W. Holman, Permittee for the Holman Hydro-1 Project No. 6431 has requested that its preliminary permit be terminated. The Preliminary Permit was issued on November 9, 1982, and would have expired on November 30, 1984. The project would have been located on an unnamed tributary of Rock Creek partially within Gifford Pinchot National Forest in Clark County, Washington.

Clifford W. Holman filed the request on February 13, 1984, and the surrender of the preliminary permit for Project No. 6431 is deemed accepted as of February 13, 1984 and effective as of 30 days after the date of this notice.

Kenneth Plumb,

Secretary.

[FR Doc. 84-12040 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-397-000]

Florida Power & Light Co.; Filing

April 30, 1984.

The filing Company submits the following:

Take notice that on April 18, 1984, Florida Power & Light Company (FP&L) tendered for filing revised copies of Exhibit A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; Utilities Commission, City of New Smyrna Beach; and City of Vero Beach.

FP&L requests an effective date of May 29, 1984, and therefore requests waiver of the Commission's notice requirements.

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 May 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12091 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-71-002]

Granite State Gas Transmission, Inc.; Filing

April 30, 1984.

Take notice that on April 20, 1984, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the following tariff sheets pursuant to the settlement approved by the Commission on April 18, 1984, in the captioned docket:

Second Substitute Alternate Fourth Revised Sheet No. 7
Substitute First Revised Sheet No. 68

Second Substitute Alternate Fourth Revised Sheet No. 7 reflects the effect of the restated Base Tariff Rates approved in the settlement on current rates. The settlement results in a reduction of 2.40 cents per Mcf in the Rate Schedule CD-2 Base Tariff Commodity Rate which has been carried through to an equivalent reduction in the Commodity Rate after Current Adjustment. No other rate changes are required by the settlement.

Substitute First Revised Sheet No. 68 states the settlement Base Tariff Rates in a provision of the General Terms and Conditions of Granite State's tariff. This tariff sheet is the same as the comparable sheet attached to the settlement because it is not affected by the intervening purchased gas cost adjustments since April 1, 1983.

Granite State proposes that these tariff sheets become effective May 1, 1984, and requests any necessary waivers of the Commission's Regulations to that effect.

Granite State states that it has mailed copies of its filing to the appropriate regulatory agencies of the states of Maine, Massachusetts and New Hampshire and to Bay State Gas Company and Northern Utilities, Inc.

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 May 8, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12092 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C163-1300-000]

Mobil Oil Corp.; Application to Amend Certificate of Public Convenience and Necessity

Take notice that on April 18, 1984, Mobil Oil Corporation (Mobil) of Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an application pursuant to § 157.23 or § 157.30 of the Regulations under the Natural Gas Act and Rule 204 of the Commission's Rules of Practice and Procedure, to delete the commitment of the shallow Cottage Grove formation in the Squirrel Creek Field in Oklahoma or, alternatively, to grant partial abandonment of said Cottage Grove formation. The gas in question is covered by Mobil's Rate Schedule No. 339.

The Cottage Grove formation in the Squirrel Greek Field is a competitive oil reservoir and shutting in the oil wells would result in the loss of oil and gas reserves to other producers in the field. At the present time the gas is being vented, but Mobil may be required to shut-in the wells under Oklahoma conservation rules. In order to avoid further venting, Mobil proposes to utilize this new casinghead gas production as plant fuel in the Northeast Unit Trail Plant or to make an alternate sale as soon as such can be arranged.

Mobil sells gas under its Rate Schedule No. 339 at the outlet of the Putnam-Oswego Unit Plant. That plant does not have sufficient capacity to also process Mobil's gas from the Cottage Grove formation. According to Mobil, Natural Gas Pipeline Company of America (NGPL), the purchaser, has refused to agree to a second delivery point at a nearby processing plant (Northeast Trail Plant) unless Mobil will accede to significant contract amendments involving substantial price concessions as to the base contract covering other gas sold under the contract. Mobil has offered to reimburse NGPL for the actual costs of the connection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 7, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12093 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT84-20-000]

National Fuel Gas Supply Corp.; Filing

April 30, 1984.

Take notice that on April 23, 1984, National Fuel Gas Supply Corporation (National Fuel) tendered for filing, pursuant to § 154.1 of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act, an executed service agreement dated March 13, 1984, for Interruptible Sale of Natural Gas (Rate Schedule I-1), between National Fuel and Consolidated Edison Company of New York, Inc.

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 May 8, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12094 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-396-000]

Ohio Edison Co.; Filing

April 30, 1984.

The filing company submits the following:

Take notice that on March 29, 1984, Ohio Edison Company (Ohio Edison) tendered for filing an Economy Energy Contract between Ohio Edison and the City of Oberlin, Ohio which will supersede Contracts with twenty-one municipal wholesale customers taking service pursuant to either Ohio Edison's FERC Electric Tariff, Original Volume No. I, or its FERC Rate Schedule No. 140.

Ohio Edison states that the Economy Energy Contract is in comformance with the Statement Agreement approved by the Commission March 23, 1984. Ohio Edison purposes an effective date of April 1, 1984.

According to Ohio Edison, copies of the filing were served on Counsel for the Company's jurisdictional customers affected by the proposed changes and The Public Utilities Commission of Ohio.

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 May 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 are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12095 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-454-001]

Ohio Edison Co.; Compliance Filing

April 30, 1984.

Take notice that Ohio Edison Company (Ohio Edison) on March 29, 1984, tendered for filing an Energy Supply Agreement between Ohio Edison and Amp-Ohio which will supersede contracts with twenty-one municipal wholesale customers taking service pursuant to either Ohio Edison's FERC Electric Tariff, Original Volume No. I, or its FERC Rate Schedule No. 140.

Ohio Edison states that the Energy Supply Agreement is in conformance with the Settlement Agreement approved by the Commission on March 23, 1984.

According to Ohio Edison, copies of the filing were served on Counsel for the Company's jurisdictional customers affected by the proposed changes and The Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 16, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12096 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-73-000]

South Georgia Natural Gas Co.; Proposed Changes In FERC Gas Tariff

April 30, 1984.

Take notice that South Georgia Natural Gas Company (South Georgia) on April 24, 1984, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 to become effective June 1, 1984:

First Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 41
First Revised Sheet No. 42

South Georgia's present Form of Service Agreement does not contain an exhibit such that a customer's contract quantity, delivery point(s), pressure, rate schedule(s), etc., may be conveniently changed by executing a superseding exhibit. In order to avoid the necessity of refiling the entire service agreement in order to make changes to such items in the future, South Georgia has converted the format of its present Form of Service Agreement into one containing an exhibit. With the exception of the substitution of the term Federal Energy Regulatory Commission for all references in the existing Form of Service Agreement to the Federal Power Commission, the revised Form of Service Agreement is substantively identical to the existing Form of Service Agreement.

Copies of this filing have been served upon South Georgia's jurisdictional customers, interested state public service commissions and all parties of record.

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 and 385.214). All such motions or protests should be filed on or before May 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12097 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2739-005]

Utilities Commission of the City of Vanceburg and the City of Vanceburg, Kentucky; Application for Approval of Amended Exhibit R

April 27, 1984.

Take notice that the Utilities Commission of the City of Vanceburg and the City of Vanceburg, Kentucky, the Licensee for the Meldahl Project, FERC No. 2739, filed on January 27, 1984, an application for approval of an Amended Exhibit R in compliance with Article 45 of the project license. The project is located at the U.S. Corps of Engineers' Captain Anthony Meldahl Locks and Dam on the Ohio River in Bracken County, Kentucky.

The Licensee proposes to provide a picnic area, a parking area, restroom facilities, a playground area, a fishing pier and a public information facility at the project. Construction of the recreational facilities would be completed by the time the Meldahl Project commences commercial operation, presently scheduled for late 1987.

Correspondence with the Licensee should be directed to: Mr. Kerby W. Burton, W. M. Lewis and Associates, Inc., P.O. Box 1383, Portsmouth, Ohio 45662.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Licensee). If an agency does not file

comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motion to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1983). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before June 11, 1984.

Filings and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above-named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208RB at the above address.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–12098 Filed 5–3–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–56–000]

Valero Interstate Transmission Co.; Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions

April 30, 1984.

Take notice that on April 24, 1984, Valero Interstate Transmission Company ("Vitco") tendered the following filings containing changes in rates pursuant to purchased gas cost adjustment provisions:

Original Supplement No. 44 to
FERC Gas Rate Schedule No. 1,
For Sale of Gas by Vitco to
Natural Gas Pipeline Company of America.

Original Supplement No. 124 to
FERC Gas Rate Schedule No. 2,
For Sale of Gas by Vitco to
Transcontinental Gas Pipe Line Corporation.

Original Supplement No. 20 to
FERC Gas Rate Schedule No. 14,
For Sale of Gas by Vitco to
El Paso Natural Gas Company, and

4th Revised Sheet No. 14 to FERC Rate Schedule No. T–1.

Vitco states that the rates stated on Exhibit A to each of the rate schedule supplements and 4th Revised Sheet No. 14 to Rate Schedule T–1 reflects the change in purchased gas costs based on the six months ended February 29, 1984.

The change in rate provided in Exhibit A to Original Supplement No. 44 to Rate Schedule No. 1 includes an increase in purchased gas costs of 13.47 cents per Mcf and a surcharge of .1886 cents per Mcf. The change in rate provided in Exhibit A to Original Supplement No. 124 to Rate Schedule No. 2 includes a decrease in purchase gas costs of 26.99 cents per Mcf and a surcharge of 114.26 cents per Mcf. The change in rate provided in Exhibit A to Original Supplement No. 20 to Rate Schedule No. 14 includes a decrease in purchased gas costs of 84.80 cents per Mcf and a surcharge of 30.48 cents per Mcf. The change in rate provided on 4th Revised Sheet No. 14 to Rate Schedule T–1 includes a decrease in purchased gas cost of 00.60 cents per Mcf and a surcharge of 6.54 cents per Mcf. The surcharge in each instance is designed to eliminate the balance in the deferred purchased gas cost account.

Vitco requests that the Commission grant waiver of Section 154.38(d)(4)(iv)(d) of the Commission's Regulations, and of Paragraph B.5 of Vitco's Purchased Gas Cost Adjustment Procedures, filed as Supplement No. 13 to FERC Gas Rate Schedule No. 14, and any other waiver necessary, to permit Vitco to file Original Supplement No. 20 to Vitco's FERC Gas Rate Schedule No. 14. Vitco states that, in accordance with El Paso Natural Gas Company's ("El Paso") request, Vitco proposes a twelve (12) month amortization period for the surcharge in lieu of the six (6) month period provided in the regulations and Vitco's FERC Gas Rate Schedule No. 14. This twelve (12) month amortization period results in a surcharge of 30.48 cents per Mcf as shown on Original Supplement No. 20 to FERC Gas Rate Schedule No. 14. Vitco states that this surcharge is necessary to recover over a twelve (12) month period a balance of $2,705,851 accumulated in the unrecovered purchased gas cost account (Account No. 191) for El Paso. Vitco states that there is good cause to waive the required six (6) month period because the majority of the amount accumulated was due to extraordinary circumstances. Vitco states that of the accumulated balance, $2,396,715 is due to payments of gas costs for past periods due to reclassification of four (4) wells from Natural Gas Policy Act ("NGPA") Section 103 to NGPA Section 107(c)(5). Vitco states that this payment was made in December 1983, during the "Adjustment Base Period" used to calculate the surcharge effective June 1, 1984. Vitco requests waiver of the Commission's Regulations to permit Original Supplement No. 20 to be accepted for filing, to be made effective June 1, 1984 to permit amortization of the current balance in the deferred account over a twelve-month period.

As an alternative to Original Supplement No. 20 to Vitco's FERC Gas Rate Schedule No. 14, Vitco also filed an original and six (6) copies of the following:

Alternate Supplement No. 20
FERC Gas Rate Schedule No. 14
For Sale of Gas by Vitco to
El Paso Natural Gas Company

Vitco states that Alternate Supplement No. 20 reflects a surcharge of 61.88 cents per Mcf effective for a six (6) month period. Vitco requests that Alternate Supplement No. 20 be accepted for filing, to be made effective June 1, 1984 only if the Commission denies the request for waiver to make Original Supplement No. 20 effective.

Vitco states that these rates include no incremental pricing factor because Vitco was granted an exemption from certain filing and accounting requirements in Docket No. SA80–42.

The proposed effective date for the above filings is June 1, 1984. Vitco requests a waiver of any Commission regulations or order which would prohibit implementation by June 1, 1984.

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 and 385.214). All such petitions or protests should be filed on or before May 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–12099 Filed 5–3–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2582-1]

Issuance of a PSD Permit To Applied Power Technology

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Applied Power Technology, Butte County, California. ERA project number SAC 83-02.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request, address request to: Rhonda Rothschild, U.S. Environmental Protection Agency, Region 9, 215 Fremont St., San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 29, 1983 the Environmental Protection Agency issued a PSD permit to the applicant named above granting approval to construct an 18-megawatt, wood-fired, electrical generating facility in Butte County. This permit has been issued under EPA's PSD regulations (40 CFR 52.21) and is subject to certain conditions, including an allowable emission rate as follows: PM at 11.9 lbs/hr and NO_x at 35.4 lbs/hr.

Best Available Control Technology (BACT) requirements include: PM will be controlled using a multi-cyclone dust collector followed by an electrostatic precipitator. NO_x combustion controls include 10% underfire and 90% overfire air to minimize pollutant formation.

Air Quality Impact modeling was required for TSP and NO_x. Continuous monitoring is required and the source is not subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by July 3, 1984.

Dated: April 20, 1984.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

FR Doc. 84-12069 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2581-7]

Issuance of a PSD Permit to County Sanitation Districts of Los Angeles County

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: This notice identifies approval of a Prevention of Significant Air Quality Deterioration (PSD) permit to the County Sanitation Districts of Los Angeles County, Carson, California. EPA project number LA 83-02.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request, address request to: Rhonda Rothschild, U.S. Environmental Protection Agency, Region 9, 215 Fremont St., San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 6, 1984, the Environmental Protection Agency issued a PSD permit to the applicant named above granting approval to construct a Carver-Greenfield Sludge Dehydration/Energy Recovery System at the Joint Water Pollution Control Plant in Carson, California. This permit has been issued under EPA's PSD regulations (40 CFR 52.21) and is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 3.4 lbs/hr and Hg at 1.01×10^{-2} lbs/hr.

Best Available Control Technology (BACT) requirements include: SO_2 emission control by fluidized combustion with limestone injection, followed by a spray dryer flue gas desulfurization system. Hg emissions will be controlled with a spray dryer/baghouse system.

Air Quality Impact modeling was required for SO_2. Continuous monitoring is required and the source is not subject to New Source Performance Standards. The source is subject to National Emission Standards for Hazardous Air Pollutants.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by July 3, 1984.

Dated: April 23, 1984.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 84-12067 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2581-8]

Issuance of a PSD Permit to Getty Oil Company

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Getty Oil Company Kern County, California. EPA project number SJ 83-03.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request, address request to: Rhonda Rothschild, U.S. Environmental Protection Agency, Region 9, 215 Fremont St., San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 3, 1983 the Environmental Protection Agency issued a PSD permit to the applicant named above granting approval to Construct four gas turbines with waste heat boilers to be located in the Kern River Oil Field, Kern County, California. Turbines will be G.E. Frame 7 turbines. This permit has been issued under EPA's PSD regulations (40 CFR 52.21) and is subject to certain conditions including an allowable emission rate as follows: CO at 17 /hr/turbine.

Best Available Control Technology (BACT) requirements include: the allowable emission rate and proper combustion.

Note—Getty has applied for a major modification to increase the allowable emission rate when firing on distillate oil, the standby fuel.

Air Quality Impact modeling was required for CO. Continuous monitoring is required and the source is subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by July 3, 1984.

Dated: April 20, 1984.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 84-12068 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL 2581-1]

Availability of Environmental Impact Statements Filed April 23, Through April 27, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840177, Draft, COE, FL, Tampa Harbor-Alafia River/Big Bend Channel, Navigation Improvements, Due: June 18, 1984, Contact: Gerald Atmar, (904) 791-2615.

EIS No. 840178, Draft, EPA, CA, Southern California Bight, Ocean Disposal Site, Designation, Due: June 18, 1984, Contact: Frank Csulak, (202) 755-2927.

EIS No. 840179, Draft, FHW, AR, Pine Bluff Railroad Demonstration Project, Jefferson County, Due: June 18, 1984, Contact: Paul Pool, (501) 378-5355.

EIS No. 840180, Final, BLM, CO, Kremmling Resource Area, Resource Mgmt. Plan, Due: June 4, 1984. Contact: Harold Belisle, (303) 724-3437.

EIS No. 840181, Draft, COE, AL, MS, Alabama/Mississippi Coastal Hydrocarbon Resources, Exploration and Production, Permit, Due: June 18, 1984, Contact: Clay Carter, (205) 690-2658.

EIS No. 840182, Final, NRC, PA, Limerick Generating Station, Units 1 and 2, Operating Licenses, Montgomery County, Due: June 4, 1984. Contact: Robert Martin, (301) 492-4937.

EIS No. 840183, Final, EPA, TX, Fort Worth Wastewater Treatment Facilities, Construction, Grant, Tarrant County, Due: June 4, 1984. Contact: Clinton Spotts, (214) 767-2716.

Amended Notices

EIS No. 840076, DSuppl, FHW, ND, US 2 Widening, Granville to Souris River, McHenry County, Published FR 3/02/84 Officially withdrawn.

EIS No. 840070, Draft, BLM, WY, North Fork Well Oil and Gas Exploration/Development/Operations, Permit, Park County, Due: May 16, 1984. Published FR 4/27/84.

EIS No. 840158, Draft, BLM, NM, Roswell Resource Area, Rangeland Mgmt. Plan, Chaves, Lincoln, Quay, Curry, DeBaca, Guadalupe, and Roosevelt Cos., Due: July 17, 1984. Published FR 4/20/84.

Dated: May 1, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-12134 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140050; TSH-FRL 2582-5]

Office of Management and Budget Disclosure of Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) has requested that EPA provide three designated OMB employees access to confidential business information submitted to EPA under the Toxic Substances Control Act (TSCA). OMB has informed EPA that its employees require access in connection with OMB's roles in reviewing EPA rulemaking processes and the Agency's budget.

DATE: Access to confidential business information will be provided to the OMB employees no sooner than May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll-free (800-424-9056), In Washington, D.C. (554-1404), Outside the USA (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is responsible for reviewing EPA rulemaking packages and processes and the Agency's budget. In connection with this role, OMB requires a thorough understanding of EPA's programs under TSCA, including rulemaking procedures and the information underlying EPA decisions. OMB has requested that three designated OMB employees be granted access to confidential business information submitted to EPA under sections 4, 5, 6, and 8 of TSCA so that the employees may from time to time review background materials which contain or refer to such confidential information.

EPA will provide the designated OMB employees access to confidential business information in accordance with 40 CFR 2.209(c), which applies to information submitted under TSCA by 40 CFR 2.306(h).

As required by 40 CFR 2.209(c), this is a notice to inform submitters of TSCA information that the designated OMB employees will have access to confidential business information no sooner than 10 days after publication of this notice.

The designated OMB employees will be cleared for access to confidential business information in accordance with the provisions of the TSCA confidential business information security manual, briefed on appropriate security procedures, and required to sign confidentiality agreements. Confidential business information will be reviewed by the OMB employees only at EPA, and no such information will be permitted to be removed from EPA's premises. OMB and its employees will be notified that this confidential information was acquired by EPA under authority of TSCA and that any knowing disclosure of the information may subject the officers and employees of OMB to the penalties in section 14(d) of TSCA.

Dated: April 27, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-12212 Filed 5-3-84; 8:45 am]

BILLING CODE 6560-50 M-

[OPTS-51517; T3H-FRL 2580-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA stataements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-seven PMNs and provides a summary of each.

DATES: Close of review Period:

PMN 84-624, 84-625, 84-626, 84-627 84-628, 84-629, 84-630 and 84-631: July 18, 1984

PMN 84-632, 84-633. 84-634, 84-635 and 84-636: July 21, 1984

PMN 84-637, 84-638, 84-639, 84-642, 84-643, 84-644, 84-645, 84-646, 84-647, 84-667 and 84-668: July 22, 1984

PMN 84-648: July 23, 1984

PMN 84-649, 84-650, 84-651, 84-652, 84-653, 84-654, 84-655, 84-656, 84-657, 84-658 84-659 and 84-660: July 24, 1984

Written comments by:

PMN 84–624, 84–625, 84–626, 84–627, 84–628, 84–629, 84–630 and 84–631: June 18, 1984

PMN 84–632, 84–633, 84–634, 84–635 and 84–636: June 21, 1984

PMN 84–637, 84–638, 84–639, 84–642, 84–643, 84–644, 84–645, 84–646, 84–647, 84–667 and 84–668: June 22, 1984

PMN 84–648: June 23, 1984

PMN 84–649, 84–650, 84–651, 84–652, 84–653, 84–654, 84–655, 84–656, 84–657, 84–658, 84–659, and 84–660: June 24, 1984

ADDRESS: Written comments, identified by the document control number "[OPTS–51517]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environemtnal Protection Agency, Rm. E–409, 401 M St., SW., Washington, D.C. 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, D.C. 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information exteacted from the non-confidential version of the submsssion provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public reading room E–107 at the above address.

PMN 84–624

Manufacturer. Confidential.

Chemical. (G) Cyclic and aliphatic unsaturated ketones

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5 ml/kg; Irritation: Skin—Very slight, Eye—Non-irritant; Phototoxicity: No potential; Maximization test: No contact sensitization; Repeated insult patch test: Negative; Skin sensitization: Non-sensitizer; Photosensitization: No potential.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works(POTW).

PMN 84–625

Manufacturer. Confidential.

Chemical. (G) 1,3-benzenedicarboxylic acid polymer with 1,2 propaneiol, adipic acid, other dicarboxylic acids and polyols.

Use/Production. (S) Primary binder in industrial paint. Prod. range: 30,000–100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 22 workers, up to 8 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. 10 kg/batch released to land. Disposal by publicly owned treatment works (POTW) and landfill.

PMN 84–626

Manufacturer. Confidential

Chemical (G) Organotion compound.

Use/Production. (S) Urethane polymerization catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: 2.14 gm/kg; Acute dermal: >2.0 gm/kg but <4.0 gm/kg; Irritation: Skin—Primary irritant, Eye—Primary irritant; Inhalation LC_{50}: <6.13 mg/1; D.O.T. skin corrosivity: Not corrosive.

Exposure. Manufacture: Dermal, a total of 15 workers, up to 1 hr/da, up to 2 da/yr.

Environmental Release/Disposal. 10 to 50 kg/batch released to water with 5 to 50 kg/batch to land. Disposal by POTW, incineration and landfill.

PMN 84–627

Manufacturer. Confidential.

Chemical. (G) Organotin compound.

Use/Production. (S) Urethane polymerization catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: 2.14 gm/kg; Acute dermal: >2.0 gm/kg but <4.0 gm/kg; Irritation: Skin— Primary irritant, Eye—Primary irritant; Inhalation LC_{50}: <5.65 mg/1; D.O.T. skin corrosivity: Not corrosive.

Exposure. Manufacture: Dermal, a total of 15 workers, up to 1 hr/da, up to 2 da/yr.

Environmental Release/Disposal. 10 to 50 kg/batch released to water with 5 to 50 kg/batch to land. Disposal by POTW, incineration and landfill.

PMN 84–628

Manufacturer. Confidential.

Chemical. (G) Modified methacrylate copolymer.

Use/Production. (G) The new substance is an essential component of an industrial coating composition having a dispersive use. Prod. range: 30,000–55,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 32 workers, up to 7 hrs/da, up to 30 da/yr.

Enviromental Release/Disposal. 10 to 50 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–629

Manufacturer. Confidential.

Chemical. (G) Modified epoxy resin.

Use/Production. (G) The new substance is an essential component of an industrial coating having a dispersive use. Prod. range: 5,000–20,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 26 workers, up to 2 hrs/da, up to 38 da/yr.

Environmental Release/Disposal. 2 to 25 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–630

Importer. Confidential.

Chemical. (G) Fatty alcohol, phthalic acid diester.

Use/Import. (S) Paint and lacquer additive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Use: dermal and inhalation.

Environmental Release/Disposal. No release.

PMN 84–631

Manufacturer. Confidential.

Chemical. (G) Trisubstituted benzenesulfonic acid derivative.

Use/Production. (G) Highly-controlled non-dispersive use in industrial product. Prod. range: 900–3,000 kg/yr.

Toxicity Data. Acute oral: 3,200 mg/kg; Acute dermal; > 1 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Skin sensitization: Normal.

Exposure. Manufacture and processing: Dermal and inhalation, a total of 14 workers, up to 0.5 hr/da, up to 20 da/yr.

Environmental Relese/Disposal. 0 to 1 kg/batch released to water. Less than 1 kg/batch disposed of by bioligical treatment system and navigable waterway with less than 2 to less than 6 kg/batch incinerated.

PMN 84–632

Manufacturer. The Sherwin-Williams Company.

Chemical. (G) Diisocylanate polyether urethane prepolymer.

Use/Production. (S) Commercial additive for automotive refinish color coats used over plastic parts. Prod. range: 44,000–88,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 46 workers, up to 2 hrs/da, up to 13 da/yr.

Environmental Release/Desposal. 40 to 60 kg/yr released to air with 60 kg/yr to water and land.

PMN 84–633

Importer. BASF System Corporation.

Chemical. (S) Polymer of: Vinyl chloride, dimethyl ester of maleic acid, diethyl ester of maleic acid.

Use/Import. (S) Site-limited and consumer binder for use in magnetic media coating. Import range: 21,000–25,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal and inhalation, a total of 60 workers, up to 2 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than ½ kg/batch released to air with less than 1 kg/da to land.

PMN 84–634

Importer. Superior Materials Inc.

Chemical. (S) 1-naphthalenesulfonic acid, 4-[(2-hydroxy-1-nphthalenyl)azo]-barium salt (2:1).

Use/Import. (S) Industrial component of pigment mixture used to colour printing inks. Import range: 1,000–5,000 kg/yr.

Toxicity Data. No date submitted.

Exposure. Import; Inhalation, a total of 6 workers, up to 2–3 hrs/da.

Environmental Release/Disposal. No data submitted.

PMN 84–635

Importer. Superior Materials Inc.

Chemical. (S) 1-naphthalenesulfonic acid, 5-[(2-hydroxy-1-naphthalenyl)azo]-barium salt (2:1).

Use/Import. (S) Industrial component of pigment mixture used to colour printing inks. Import range: 1,000–5, kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: Inhalation, a total of 6 workers, up to 2–3 hrs/da.

Environmental Relaease/Disposal. No data submitted.

PMN 84–636

Importer. Superior Materials Inc.

Chemical. (S) 1-naphthalenesulfonic acid, 2-[(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-barium salt (1:1).

Use/Import. (S) Industrial component of pigment mixture used to colour printing inks. Import range: 1,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: Inhalation, a total of 6 workers, up to 2–3 hrs/da.

Environmental Release/Disposal. No data submitted.

PMN 84–637

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Resin for use in solvent based, crosslinked industrial coatings formulations. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: demeral, a total of 2 workers, up to 8 hrs/da, up to 38 da/yr.

Environmental Release/Disposal. 40 kg/batch released to air. Disposal by inceneration.

PMN 84–638

Manufacturer. Confidential.

Chemical. (S) Polymer of: Neopentyl gloycol, 1,6-hexanediol, insophthalic acid, butyl stannoic acid, adipic acid, phthalic anhydride and trimellitic anhydride.

Use/Production. (S) Commercial protelctive coatings. Prod. range: 100,000–200,000 lbs/yr.

PMN 84–639

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: Dermal, a total of 8 workers, up to 8 hrs/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by sawdust landfill control technology.

PMN 84–639

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic polyamic acid polymer.

Use/Production. (S) Industrial resin for magnet wire enamel. Prod. range: 100,000–400,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 10 workers, up to 4 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

PMN 84–642

Manufacturer. Carus Chemical Company.

Chemical. (S) Cesium hydrogen carbonate (carbonic acid monocesium salt).

Use/Production. (S) Site-limited intermediates to make a variety of cesium salts. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: Dermal, a total of 9 workers, up to 4 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 0.002 to 2.0 kg/batch released to water. Disposal by navigable waterway.

PMN 84–643

Manufacturer. Carus Chemical Company.

Chemical. (S) Copper permanganate.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: Dermal, a total of 8 workers, up to 0.5 hr/da, up to 120 da/yr.

Environmental Release/Disposal. 0.02 kg/da released to water. Disposal by navigable waterway.

PMN 84–644

Manufacturer. Carus Chemical Company.

Chemical. (S) Zinc permanganate hexahydrate.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: Dermal, a total of 8 workers, up to 4 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. 0.002 to 2.0 kg/batch released to water. Disposal by navigable waterway.

PMN 84–645

Manufacturer. General Electric Company.

Chemical. (G) Terephthalic acid and aliphatic dicarboxylic acid polymer with polytetramethylene ether glycol and alkane diols.

Use/Production. (S) Consumer and sporting goods, automotive and industrial fasteners for consumer, commercial and industrial use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 130 workers, up to 10 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 10 kg/batch released to land. Disposal in accordance with local, state and federal regulations.

PMN 84–646

Manufacturer. General Electric Company.

Chemical. (G) Terephthalic acid and aliphatic dicarboxylic acid polymer with polytetramethylene ether glycol and alkane diols.

Use/Production. (S) Consumer and sporting goods, automotive and industrial fasteners for consumer, commercial and industrial use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 130 workers, up to 10 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Less than 10 kg/batch released to land. Disposal in accordance with local, state and federal regulations.

PMN 84–647

Manufacturer. S. C. Johnson and Son. Inc.

Chemical. (G) Styrene acrylate acrylic acid copolymer.

Use/Production. (G) Water resistant coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Desposal by POTW.

PMN 84–648

Manufacturer. Confidential.
Chemical. (S) polymer of: Neopentyl glycol, trimethylol propane, phthalic anhydride, maleic anhydride.
Use/Production. (S) Commercial gel coat. Prod. range: 500,000–750,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing, use and disposal: dermal, a total of 8 workers, up to 8 hrs/da, up to 251 da/yr.
Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by sawdust landfill.

PMN 84–649

Importer. Confidential.
Chemical. (G) Chromate, bis(substituted substituted phenolato)inorganic salts.
Use/Import. (S) Industrial colorant for acid dyeable fibers and fabrics. Import range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Slight, Eye—Slight; IC_{50} (Psuedo fluorescence): 0 at 10 g/l; LC_{50} 24 to 48 hrs (Leuciscus idus): 10 mg/l.
Exposure. Processing: dermal, inhalation and ocular.
Environmental Release/Disposal. No release to air, water and land. Disposal by POTW or wastewater treatment facility.

PMN 84–650

Importer. Confidential.
Chemical. (G) Chromate, bis(substituted substituted substituted pyrazolyl), sodium.
Use/Import. (S) Industrial colorant for acid dyeable fibers and fabrics. Import range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; IC_{50} (Psuedo fluorescence): > 100 mg/l; LC_{100} 96 hr (Brachydanio rerio): 7.8 mg/l.
Exposure. Processing: Dermal, inhalation and ocular.
Environmental Release/Disposal. No release to air, water and land, Disposal by POTW or wastewater treatment facility.

PMN 84–651

Importer. Confidential.
Chemical. (G) Chromate, bis(substituted substituted naphthalenolato)sodium.
Use/Import. (S) Industrial colorant for acid dyeable fibers and fabrics. Import range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant: IC_{50} (Psuedo fluorsdcence): > 100 mg/l; LC_{100} 96 hr (Brachydanio rerio): 42 mg/l, LC_{50}: 41 mg/l, LC_0: 40 mg/l.
Exposure. Processing: Dermal, inhalation and ocular.
Environmental Release/Disposal. No release to air, water and land. Disposal by POTW or wastewater treatment facility.

PMN 84–652

Importer. Confidential.
Chemical. (G) Perfluoroalkyl phosphate.
Use/Import. (S) Industrial releasing agent in releasing plastics or rubbers from the mold. Import range: 300–900 kg/yr.
Toxicity Data. Acute oral: > 1 g/kg; Irritation: Skin—Non-irritant, Eye—Negative.
Exposure. Processing: Dermal and inhalation, a total of 1,000 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 1,000 kg/yr released to landfill.

PMN 84–653

Importer. Confidential.
Chemical. (G) Perfluoroalkyl phosphate ammonium salt.
Use/Import. (S) Industrial releasing agent in releasing plastics or rubbers from the mold. Import range: 300–900 kg/yr.
Toxicity Data. Acute oral: > 1 g/kg; Irritation: Skin—Non-irritant, Eye—Negative.
Exposure. Processing: Dermal and inhalation, a total of 1,000 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 1,000 kg/yr released to landfill.

PMN 84–654

Importer. Sybron Chemicals Inc.
Chemical. (G) Magnesium carboxylate.
Use/Import. (S) Industrial and commercial corrosion inhibitor and slag modifier for use in fuel oil combustion. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Import: Dermal, a total of 6 workers, up to 2 hrs/da, up to 6–10 da/yr.
Environmental Release/Disposal. Minimal release to water and land. Disoposal by biological treatment system.

PMN 84–655

Importer. Sybron Chemicals Inc.
Chemical. (G) Cerium salt of fatty acid.
Use/Import. (S) Industrial and commercial combustion enhancing agent for fuels oils. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Import: Dermal, a total of 2 workers, up to 2 hrs/da, up to 6–10 da/yr.
Environmental Release/Disposal. Minimal release to land.

PMN 84–656

Manufacturer. Hach Company.
Chemical. (G) Substituted ammonium phenylphosphonate.
Use/Production. (S) Commercial analytical reagent. Prod. range: 200 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing, use and disposal: Dermal and inhalation, a total of 2 workers, up to 2–4 hrs/da, less than 5 da/yr.
Environmental Release/Disposal. Less than 1 kg/batch released to water. Disposal by POTW.

PMN 84–657

Manufacturer. Hach Company.
Chemical. (G) Sulfonated amino naphthalene.
Use/Production. (S) Consumer solution and powder preparation; as a reducing agent for silica testing. Prod. range: < 500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 8 hrs/da.
Environmental Release/Disposal. Release unknown. Disposal by POTW.

PMN 84–658

Manufacturer. Confidential.
Chemical. (S) Polymer of Epsilon caprolactam, 2,4, toluene diisocyanate, epsilon caprolactone triol.
Use/Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range: 131,826–219711 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 250 da/yr.
Environmental Release/Disposal. 0.2 to 180 kg/batch resin and 0.2 to 1 kg/batch of paint released. Disposal by landfill.

PMN 84–659

Manufacturer. Confidential.
Chemical. (G) Iron complex of a substituted phenyl azo.
Use/Production. (S) Industrial direct dye for paper. Prod. range: Confidential.
Toxicity Data. Acute oral: 2,730 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Negative; DOC

determination: 100 percent after 3 da; LC_{50} 96 hr (Zebrafish): 22 mg/1; IC_{50} bacteria: 4,800 mg/1.

Exposure. Processing: dermal, a total of 1 person/shift, ¼ hr/da.

Environmental Release/Disposal. Minimal release. Disposal by on-site biological treatment system.

PMN 84–660

Manufacturer. Confidential.

Chemical. (G) Substituted aryl olefin.

Use/Production. (G) Reactant monomer in the formulation of certain polymers. Prod. range: Confidential.

Toxicity Data. Acute oral: 6.327 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Severe, Eye—Mild; Inhalation: 2.8–3.1 mg/L; Ames Test: Negative.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Confidential. Disposal by incineration and landfill.

PMN 84–667

Manufacturer. Confidential.

Chemical. (G) Polyester from carbomonocyclic acid and alkylene glycol.

Use/Production. (S) Industrial size for textile fibers. Prod. range Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Confidential. Disposal by incineration and wastewater treatment.

PMN 84–668

Manufacturer. Confidential.

Chemical. (G) Polyester from carbomonocyclic ester and alkylene glycol.

Use/Production. (S) Industrial size for textile fibers. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Confidential. Disposal by incineration and wastewater treatment.

Dated: April 30, 1984.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 84–1196 Filed 5–3–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; B&D Wireless Radio, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. B&D Wireless Radio, Inc.; Fountain, CO.	BPH–820520AP	84–385
B. Louis Foreman Allen; Widefield, CO.	BPH–820625AH	84–386
C. John R. Bower; Ft. Carson, CO.	BPH–820216AL[1]	

[1] Application dismissed in Hearing Designation Order.

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A and B
2. 307(b), A and B
3. Contingent comparative, A and B
4. Ultimate, A and B

3. If there is any non-standarized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–12024 Filed 5–3–84; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Carter Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city/State	File No.	MM Docket No.
A. Carol Renee Carter and Lois A. E. Carter, d.b.a. Carter Broadcasting; Santa Rosa Beach, FL.	BPH–830627AD	84–387
B. Santa Rosa Broadcasting, Inc.; Santa Rosa Beach, FL.	BPH–831028AN	84–399

2. Pursuant to Section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced samle HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A,B
2. Comparative, A,B
3. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO is in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–12025 Filed 5–3–84; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Delta Broadcasters, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city/State	File No.	MM Docket No.
A. Delta Broadcasters; Delta Junction, AK.	BPH–830404AC	84–383
B. Delta Communications, Inc.; Delta Junction, AK.	BPH–830805AJ	84–384

2. Pursuant to Section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each

applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A,B
3. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO is in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–12027 Filed 5–3–84; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Delta Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Delta Broadcasting, Inc.; West Helena, AR.	BPH–821215AF	84–379
B. West Helena Broadcasters (a limited partnership); West Helena, AR.	BPH–830321AG	84–380

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–12023 Filed 5–3–84; 8:45 am]

BILLING CODE 6712–01–M

Closed Circuit Test of the Emergency Broadcast System During the Week of May 14, 1984

April 30, 1984.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of May 14, 1984. Only ABC, CBS, MBS, NBC, NPR, AP Radio and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC and PBS television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–12029 Filed 5–3–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket 84–389; File No. BP–820305AE, etc.]

Essential Communications Co., et al.; Hearing Designation Order

In re Application of Essential Communications Co., Commerce City, Colorado, Req: 760 kHz, 1 kW, 5 kW–LS, DA–2, U; MM Docket No. 84–389, File No. BP–820305AE; Deloris M. Kath, Personal Representative of the Estate of Kermit G. Kath, KGOS, Torrington, Wyoming, Has: 1490 kHz, 250 W, 1 kW–LS, U; Req: 760 kHz, 1 kW, 5 kW–LS, DA–N, U; MM Docket No. 84–390, File No. BP–8209275AB; and Mountainview Broadcasting Company, Thornton, Colorado, Req: 760 kHz, 1 kW, 5 kW–LS, DA–2, U; MM Docket No. 84–391, File No. BP–830706AH. For Construction Permit.

Adopted: April 20 1984.
Released: May 8, 1984.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) the above captioned mutually exclusive applications for new AM broadcast stations; (b) a petition to deny the Essential Communication Co., application, filed by Jefferson-Pilot Broadcasting Corporation; (c) petitions for the imposition of condition, filed by Capital Cities Communications, Inc., against the Deloris M. Kath, Personal Representative of the Estate of Kermit G. Kath, application and the Montainview Broadcasting Company application; and (d) related pleadings.[1]

2. Jefferson-Pilot Broadcasting Corporation (Jefferson-Pilot or KIMN), licensee of station KIMN, Denver, Colorado, filed a petition to deny[2] the Essential Communications Co. (Essential) application alleging problems of intermodulation and re-radiation between its tower and that proposed by Essential. On these grounds, Jefferson-Pilot asserts that the Essential application should be denied or if not denied amended to protect KIMN's operation at Essential's cost.

3. We agree with petitioner that the close proximity of the two directional antenna systems raises a question of potential re-radiation and intermodulation problems. We believe an appropriate condition on any construction permit granted Essential to be the appropriate remedy. As for the allocation of costs and responsibility for any necessary measures, it is a well established Commission policy that new applicants are responsible for correcting interference they cause to existing stations. *Mountain Valley Broadcasting Corp.*, 47 RR 2d 400 (Br. 1980); *Sudbrink Broadcasting of Georgia, Inc.*, 65 F.C.C. 2d 691 (1977). To the extent set out above we will grant the Jefferson-Pilot petition to deny.

4. The environmental narrative statement submitted by Essential did not contain a description of the transmitter site, including access roads, power lines and the surrounding area and its uses, as required by § 1.1311(a)(2) of the Commission's Rules. Accordingly, Essential will be required to comply with § 1.1311(a)(2) and file the required environmental narrative statement with the presiding Administrative Law Judge within thirty days of the release of this Order. In addition, a copy shall be filed

[1] These include two Essential Communications Co., motions for extension of time in which to file responsive pleadings. The requests are unopposed and are hereby granted.

[2] Jefferson-Pilot Broadcasting Corporation has standing to file its petition to deny based on the possibility of objectionable interference being caused to station KIMN. *FCC* v. *National Broadcasting Company*, 319 U.S. 239 (1943).

with the Chief, Audio Service Division, who will then proceed regarding this matter in accordance with the provisions of Section 1.1313(b). Section 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

5. Exhibit 4 to the Essential application states that a certification of financial qualifications will be supplied. The record does not contain a certification of financial qualifications for this applicant, however. Essential must therefore file the certification of financial qualifications as required by the application form (FCC Form 301) with the presiding Administrative Law Judge within thirty days of the release of this Order; if it cannot file the required certificate it shall so notify the Administrative Law Judge who shall then specify an appropriate issue.

6. Capital Cities Communications, Inc. (Capital Cities), license of station WJR, Detroit, Michigan, filed petitions for the imposition of condition [3] on the applications of Deloris M. Kath, Personal Representative of the Estate of Kermit G. Kath (Kath) and Mountainview Broadcasting Company (Mountainview); the petitions are essentially identical and will be considered here together. Capital Cities asserts that the proposed nighttime antenna systems are inherently unstable and are likely to cause objectionable interference to the protected skywave service of station WJR.

7. It is our policy to consider as being generally stable directional arrays which do not exceed their radiation limits with 1.0 percent current ratio and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree highly unstable. Where arrays exceed their radiation limits within these parameter variations, we will condition a grant accordingly.[4] Our computerized studies here indicate that both operations would exceed specified standard radiation values with variations of 1.0 percent current ratio deviation and 1.0 degree phase deviation. Thus the proposals fall into the category where stability conditions are called for.[5]

8. Section 73.1125 of the Commission's Rules requires, *inter alia*, that each AM broadcast station maintain a main studio in the community which it is licensed to serve or at the transmitter site, unless good cause is shown for a location elsewhere. Station KGOS is currently licensed to Torrington, Wyoming, with its main studio located at its transmitter site outside Torrington. Kath proposes to relocate its transmitter but retain its main studio at its current location. As this location is less than one-half mile from the city boundary line and already well known to the community, we think that the public interest favors its retention at the present site. Hence we find that Kath has made the requisite good cause showing.

9. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[6] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

10. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the proposal of Essential Communications Co., which concludes that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine:

a. Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

2. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural services to such areas and populations.

3. To determine in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

11. It is further ordered, That the petition to deny, filed by Jefferson-Pilot Broadcasting Corporation IS GRANTED to the extent set out herein and IS DENIED in all other respects.

12. It is further ordered, That the construction permit for the application of Essential Communications Co., if it should be granted, shall contain the following condition:

Prior to construction of the tower authorized herein, permittee shall notify AM station KIMN, Denver, Colorado, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority form the commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, 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.

13. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within thirty (30) days of the release of this order Essential Communications Co. shall submit the environmental impact information required by Section 1.1311 of the Commission's Rules to the

[3] The possibility of objectionable interference to its station WJR confers standing on Capital Cities Communications, Inc. *FCC* v. *National Broadcasting Company*, 319 U.S. 239 (1943).

[4] Where other factors, internal and/or external to the array warrant it, a hearing issue may be specified. Such circumstances, however, have not been established here.

[5] Capital Cities' request for specific operating limits is premature. Operating limits are generally specified after construction is completed and technical test data submitted.

[6] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

14. It is further ordered, That Essential Communications Co., shall file the certification of financial qualifications required by Section III of the application form (FCC Form 301) with the presiding Administrative Law Judge within thirty (30) days of the release of this Order, if it can, and if it cannot, it shall so notify the presiding Administrative Law Judge who shall then specify an appropriate issue.

15. It is further ordered, That the petitions for the imposition of condition filed by Capital Cities Communications, Inc., are granted to the extent set out herein and are denied in all other respects, and the construction permit for the applications for Deloris M. Kath, Personal Representative of the Estate of Kermit G. Kath, and Mountainview Broadcasting Company, if they should be granted, shall contain the following condition:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degree phase deviation and 0.1 percent sample current ratio deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array to insure maintenance of the radiated fields within the standard pattern values of radiation.

Upon receipt of operating specifications and before issuance of a license, the permittee shall submit the results of observations made daily of the base currents and their ratios, relative phase, sample currents and their ratios, and sample current deviations for each element of the array, along with the final amplifier plate voltage and current, the common point current, and the field strengths at each monitoring point for both the nondirectional and directional operations for a period of at least 30 days, to demonstrate that the array will be maintained within the specified tolerances. Permittee shall utilize monitoring point radials on true bearings from the site, as follows: 35°, 52.0°, 74.0°, 96.5°and 119.0°.

16. It if further ordered, That pursuant to § 73.1125(a)(3) of the Commission's Rules, Deloris M. Kath, Personal Representiative of the Estate of Kemit G. Kath, may retain its main studio at its current location.

17. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this order, in person or by attorney, file with the commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this order.

18. It is further ordered, That pursuant to Section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission Rules, the applicants shall give notice of hearing as prescribed in the rules and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-12026 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Payne Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Payne Communications, Inc.; Evergreen, CO.	BPH-820719AL	84-392
B. Sterling Recreation Organization, Co.; Evergreen, CO.	BPH-8211103AH	84-393
C. Viola Ann Violet; Evergreen, CO.	BPH-821215AA	84-394
D. Evergreen Radio, Inc.; Evergreen, CO.	BPH-821215AE	84-395
E. Arapaho Communications, Inc.; Evergreen, CO.	BPH-821216AA	84-396
F. Evergreen Broadcasting Co.; Evergreen, CO.	BPH-821216AC	84-397
G. Best Evergreen Broadcasting; Evergreen, CO.	BPH-821217AC	84-398
H. Donald Pfau et al, d.b.a. Lord Broadcasting; Evergreen, CO.	BPH-821217AE	84-399
I. Evergreen Ventures, Inc.; Evergreen, CO.	BPH-821217AI	84-400
J. Ms. Melony Jordan; Evergreen, CO.	BPH-821217AL	84-401
K. United Cable Television Corporation; Evergreen, CO.	BPH-821217AM	84-402
L. Minority Broadcast Enterprises, Inc.; Evergreen, CO.	BPH-821217AP	84-403
M. Interstate Broadcasting System of Colorado, Inc.; Evergreen, CO.	BPH-821217AQ	84-404
N. Evergreen Broadcasting Corporation, II; Evergreen, CO.	BPH-821217AV	84-405
O. Sey-Dan, Inc.; Evergreen, CO.	BPH-821217AX	84-406
P. Group Y Communications Investment Partnership, Ltd.; Evergreen, CO.	BPH-821217AZ	84-407
Q. Evergreen FM, Ltd.; Evergreen, CO.	BPH-821217BA	84-408
R. Leni Marie Lambert; Evergreen, CO.	BPH-821217BB	84-409
S. Evergreen Communications Co.; Evergreen, CO.	BPH-821217BC	84-410
T. Janet Hunter Driggs; Evergreen, CO.	BPH-821217BE	84-411
U. Evergreen Radio Inc.; Evergreen, CO.	BPH-821217BG	84-412
V. Nancy C. Hart & Pauline E. Richardson d.b.a. Hart Broadcasting Co.; Golden, CO.	BPH-821217BH	84-413

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), J
2. (See Appendix), All Applicants
3. Air Hazard, V
4. 307(b), All Applicants
5. Contingent Comparative, All Applicants
6. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. to determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph *, the applicant(s) is financially qualified: J (Jordan).

Additional Issue Paragraph

2. *Line of Sight.* To determine whether each applicant's proposed transmitting facility complies with Rules Section 73.315(b) or if not, whether circumstances exist which would warrant waiver of that Section of our Rules.

[FR Doc. 84-12028 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

* Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency: *Applicant(s):* J (Jordon). *Deficiency:* No certification or data-applicant stated that an amendment on on the subject would be forthcoming, but it was never submitted.

Applications for Consolidated Hearing; Spring Valley Broadcasting Co., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Billy M. Price, d.b.a. Spring Valley Broadcasting Company; Poplar Bluff, Mo.	BPH-820309AC	84-381
B. Deborah Lynn Foster and Linda Cox, d.b.a. Foster Broadcasting; Poplar Bluff, Mo.	BPH-820825AI	84-382

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 3919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-12022 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 13, 1984.

The Federal Communications Commission has submitted the collection of information requirement contained in the following proposed rule to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on this proposed information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title of Rulemaking: MM Docket No. 84-110, Amendment of Part 73 concerning remote control operation of AM, FM, and TV broadcast transmitters.

Type of Review Requested: New collection.

Respondents: Businesses (including small businesses); non-profit institutions.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-12020 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

Partial Relaxation of 18 GHz Band Suspension

April 30, 1984.

On April 5, 1984 the Commission suspended the filing of applications for all frequencies between 17,700 MHz and 19,700 MHz (18 GHz band) because it was considering petitions to adopt a new channel plan for the 18 GHz band. Public Notice dated April 5, 1984 (49 FR 14,579). The Commission announced that no additional applications would be accepted for the band until further notice, except for timely filed applications which were mutually exclusive with applications filed on or before April 5.

Several petitions seeking limited relief from the suspension have been filed with the Commission. These petitions ask for a limited modification of the suspension order to permit the Commission to continue accepting and processing applications for the point-to-point channels in the 18 GHz band. Petitioners note that there are existing point-to-point systems in this band and that 18 GHz point-to-point links represent an essential element in numerous communications systems which need to be implemented expeditiously.

The Commission has considered the petitions and agrees that a partial lifting of the band is appropriate and necessary. The Commission recognized the public interest in allowing these licensees to expand or modify these systems when it approved the Ericsson waiver. *Order* (FCC 83-576) in Gen. Docket No. 79-188, released December 6, 1983. Accordingly, the suspension will be relaxed to the extent of permitting the acceptance for filing and processing of applications for the point-to-point channels in the 18 GHz band. All such grants will be on a secondary non-interference basis to systems which may be approved pursuant to the revised channel plan under consideration for the 18 GHz band.

The suspension announced April 5 continues in effect for applications proposing to establish Digital Termination Systems on either a common carrier or private radio basis.

For further information contact Saundra Donnell at (202) 634-2443.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-12030 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 80-634; FCC 84-126]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation

AGENCY: Federal Communications Commission.

ACTION: Second memorandum opinion and order.

SUMMARY: The order accepts Comsat's current corporate structure as adequate but requires certain changes in Comsat's procedures for allocating shared costs between regulated and unregulated accounts. Comsat is required to file new tariffs reflecting these procedures and its authorized rate of return. This order ameliorates problems of cross subsidization, excessive rates, and potential anticompetitive advantages.

DATES: Comsat is to file new tariffs on June 15, 1984.

FOR FURTHER INFORMATION PLEASE CONTACT:

Joel Pearlman, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-3214.

Second Memorandum Opinion and Order

In the matter of changes in the corporate structure and operations of the Communications Satellite Corporation; CC Docket No. 80-634.

Adopted: March 30, 1984.

Released: April 20, 1984.

By the Commission.

I. Introduction and Background

1. On May 1, 1980, we released our *Comsat Study* in which we analyzed the corporate structure and operating activities of the Communications Satellite Corporation (Comsat) to determine whether any changes were required to ensure that Comsat could effectively fulfill its obligations and carry out its statutory functions.[1] After the release of the *Comsat Study* we initiated a formal rulemaking on Comsat's structure, operating activities and accounting practices. In this order we further refine Comsat's accounting (cost allocation) practices. Below we summarize this proceeding's history, describe the filings since our first order in this docket, analyze the record, and prescribe certain modifications to Comsat's accounting (cost allocation) practices.

2. We concluded in the *Comsat Study* that the Communications Satellite Act of 1962 [2] permits Comsat to engage in activities which are not inconsistent with its statutory mission. We stated that Comsat should not be foreclosed from applying its corporate technology and expertise to the development of new lines of business which would likely contribute to the overall development of satellite technology and which would be in the public interest. However, we found that Comsat's involvement in diversified lines of business raised significant public policy problems. These problems included conflicts of interest resulting from Comsat's involvement in both jurisdictional and nonjurisdictional activities, competitive advantages in nonjurisdictional markets flowing from Comsat's unique status as the U.S. Signatory to INTELSAT and INMARSAT, and potential cross-subsidization resulting from the misallocation of jurisdictional and nonjurisdictional costs.[3]

3. In view of these problems we concluded in the *Comsat Study* that changes were required in Comsat's current corporate structure, its accounting system and the current arrangements for government oversight of Comsat's activities. As to Comsat's corporate structure, we concluded that Comsat should be separated into two distinct corporate elements: one element to handle all jurisdictional (INTELSAT/INMARSAT) activities and one element to handle all present and future nonjurisdictional (non-INTELSAT/INMARSAT) activities. As to Comsat's accounting practices, we concluded that to prevent anticompetitive activities and any evasion of rate regulation, certain accounting requirements coupled with structural separation and arm's-length dealings between the separated elements would be appropriate. As to government oversight of Comsat activities, we concluded that such oversight was necessary and should be expanded to protect ratepayers, to assure fair competition, and to prevent conflicts of interest resulting from Comsat's increasing involvement in nonjurisdictional and competitive enterprises.

4. In September, 1980, in response to the *Comsat Study*, Comsat instituted a number of changes to its organizational structure. The major change was to divide the corporation into two elements: (a) A parent organization which included, but was not limited to, jurisdictional activities; and (b) the fully separated nonjurisdictional subsidiaries.[4] Under this reorganization the parent organization was divided into two segments, the Headquarters Division and the World Systems Division (WSD). The first segment of the parent organization, the Headquarters Division (central staff), was established to provide ultimate policy control over the various divisions of the corporation. The Headquarters Division was also established to provide certain administrative and support functions for the entire corporation. However, the Headquarters Division was not to control the day-to-day operations of the corporation.

5. The second segment of the parent organization, the World Systems Division, was established to perform certain international common carrier functions and related duties in connection with Comsat's role as the U.S. operating entity in INTELSAT and INMARSAT. It also was to perform engineering and research and development in satellite, general telecommunications and electronic product development for the jurisdictional entity, Comsat's affiliates, other commercial entities, government organizations, and INTELSAT/INMARSAT under contract. According to Comsat, the establishment of the WSD increased the corporation's ability to directly assign to its ratepayers those staff and support costs associated with its jurisdictional activities. Since the WSD would perform most of its own administrative, operating and engineering tasks, the costs incurred on behalf of the jurisdictional ratepayer could now be determined with greater precision than was possible when these services were provided by the central corporate staff. The WSD was structured to have three operating units and four administrative groups. The operating units were: (a) International Communications Services (ICS); (b) INTELSAT Technical Services (ITS); and (c) Comsat Laboratories (Comsat Labs).[5] The administrative groups were: (a) Legal; (b) Contracts and Procurement; (c) Finance; and (d) Personal.[6]

6. The second element established by Comsat contained its nonjurisdictional subsidiaries and partnerships. These wholly owned subsidiaries which engage in competitive activities are Comsat General Corporation (Comsat General), Environmental Research and Technology, Inc. (ERT) and Satellite

[1] Communications Satellite Corporation, 77 FCC 2d 564 (1980) (hereinafter referred to as the *Comsat Study*).

[2] 47 U.S.C. 701 (1962) (hereinafter referred to as the Satellite Act).

[3] *Comsat Study*, 77 FCC 2d at 570, 607–676. Jurisdictional refers to Comsat's INTELSAT and INMARSAT activities mandated by the Communications Satellite Act of 1962, as amended, and the INTELSAT Agreements.

[4] The revenues and expenses/costs of separate nonjurisdictional subsidiaries are fully outside of Comsat's statutorily mandated operations. The revenues and expenses/costs of the parent organization—Headquarters Division and World Systems Division (including Comsat Labs)—are allocated between the jurisdictional and the nonjurisdictional activities.

[5] ICS was to be the international common carrier segment of the WSD operating under the mandate of the Satellite Act. It was to provide INTELSAT and INMARSAT communications services to United States customers and to participate in related functions, such as technical and operational planning. In particular, ICS was to develop the proposals that Comsat as the U.S. Singatory to INTELSAT and INMARSAT submits to these organizations.

ITS was created to perform technology application and system development services. These services were to be performed exclusively under contract to INTELSAT or INMARSAT.

Comsat Labs were established to conduct research and development relating to satellite and earth station technology. The Labs were also to provide engineering services to the other elements of the WSD, namely, ICS and ITS, and to the nonjurisdictional segments of the corporation. We found in our *Comsat Study* that the Comsat Labs should be located in the nonjurisdictional element of the corporation. In its reorganization Comsat placed the Labs in the element containing its jurisdictional activities. In so doing, Comsat stated that the Labs performed primarily jurisdictional activities.

[6] Under the 1980 reorganization, personnel in the WSD's administrative groups were to provide most of the services necessary to carry out Comsat's day-to-day jurisdictional responsibilities. For example, the function of the WSD personnel office was to administer personnel policy for all the WSD units and to coordinate all personnel and salary actions. The WSD financial staff was to maintain all the WSD books of account, handle all customer billings, and make payment to creditors. It was also to comply with all financial reporting requirements and conduct budgeting and financial planning functions. The WSD contracts and procurement staff was to procure materials and services, issue requests for proposals, and administer contracts. The WSD legal staff was to perform the legal services related to day-to-day WSD operations.

Television Corporation (STC). Comsat's participation in partnerships, such as Satellite Business Systems (SBS), is also through the nonjurisdictional element. (Since 1980 Comsat's nonjurisdictional activities have expanded and now include Amplica, Telesystems, Compact Software and Intelmet).

7. On October 29, 1980, we released a Notice of Proposed Rulemaking (NPRM) in the captioned preceeding to solicit public comment on the proposed changes in Comsat's corporate structure and operations set forth in the *Comsat Study* as well as on the reorganization implemented by Comsat.[7] Comments were submitted on both topics. Thereafter we released our *First Comsat Structure* order.

8. In our *First Comsat Structure* order[8] we reaffirmed our conclusion from the *Comsat Study* that Comsat is permitted under the Satellite Act to engage in activities which are not inconsistent with its statutory mission.[9] We stated that the public would benefit from Comsat's applying its expertise in diversified businesses so long as certain regulatory concerns were adequately addressed. We accepted Comsat's decision to retain the Comsat Labs in the parent organization even though this was contrary to our proposal in the *Comsat Study* to locate the Labs in the nonjurisdictional element. This acceptance was based on our belief that allocation procedures could be implemented to accurately apportion shared Lab costs between the jurisdictional and nonjurisdictional elements. We then analyzed the steps taken and proposed by Comsat to resolve the cost allocation and information flow problems. We concluded, as summarized below, that the measures instituted by Comsat fell short of satisfying our concerns. We therefore mandated certain changes and required Comsat to report back to us on how it would implement these accounting modifications.

9. As to Comsat's allocation practices, we found Comsat's method of apportioning research and development expenses and capital costs between its competitive and jurisdictional elements to be inadequate and deficient. We identified three areas in which Comsat's existing methodology to allocate shared costs between jurisdictional and nonjurisdictional accounts was deficient. These categories covered: (a) shared research and development capital costs; (b) shared research and development expenses; and (c) shared administrative and support expenses.[10] We specifically questioned Comsat's continued use of a formula which placed 75 percent of the capital costs for research and development at the Labs in its rate base. We further questioned Comsat's use of the "primary benefitting entity" test to allocate common research and development expenses between jurisdictional and nonjurisdictional accounts. In questioning both of these accounting procedures we found that their use was placing an unnecessary and unfair burden on the Comsat ratepayer. However, we indicated a willingness to permit the Labs to remain within the parent organization if an accounting and reporting system could be expeditiously developed which properly identified and allocated research and development costs. Additionally, we questioned Comsat's existing methodology (three factor formula) for allocating the expenses of shared general and administrative and support services. We again required Comsat to expeditiously propose revisions to its accounting practices in order to remedy the identified deficiencies.[11] Finally, we directed Comsat to submit its accounting and cost allocation proposals to independent auditors for evaluation as to whether the proposals satisfied our concerns.

10. In the area of information flow, we indicated our concern with Comsat's access to INTELSAT/INMARSAT information and the possible intracorporate transfer of this information to its various competitive ventures. We stated that a competitive advantage could flow from Comsat's access (or "leadtime" access) to INTELSAT Board of Governors documents, INTELSAT facilities planning documents, and inventions and technical data which arise out of or are utilized in work performed at INTELSAT's or INMARSAT's expense. We therefore adopted general guidelines and delegated authority to the Common Carrier Bureau to broaden public access to INTELSAT and INMARSAT information while at the same time protecting documents under the Freedom of Information Act which merit confidential treatment.[12]

11. Pursuant to the *First Comsat Structure* order, Comsat filed a report outlining its cost allocation changes, the Commission and Comsat exchanged letters, interested parties submitted comments, Comsat filed additional information, and the staff reviewed Comsat's accounts and records. Below we outline these reports, letters and other filings as well as the staff's examination. Thereafter we analyze the record, reach certain conclusions as to Comsat's structure and cost allocation practices, and require the implementation of specific cost allocation procedures by Comsat to more fully protect ratepayers and ensure fair competition.

II. Reports and Correspondence Subsequent to the First Comsat Structure Order

A. Comsat's Report

12. In response to our directives in the *First Comsat Structure* order, Comsat submitted on January 24, 1983, a report

[7] 81 FCC 2d 287 (1980). In our Notice of Proposed Rulemaking we reiterated the conclusions found in the *Comsat Study*, noted the pendency of related proceedings and summarized Comsat's reorganization. We then solicited pubic comment on the structural changes and controls proposed in the *Comsat Study* as well as on the reorganization implemented by Comsat. In response to the NPRM, interested parties submitted filings which reflected a broad range of concerns about Comsat's increasing diversification into non-INTELSAT/INMARSAT activities. Some parties challenged Comsat's legal authority to engage in nonjurisdictional activities. Others requested the Commission to limit these outside business activities. Almost all parties agreed with our assessment that any Comsat business diversification created opportunities for conflicts of interest, misallocation of costs and anticompetitive behavior.

Among the principal concerns raised by the parties was the ability of Comsat to engage in non-INTELSAT/INMARSAT activities without compromising or abusing its role as the U.S. Signatory to INTELSAT and INMARSAT to gain advantages for its subsidiaries in competitive markets. Parties questioned whether Comsat's involvement in satellite equipment manufacturing would compromise its ability to exercise independent judgment in evaluating hardware procurement proposals for the international satellite system. Parties also questioned whether Comsat's ownership of affiliates would compromise its ability to fully represent the interests of the U.S. international carriers in INTELSAT and whether anticompetitive conduct by Comsat could effectively be prevented through structural, accounting, information flow and arms-length dealings requirements. In response to these concerns, Comsat averred that its new corporate structure and steps taken in the areas of cost assignment and dissemination of INTELSAT/INMARSAT information would provide a discrete cost center for its INTELSAT/INMARSAT activities and reduce the potential for any misallocation of costs or anticompetitive conduct.

[8] Changes in the corporate structure and operations of the Communications Satellite Corporation, 90 FCC 2d 1159 (1982) *recon. denied*, 93 FCC 2d 701 (1983), *appeal dkt'd. sub nom.* RCA Global Communications, Inc., et. al., v. FCC, case No. 83-1662 and consolidated cases (D.C. Cir., June 16, 1983) (hereinafter referred to as *Comsat Structure* or *First Comsat Structure* order).

[9] *Id.* at 1171-72.

[10] At the time of the *First Comsat Structure* order our examination of Comsat's cost allocation practices had not yet revealed problems with the corporation's treatment of shared administrative and support capital costs.

[11] *Comsat Structure* at 1174-1181.

[12] Id. at 1184-1194.

proposing certain changes in its cost allocation practices. Comsat's proposals for assigning certain expenses and capital costs associated with shared general and administrative (G&A) activities and shared research and development (R&D) projects included the use of direct assignments to particular divisions/projects, special factors and general allocation formulas. Below we describe the cost allocation proposals submitted by Comsat for the: (a) allocation of expenses for shared G&A services; (b) allocation of expenses for shared R&D projects; and (c) allocation of capital costs for shared R&D projects.[13]

13. *Allocation of expenses for shared G&A services.* In its 1980 reorganization Comsat established a Headquarters Division to provide, in part, G&A support services for all of the corporation's divisions, both jurisdictional and nonjurisdictional. Since the Headquarters Division (and only the Headquarters Division) was providing G&A support services to other divisions, both jurisdictional and nonjurisdictional, it was necessary to establish an accounting system to allocate the costs of providing these support services to the appropriate jurisdictional or nonjurisdictional accounts.[14] The system that Comsat established to allocate G&A expenses generated by the Headquarters Division between the jurisdictional and nonjurisdictional accounts permitted three staff groups within this division—Legal, Corporate Development, and Secretary—to directly charge expenses to specific projects within a line of business that benefited exclusively from the work done. These employees could not broadly assign expenses to an entire division or a line of business. All other shared expenses incurred by these three staff groups which did not benefit a particular project in a line of business were placed in a residual pool. Most of the other staff segments within the Headquarters Division assigned their time to the same residual pool which then was allocated between jurisdictional and nonjurisdictional accounts through the three factor "activity" formula.[15]

14. Comsat now proposes in its report that all of its Headquarters staff be permitted to directly charge expenses to a specific projects (task) or to assign expenses to a division or line of business. Comsat also proposes that certain expenses within its Headquarters Division be allocated by means of special factors rather than by means of project identification or an activity formula. These special factors were, according to Comsat, chosen to better reflect the cost/benefit relationships of these staff members to the corporation. For example, Comsat proposed the use of a "personnel count" as the special factor for allocating Human Resources, Payroll, and Trust Fund Administration staff expenses because these staff members provide services directly to employees. Further, it proposed "assets" as the special factor for allocating certain Financial and Stockholder Meeting staff expenses because Comsat claimed that these employees are primarily concerned with protecting the assets of the corporation. Finally, Comsat proposes to use a ratio based on operating expenses rather than the three factor formula to allocate shared G&A expenses to the Satellite Television Corporation (STC).

15. *Allocation of expenses for shared R&D projects.* Comsat R&D, which is primarily conducted at Comsat Labs, is currently classified by Comsat into two broad categories: corporate initiated and customer initiated. Corporate initiated R&D is originated by corporate management, both jurisdictional and nonjurisdictional, and is the source of a large percentage of the R&D projects at the Labs. Customer initiated R&D is originated by specific entities, either internal (Comsat General, for example) or external (INTELSAT, for example). Comsat now assigns the great majority of all corporate unitiated R&D projects to the jurisdictional account on the theory that the ratepayer is the "primary benefitting entity" of the work. Comsat calls corporate initiated R&D projects wholly assignable to the ratepayer "Category I" R&D. Since 1980, Comsat has initiated a few corporate R&D projects solely to provide additional support for its commercial ventures. Comsat calls these projects "Category II" R&D and has charged their expenses to the nonjurisdictional side of the company. Comsat calls customer initiated R&D, whether for nonjurisdictional or jurisdictional elements, "Category III" R&D. The costs for this category are assigned according to the identity of the customer.

16. In response to our request for a detailed justification for the inclusion of research and development expenses in jurisdictional accounts, Comsat proposed a new allocation scheme and provided task descriptions for three types of R&D projects that it stated should be wholly or partially funded by the jurisdictional ratepayer. The first type includes Category III R&D projects performed at the request of certain lines of business within the WSD (such as ICS or ITS). Comsat proposes that these customer initiated projects be wholly funded by the ratepayer because they are initiated by jurisdictional entities. The second type includes Category I and II R&D projects initiated at the request of the corporate staff. Comsat states that a portion of these corporate R&D projects should be charged to the jurisdictional ratepayer by means of a matrix formula.[16] The third group of projects consists of Category III R&D work done under contract for INTELSAT, INMARSAT or the U.S. government. Comsat states that all of the expenses associated with this type of R&D should be included in its jurisdictional revenue requirements. Of course, these latter expenses would be partially offset by revenues received from the entity which let the contract to Comsat.

17. *Allocation of capital costs for shared R&D.* In the *Comsat Structure* order we questioned the current arrangement under which Comsat allocates 75 percent of its capital costs for plant and equipment in Comsat Labs to its jurisdictional rate base.[17] We

[13] Comsat did not address the issue of allocation of capital costs for shared G&A services.

[14] When a cost is charged, assigned or allocated to a jurisdictional account it becomes part of the regulated entity's revenue requirement.

[15] The three factor formula utilized by Comsat to allocate residual expenses not directly charged, assigned or allocated by means of certain special factors averages salary, operating revenues, and certain capital assets to measure the "activity" of Comsat's corporate elements and to allocate shared costs on this basis.

[16] Comsat describes the "matrix" approach as follows. First, Comsat would take all of its R&D projects in its corporate (Category I and Category II) programs and assign them individually to one of six broad classes. These classes are: (1) Earth Segment, (2) Space Segment, (3) Systems and Services, (4) Other Physical Sciences and Technology, (5) Monolithic Microwave Integrated Circuits (MMIC) and Other Related Technology Development, and (6) Other Software. Comsat then would evaluate the benefits of work in these six classes in relation to the present and planned activities of each of its lines of businesses. If Comsat concludes that a line of business cannot benefit from one or more of these R&D classes, it would assign no costs whatsoever arising from that class or classes to that line of business. Instead, it would restrict the apportionment process to those lines of business that Comsat believes can benefit from that class of research. Next, Comsat would use an activity formula to apportion the expenses within each class of R&D expenses among the benefitting lines of businesses. For this formula, Comsat would use salaries, operating revenues, and certain capital assets—the same three factors Comsat proposed for use in allocating shared residual G&A expenses.

[17] Our staff examination indicates that Comsat is currently using other fixed percentages for the allocation of certian Lab assets and other common corporate equipment and property. It now allocates 100 percent of its computer facilities which are used by the entire corporation and 68 percent of its Headquarters plant (building and contents) to its jurisdictional rate base.

stated that such a high percentage may no longer be reasonable in light of Comsat's expanded efforts to develop and market nonjurisdictional products and services. In its report, Comsat proposed to implement an allocation formula or ratio that it stated more fairly reflected the changing nature of the corporation.

18. This ratio assigns to the jurisdictional rate base a percentage of all capital costs related to R&D based on previously determined R&D expense allocations. The denominator of this ratio is the sum of the expenses incurred by the Labs. The numerator is the sum of three expense items which Comsat considers to be jurisdictional. The first expense item in the numerator is the dollar amount of corporate initiated (Category I and Category II) R&D expenses derived under the "matrix" approach and attributable to the ratepayer. The second expense item in the numerator is comprised of the expenses incurred by the Labs in performing INTELSAT, INMARSAT, and U.S. government contracts (Category III). The third part of the numerator includes the expenses incurred by the Labs in connection with work done for the WSD (Category III).

B. Assessment of Independent Auditors

19. In the *Comsat Structure* order, we required Comsat to obtain from independent auditors an assessment of the extent to which its proposed cost allocation methodology comported with the guidelines and policies enunciated in that order. Through this mechanism, we sought to obtain an unbiased opinion from an outside auditing expert. Comsat, however, did not submit its proposed methodology to an independent auditor for full evaluation. Rather, it obtained from its regular auditing firm only a very limited opinion on certain minor aspects of its methodology. Although Comsat stated that it recognized its proposals were "not wholly consistent with the letter of the *Comsat Structure* guidelines," it stated that its proposals fully achieved "the Commission's underlying objectives" and that submission of its proposals to outside auditors was not required.[18]

C. Commission Response

20. By letter dated March 31, 1983, we transmitted to Comsat our concerns regarding the suitability of its cost allocation proposals. We stated that the proposals did not conform with many of the requirements and policies enunciated in the *Comsat Structure* order, especially those relating to the equitable allocation of expenses and capital costs in shared G&A and R&D functions. We describe these concerns more fully below. We also noted that Comsat had failed to comply with our explicit directive that it submit its proposals to an independent auditor.

21. In our letter we first affirmed our rejection of the three factor formula as unsuitable to measure the "activity" and allocation of certain shared G&A expenses. It appeared that this formula did not fully reflect the corporate resources being employed by Comsat's new business ventures. Second, we questioned the use of special allocation factors for items otherwise earmarked for the residual G&A expense pool. Third, we addressed the allocation of shared R&D expenses and capital costs for Comsat Labs. We were concerned that Comsat's proposal allocated an unreasonably high percentage of both the Labs' expenses and associated capital costs to jurisdictional ratepayers.[19]

22. In our letter, we gave Comsat another opportunity to develop a cost allocation policy that satisfied the concerns we had identified. We also requested additional information regarding auditing criteria, reporting requirements, and the rationale for the selection of the particular special factors Comsat had proposed. We did not, however, require that Comsat submit its new proposal to independent auditors because we believed such requirement would engender additional delays in resolving the issues in this docket. Instead, we opted to devote additional staff resources to the analysis and evaluation of Comsat's new proposals. We also did not insist that Comsat submit a proper auditor's report for its original proposal, as the staff had already done a full analysis of that proposal in the preparation of the letter to Comsat.

D. Comsat's Reply

23. On May 9, 1983, Comsat responded to our letter of March 31, 1983, with a supplemental report.[20] In its response Comsat presented new proposals and supporting documentation which it stated addressed our concerns. We summarize below Comsat's supplemental report.

24. *Allocation of expenses for shared G&A.* In its submission Comsat addressed our concerns relating to the continue use of the three factor formula to allocate shared G&A expenses within the residual pool. Comsat proposed to replace its three factor formula with a new formula which would be based on "expenditures."[21] In selecting "expenditures" as the basis for its general formula, Comsat stated that this formula would fairly allocate shared G&A expenses. Comsat also stated that a formula which used operating expenses,[22] which we had earlier suggested as a possible basis for allocating shared G&A, would result in an allocation of expenses to its World Systems Division which would be unreasonably low compared to the allocation using "expenditures"—specifically, 55.6 percent as compared to 66.5 percent. Comsat argued that 66.5 percent funding by the WSD of shared

[18] Comsat report submitted January 24, 1983, at 22, n. 34.

[19] Specifically, as to allocation of R&D expenses for the Labs, we found Comsat's use of the "matrix" approach unacceptable for several reasons.

First, Comsat had provided no adequate justification to support the inclusion of the WSD line of business in the allocation formula as benefitting from each of the six classes of R&D expenses. Second, Comsat did not provide adequate justification for the exclusion of various competitive lines of business from the allocation formula. Third, Comsat presented no new facts to warrant reconsideration of our earlier decision rejecting its use of the three factor formula to apportion residual expenses, which would include those relating to common R&D.

We also criticized the inclusion in jurisdictional accounts of expenses associated with R&D contracted for by INTELSAT and INMARSAT. Such contracts are voluntarily entered into by Comsat as a competitive vendor of services, and as such are not related to Comsat's jurisdictional mission under the Communications Satellite Act of 1962. We determined that the expenses and capital costs associated with these contracts were to be recovered by Comsat directly from INTELSAT, INMARSAT, or the U.S. Government, as the case may be, and not directly from its jurisdictional ratepayers. Jurisdictional ratepayers indirectly help fund INTELSAT and INMARSAT R&D contracts (whether given to Comsat or to other R&D vendors) because of Comsat's ownership position in INTELSAT (24 percent) and INMARSAT (23 percent).

As to allocation of R&D capital costs for the Labs, we expressed similar concerns. Comsat's proposal did not provide the detailed justification that we had required on the "used and useful" relationship of the Labs' capital costs to the jurisdictional ratepayers. Specifically, we criticized Comsat's approach because it allocated R&D capital costs under the same formula by which it allocated R&D expenses. As previously noted, we found this formula flawed. For instance, we said that to the extent that Comsat's capital cost allocation formula for the Labs relies on the "matrix" approach, it had the same flaws we had noted for its use to allocate R&D expenses. Similarly, we said that to the extent that it relies on using expenses associated with contractual R&D (such as INTELSAT or INMARSAT), it was improper. We indicated that, as with R&D expenses, the capital costs of the Labs' plant and equipment incurred under contract should be recovered from the organization awarding the contract.

[20] Supplemental Report on Allocation of Shared Services and Comsat Labs, submitted May 9, 1983.

[21] Expenditures are current operating expenses less depreciation plus total capital costs expended in a year.

[22] The "operating expenses" formula that we proposed for study includes all cash expenses plus depreciation expended in a year for operations.

Headquarters Division expenses was appropriate given the benefit of this division's efforts to the WSD. Comsat also argued that use of current operating expenses would be improper because it takes into account corporate property through historical depreciation rather than through total cash outlays. Comsat argued that property measurements based on current cash outlays more accurately track corporate Headquarters efforts and related benefits than measurements based on depreciation. As a final matter, Comsat stated that whether an allocation formula is based on current operating expenses or on some other factor, SBS should not be charged with any portion of Headquarters costs. In support of this proposal Comsat stated that the amount of Headquarters effort expended in support of SBS was minimal and therefore allocation of this effort was not required.

25. In its reply, Comsat further explained its proposal to use special allocation factors for certain shared G&A expenses within the Headquarters Division. For Personnel and Trust Fund Administration expenses, Comsat proposed a formula which would count the number of persons in its World Systems Division and subsidiaries and allocate expenses based on this count. However, this personnel count would not include the employees in the Headquarters Division or in SBS. Thus, the numerator of this ratio for the jurisdictional share of these expenses would be WSD employees. The denominator of this ratio would be total Comsat employees, less SBS and Headquarters Division personnel. For Common Stock and certain Finance related expenses, Comsat proposed to use the assets of its World Systems Division and the assets of its subsidiaries in deriving an apportionment formula. Again, except for the Common Stock expense allocation, Comsat would not include its investment in SBS in this apportionment formula.

26. *Allocation of expenses for Shared R&D.* In its filing Comsat reiterated its proposal that three types of R&D expenses be considered wholly or partially jurisdictional: (a) Category III expenses generated by WSD requests; (b) Category I and Category II R&D expenses initiated by corporate management; and (c) Category III expenses incurred in connection with certain outside contracts. Although Comsat no longer argued that outside contracts with commercial entities should be jurisdictional, it still proposed to include INTELSAT, INMARSAT, and most U.S. government contracts in its jurisdictional revenue requirements.[23]

27. *Allocation of capital costs for shared R&D projects.* In its first (January 1983) report, Comsat took the position that the portion of the Labs' net capital costs properly includable in the jurisdictional rate base should be the percentage that results from dividing legitimate jurisdictional R&D operating expenses by total jurisdictional and nonjurisdictional R&D operating expenses.[24] In its second (May 1983) proposal Comsat states that the ratio should be based on jurisdictional R&D "expenditures" divided by total R&D "expenditures."

E. Comments on Comsat's Reports

28. By public notice dated on May 13, 1983, we solicited comment on the January 24, and the May 9, 1983 reports submitted by Comsat.[25] M/A-COM, Inc. (M/A-COM) and RCA Global Communications, Inc. (RCAG) filed comments to which Comsat replied. These pleadings are summarized below.[26]

29. *M/A-COM Comments.* M/A-COM objected to Comsat's use of the "expenditures" formula for allocating corporate R&D and residual G&A expenses. While M/A-COM found that the use of the "expenditures" formula resulted in some improvement over the earlier "three-factor" formula, M/A-COM asserted that it would continue to distort results. In M/A-COM's view, neither additions to property (through expenditures) nor depreciation (through operating expenses) should be included in the allocation factor, since neither adequately reflects current activity. Moreover M/A-COM stated that use of either additions to property or depreciation would unwisely encourage Comsat as a monopoly supplier of international satellite circuits to overinvest and expand its rate base in order to increase its allowed return to investors. M/A-COM avers that a "cash expenses" formula would provide a better measure of current activity in Comsat's business segments.[27] Such a formula would better reflect day-to-day business activity since it would not be distorted by the "lumpy" nature of investment in satellite telecommunications.

30. M/A-COM also argues that Comsat has not yet shown convincingly that the "matrix" approach is truly an objective and auditable method of allocating R&D costs. Thus, M/A-COM requested that Comsat be required to supplement the record with substantially more information about both its corporate R&D projects and customer directed R&D projects to enable interested parties to make reasoned judgments on the "matrix" approach.[28] As to the information which Comsat had already submitted, M/A-COM claimed that a number of the exclusions Comsat proposed for its competitive business segments were unreasonable.

31. In addition, M/A-COM urged the Commission to reject any formula to allocate shared R&D expenses that would give ownership rights in R&D patents or data to Comsat's affiliates if such rights would enable these affiliates to gain preferential access to ratepayer funded R&D. M/A-COM asserted that when ratepayer funding is involved, Comsat's competitors should be accorded the same access to the resulting patents or data as Comsat's affiliates. M/A-COM also argued that the arm's-length relationship between the WSD and Comsat affiliates should be strengthened insofar as the use of Comsat Labs' services is concerned. M/A-COM seeks a prohibition on the sharing of R&D and technological know-how, and a prohibition on the transfer of research scientists and engineers from

[23] Comsat proposed to include 100 percent of WSD initiated R&D expenses and 100 percent of most contractually generated R&D expenses in its revenue requirements. As to corporate R&D expenses, Comsat again proposed to allocate these expenses between jurisdictional and nonjurisdictional segments based on activity, though with a new formula for measurement of activity, using the single factor of "expenditures." Comsat again objected to the use of the single factor of "operating expenses" for allocating common R&D expenses on much the same grounds that it objected to the use of this factor for the allocation of shared G&A expenses. First, it argued that research and development effort is driven by the current and, possibly, future activities of the corporation, not by past activities. Therefore, total cash outlays is a better measurement of benefit as reflected in property rather than depreciation. Second, it claimed that the bottom line results of the "expenditures" approach to R&D expense allocation "are more consistent with the basic purpose of the Corporation and the importance of its jurisdictional activities," than would be the results of alternative approaches.

[24] Comsat argued that the following types of R&D efforts be considered jurisdictional for this purpose: (1) WSD tasking to the Labs, (2) certain outside contracts with the Labs, and (3) the jurisdictional portion of corporate initiated R&D derived from the matrix formula.

[25] Public Notice, Mimeo. No. 4156.

[26] We shall grant M/A-COM's request that its earlier filed comments (March 11, 1983) be incorporated by reference into its comments filed pursuant to our Public Notice.

[27] Cash expenses are current operating expenses less depreciation.

[28] Comsat later provided additional information about its corporate initiated Category II and customer initiated Category III nonjurisdictional R&D projects but requested confidential treatment of the information under the Freedom of Information Act (FOIA).

Comsat Labs to Comsat's competitive affiliates.

32. *RCAG Comments.* RCAG also criticized Comsat's proposals for allocation of shared G&A and R&D expenses. RCAG offered three reasons why "expenditures" is not an appropriate method to allocate residual G&A expenses. First, "expenditures" results in an unreasonably large allocation of shared costs to the jurisdictional ratepayer. Second, since "expenditures" reflects all types of cash outlays, the use of this factor results in an unreasonably high allocation of residual costs to those corporate segments which disburse payments to contractors for "turnkey-type" construction projects requiring minimal headquarters supervision. As an example, RCAG cited Comsat's payments to INTELSAT to finance satellite system acquisition. Third, Comsat's proposal to allocate only 0.3 percent of shared G&A costs to SBS is unreasonably low in view of the magnitude of Comsat's investment and involvement in SBS.

33. RCAG also argued that Comsat's proposed approach for allocating the expenses and capital costs of the Labs to jurisdictional accounts is flawed and contrary to Commission directives. In particular, RCAG stated that Comsat has ignored our directive in the *Comsat Structure* order to exclude INTELSAT and U.S. government contracts in determining jurisdictional expenses and its rate base. RCAG maintained that since these contracts are not perceptibly different from commercial contracts they should not be treated differently. Since Comsat now concedes that commercial contracts are not jurisdictional, RCAG sees no reason why Comsat should be allowed to treat INTELSAT and U.S. government contracts as jurisdictional. Rather, RCAG believes that the expenses and costs of investment associated with these contracts should be reflected in the prices paid by INTELSAT and the U.S. government. RCAG criticized Comsat's rationale for such inclusion—the enhancement of U.S. leadership in satellite technology, the protection of U.S. investment in INTELSAT, and the promotion of Comsat's corporate objectives—as inadequate to justify ratepayer subsidization of contract revenue shortfalls. Finally, RCAG argued that SBS benefits from the research peformed at the Labs and therefore should be required to bear a substantially greater portion of total amount of R&D expenses and capital costs.

F. Comsat's Reply

34. In its reply, Comsat responded to M/A–COM's argument that its expenditures formula did not properly reflect current corporate activity. First, Comsat stated that its proposed "expenditures" formula would more accurately allocate shared costs than the "cash expense" formula proposed by M/A–COM. Second, Comsat stated that capital investment as reflected in "expenditures," is an important aspect of certain Headquarters staff segments, including the Finance, Corporate Affairs, and General Counsel groups, and should accordingly be part of the general formula. Third, Comsat stated that "expenditures" reflects staff effort at the time of investment and not at the time of depreciation and is therefore preferable to a formula based on current operating expenses.

35. Comsat also responded to the contention that SBS is not assuming its fair share of common costs. Comsat argued that there is now in place a system for the direct charging to SBS (through a Comsat subsidiary) of all costs associated with corporate staff effort undertaken on behalf of SBS. Comsat also reiterated that the amount of corporate staff effort expended in support of SBS is "minimal."

36. Comsat also addressed M/A–COM's comments regarding the reasonableness of certain exclusions of nonjurisdictional segments in the "matrix" formula. As to the exclusion of Comsat's Technology Products (Amplica and Telesystems lines of businesses) from paying a share of the costs of the Other Physical Sciences and Technology class of R&D projects, Comsat stated that Technology Products received only minimal benefit from this class of R&D. Comsat also made the same argument for exclusion of ERT from the costs of Physical Sciences projects.

37. Finally, Comsat addressed the issue of the inclusion of INTELSAT and U.S. government contracts in the jurisdictional accounts. Comsat reiterated its view that "all relationships with INTELSAT are jurisdictional," that government contracts obviate the need for ratepayer funded corporate R&D, and that its practice of considering both INTELSAT and government contracts as jurisdictional activities is fully consistent with its obligations to perform research and development in furtherance of the purposes and objectives of the Satellite Act.

G. Bureau Letters to Comsat

38. Subsequent to Comsat's reply filing, the Chief, Common Carrier Bureau, requested additional information form Comsat on certain aspects of its current organization and proposed accounting practices. Comsat replied to these questions on July 1, 1983. Comsat also provided additional information in response to later Bureau requests. Information submitted by Comsat related to its organization, staff areas of responsibility, existing accounting practices, contracts, and corporate and government R&D projects.

H. Staff Examination of Comsat's Records and Books of Accounts

39. On August 9, 1983, the Common Carrier Bureau staff initiated an on-site examination of Comsat's accounts and supporting records. The purpose of this examination was to review Comsat's allocation of expenses and capital costs between jurisdictional and nonjurisdictional accounts. This examination was substantially completed by the end of September 1983.

40. The staff reviewed numerous corporate material, including the corporation's Board of Directors' Minutes, the subsidiaries' Boards of Directors' Minutes, materials submitted to the above Boards (including the President's Report), minutes of various Board Committees (Research and Development, Finance, Direct Broadcast Satellite, Internal Auditing), and materials relating to various SBS partnership committees. The staff also examined materials relating to Comsat Labs, including the 1983 Corporate R&D task descriptions, a 1983 Capital Equipment Purchases memorandum, and various Laboratory business plans. In addition, they examined portions of the business plans of Comsat's subsidiaries. Finally, they examined such other items as SEC filings, Comsat annual and quarterly reports, various Comsat publications, computer printouts listing employee names, organization, time charged and other materials indicating the manner in which Comsat is currently allocating common expenses and capital costs.

III. Discussion

A. Overview

41. Our decisions to permit Comsat to engage in non-INTELSAT/INMARSAT ventures have been accompanied by a public interest determination that the initiation of such competitive activities must be coupled with certain structural, accounting and information flow modifications within Comsat. In this *Second Comsat Structure* order we review Comsat's existing structure and accounting practices. We permit

Comsat's existing structural organization to continue. However, we do require modification of Comsat's cost allocation practices to more fully protect the users of Comsat's monopoly services.[29]

42. As to Comsat's structure, we shall permit Comsat to retain its Headquarters and World System Divisions (including the Comsat Labs) within the parent company. However, we will continue to monitor this structural arrangement in order to determine whether the economies of scale created by this structure outweigh the potential risks of ratepayer subsidization of competitive ventures or anticompetitive practices that we identified in the *Comsat Study*. As to Comsat's cost allocation practices, we find it necesary for Comsat to implement more specific practices for the allocation of shared capital costs and expenses between jurisdicational and nonjurisdictional accounts. There can be no doubt that the only costs properly attributable to the rate base and revenue requirements for INTELSAT and INMARSAT services are those costs directly attributable to those statutory services. Since neither Comsat's existing Headquarters Division nor its World Systems Division is exclusively devoted to jurisdictional tasks, expense and capital cost allocation practices must be further deveoped which permit Comsat to place in its regulated accounts only that portion of its Headquarters and WSD costs which represent actual expenditures in fulfillment of its statutory mission. Below we discuss Comsat's structure and cost allocation proposals, make certain conclusions, prescribe certain modifications to Comsat's cost allocation practices, and explain the bases for these actions.

B. Structure

43. In our *First Comsat Structure* order we affired our *Comsat Study* determination that Comsat could engage in nonjurisdictional activities that were not inconsistent with its statutory mission and established the basic parameters of Comsat's structural organization. Recognizing the possibilities of conflicts of interest, misallocation of costs, and anticompetitive behavior we conditioned Comsat's continuation of nonjurisdictional business ventures on the establishment of a corporate structure which substantially separated its jurisdictional and nonjurisdictional activities. We stated our tentative approval of a structure wherein the jurisdictional entity had officers, operating and support personnel, facilities and records/books of accounts separate from the nonjurisdictional divisions, subsidiaries or affiliates. However, we tenatively permitted, for efficiency reasons, the sharing of certain limited common facilities and personnel, including Comsat Headquarters and Laboratories.

44. Upon review of the record, we reaffirm our previous conclusion that Comsat's participation in non-jurisdictional activities which are not inconsistent with its mission under the Satellite Act and INTELSAT Agreements may contribute to the overall development of satellite technology and is, therefore, in the public interest.[30] We also find Comsat's corporate structure to be generally acceptable. In view of the promised increased efficiencies and implementation of improved cost allocation procedures, we will permit Comsat to retain within the parent company both procedures, we will permit Comsat to retain within the parent company both jurisdictional and nonjurisdictional activities. We emphasize that this structural arrangment is satisfactory only because we believe that a cost allocation system can be implemented with will protect ratepayers from bearing the cost of Comsat's nonjurisdictional activities.

45. In our *First Comsat Structure* order we required Comsat to provide us 90 days notice prior to any change in its existing corporate structure. However, the Bureau determined during its on-site examination that Comsat had instituted a number of corporate changes without informing us in advance. Some of these changes involved the granting of increased responsibilities to the Headquarters Division. The Headquarters Division now performs additional tasks directly for Comsat's subsidiaries (e.g., Comsat General has no internal legal staff but relies wholly on Headquarters staff for legal support). The Bureau also found that certain functions formerly performed by the staffs of the subsidiaries (e.g., accounting and preparation of Management Information Systems software) were now being performed by the Headquarters Staff. Comsat states in its filings that this expansion of the Headquarters's functions and staff (from about 225 in 1981 to over 400 in 1983) is necessary to increase corporate efficiency. It argues that both its jurisdictional and nonjurisdictional elements benefit from the associate cost savings to the corporation from this consolidation. Because we have only recently become aware of these matters, we shall direct the staff as part of its oversight function to monitor these changes in order to evaluate benefits and costs to the ratepayers as well as their impact on allocation formulas.[31]

46. Since 1980 Comsat has also modified the relationship of the WSD to the rest of the corporation. Based on our examination of the WSD's current operations, it is clear that this entity now has substantial nonjurisdictional responsibilities. In addition to performing nonjurisdictional contracts for various outside organizations, it has provided and continues to provide engineering and administrative support to nonjurisdictional Comsat affiliates. This support has included the provision of financial, procurement, accounting, and personnel support functions for these affiliates. Although the WSD has received some reimbursement for this support, we are not convinced that the amount of reimbursement has been adequate to cover the WSD's fully allocated costs. We therefore again direct the staff to monitor as part of its oversight function the WSD's modified role, with particular attention to assuring that the WSD's support for nonjurisdictional affiliates is fully reimbursed.

C. Cost Allocation Practices

47. Comsat's role under the Satellite Act is to establish, in conjunction and in cooperation with other countries, a global communications satellite system. In carrying out this task Comsat is authorized in Section 305 of the Satellite Act to: (a) Plan, initiate, construct, own, manage and operate by itself or in conjunction with foreign governments or business entities an international commercial communications satellite system; (b) furnish for hire channels of communication; and (c) own and operate international earth stations. To

[29] In the area of information flow, by letter dated March 30, 1984, the Bureau reviewed Comsat's various proposals and required the implementation of certain procedures to broaden public access to INTELSAT/INMARSAT documents.

[30] While we reaffirm here Comsat's ability to engage in nonjurisdictional activities that are not inconsistent with its mission under the Satellite Act and INTELSAT Agreements, we must express our concern about the financial viability of one or more of these activities and the potential economic impact that such activities can have on charges to jurisdictional ratepayers.

[31] We particularly direct the staff to monitor Comsat's cost allocation mechanisms to make sure that jurisdictional ratepayers do not bear any costs for Headquarters efforts not beneficial to them. Monitoring is particularly appropriate in areas where the WSD maintains its own internal staff (e.g., legal and business development) but where Comsat affiliates have little or no internal staff and thus rely on corporate Headquarters staff for actual day-to-day operations.

accomplish these purposes Comsat is authorized to: (a) Conduct or contract for research and development related to its mission; (b) acquire necessary facilities and equipment; and (c) purchase launch services, sell satellite services, and develop technical specification plans for the satellite system. In 1971 the United States and Comsat signed the INTELSAT Agreements which established the INTELSAT system and defined the relationship between the system and each signatory.[32]

We view the INTELSAT Agreement and Section 305 of the Satellite Act as giving the Commission broad latitude in defining Comsat's mission. Thus, depending on the state of development of a global satellite system, Comsat's mission may expand or contract. Prior to the establishment of INTELSAT, and during this organization's infancy, we viewed Comsat's mission as quite broad. It owned and operated an international system and later became the manager of INTELSAT. During this period we did not object to Comsat's engaging in a broad range of R&D projects, assigning most costs to the jurisdictional ratepayer. Now, however, circumstances have changed and a more restrictive view of Comsat's mission is appropriate. First, the INTELSAT system has developed into a reliable and stable source of global communications facilities and services. Second, under the INTELSAT Agreement, INTELSAT now owns and operates the international system and conducts its own R&D. We believe that the maturation of the INTELSAT system and the development of a separate INTELSAT staff to operate and manage the global system are particularly important changes. Thus, Comsat is now just one of over 100 signatories whose obligation is to provide service to U.S. entities, to participate in the INTELSAT decision making process, and to invest in the global system in proportion to its ownership share.

48. Below we analyze the extent to which Comsat's cost allocation practices accurately reflect its current mission. Our analysis covers Comsat's cost allocation practices for: (a) G&A expenses; (b) R&D expenses; (c) R&D capital costs; (d) G&A capital costs; and (e) other miscellaneous costs.

1. G&A Expenses

49. *Direct G&A Expenses:* Comsat has developed an extensive listing of descriptions applicable to all of the tasks performed by the corporation in order to facilitate the direct charging of expenses to particular tasks within lines of businesses and divisions. We believe that the use of a direct charging system presents a reasonable and auditable method of assigning costs. As such, we see no need for changes to Comsat's policy of direct charging when the work is clearly beneficial to one task. We reach the same conclusion as to Comsat's propoal to assign expenses to a particular line of business or division when that line of business or division is the sole beneficiary of an expenditure. However, to protect ratepayers, we direct the Bureau to continue to monitor this direct charging/assigning system to assure that costs that should be placed in full in nonjurisdictional accounts do not end up in the shared residual pool and that costs that should be placed in the shared residual pool do not end up directly charged or assigned in full to a jurisdictional account.[33]

50. While we find Comsat's proposed direct charging and assignment system to be generally acceptable, we do have one concern relating to the consequences of charging "intangible" products to jurisdictional accounts. By intangible products we particularly mean Comsat's informational system packages (software). When these items are charged wholly or partially to Comsat's ratepayers, we believe it only equitable for Comsat to grant an owership interest in these products to its ratepayers. Therefore, if Comsat later makes these intangible products available to entities within Comsat who have not funded the full share of the development of the products, these entities shall compensate the INTELSAT and INMARSAT ratepayers in full by paying to jurisdictional accounts both their share of expenses and a return on ratepayer capital used to develop the product.

51. *Special G&A Expenses:* Comsat has proposed to allocate certain of its shared Headquarters Division expenses by using formulas based on special factors. For instance, Payroll, Human Resources, Compensation and Benefits, Employee Relations, Human Relations and EEO, Safety and Health, Credit Union, and Trust Fund Administration expenses are to be allocated based on "personnel" count of its subsidiaries and the WSD. We believe that the ratio of jurisdictional personnel to total corporate personnel is a reasonable manner by which to allocate the expenses of these Headquarters staff groups. However, we note that Comsat omits all Headquarters staff groups from the denominator (total personnel count) of its special factor formula. Since this omission would distort the allocation process, we believe it appropriate for Comsat to include in its total personnel count all employees, including Headquarters staff members.

52. Comsat proposes to allocate Common Stock Services and Shareholder Meeting costs on the basis of assets (including among its assets its investment in partnerships, such as SBS). Comsat maintains that the shareholder's investment in the corporation is best reflected on an ongoing basis by the assets of the corporation. We find that the usage of an assets factor for this purpose appears to be reasonable.

53. Comsat also proposes to employ the assets factor to allocate certain Treasurer and Treasury Operations expenses. These staff functions deal with corporate financing, including both debt and equity. Comsat claims that the primary function of these function of these staff members is to protect corporate assets and therefore the use of an assets factor is appropriate. We disagree. We find from the record and our own examination that these financial staff groups are concerned with funding for current operations and corporate expansion in addition to protection of assets. Therefore, the amount and utilization of such funding for expansion, current operations and protection of assets would constitute a better special factor than assets alone. Comsat has defined the amount and utilization of such funding as "expenditures." [34] We therefore direct Comsat to use its "expenditures" methodology to allocate Treasurer and Treasury Operations expenses.

54. *Residual G&S Expenses:* All G&A expenses not directly charged, assigned or allocated by special factors are placed in a residual pool. These expenses are then allocated pursuant to a general formula between various jurisdictional and nonjurisdictional accounts. There is no disagreement

[32] INTELSAT, Agreement Between the U.S. and Other Governments and Operating Agreement, T.I.A.S. 7532, Washington, D.C., August 20, 1971 (entered into force February 12, 1973).

[33] To this end we direct Comsat to maintain an up to date and detailed description of all work and associated costs Comsat directly assigns to lines of business rather than to specific corporate tasks and make this available to the Commission. This description will enable the staff to determine whether any given work item should legitimately be charged or assigned, in whole or part, to the jurisdictional ratepayers. We expect, of course, that Comsat will directly assign costs to nonjurisdictional accounts with the same vigor that it assigns costs to jurisdictional accounts.

[34] Expenditures includes funds useful only during the present year (cash expenses) and funds useful for future years (capital additions to plant). Expenditures, for this purpose should also include Comsat's investments in partnerships, such as SBS.

among the parties in this proceeding that residual pool expenses should be allocated pursuant to a general formula which best reflects the "activity" of the corporation. Comsat currently employs a three factor formula to allocate these costs but has indicated a willingness to use a formula based on relative expenditures. In our correspondence to Comsat we raised the possibility of using a formula based on current operating expenses. In its filings M/A-COM proposes the use of a "cash expense" formula to allocate residual G&A expenses. The question, then, is which of these formulas, if any, reasonably reflects Comsat's activities and operations.

55. Our review of Comsat's activities leads us to conclude that Comsat is now heavily engaged in the development of new business ventures, that all of these new activities are nonjurisdictional, and that most of these new businesses have little or no property, plant or equipment at the present time. As more and more Headquarters Division resources are devoted to nonjurisdictional activities, we believe it only fair that the allocation of the residual G&A expense pool reflect this change in corporate activity. This conclusion is based on our review of Comsat documents which reflect the corporation's direction, activities and use of resources. Almost every corporate document the Bureau examined in its audit contained a greater amount of discussion on, and showed a greater amount of resources allocated to, competitive matters rather than jurisdictional matters.

56. Moreover, we have found that Comsat's Headquarters staff is structured in such a way as to provide unequal support to the nonjurisdictional side of the corporation. WSD performs internally almost all of its operating and staff functions (except for accounting), while most competitive elements within Comsat rely on Headquarters staff for various operating and staff functions. Since Comsat uses the corporate staff to support its affiliates to a much greater extent than it uses them to support the jurisdictional entity, the allocation formula for G&A residual expenses should reflect this reality. For example, COMSAT General, although not a new organization, has no legal staff of its own. Instead, it relies solely on the legal staff within the Headquarters Division, even for day-to-day operations. According to Comsat, the ratepayer does not suffer from this imbalance because Headquarters Division attorneys directly charge their time to COMSAT General. We disagree. Although many of the expenses associated with those Headquarters Division attorneys who do legal work for COMSAT General are charged directly to COMSAT General, other overhead expenses (such as annual and sick leave) are placed in the residual pool and allocated to the ratepayer. Therefore, the fact that a particular attorney is not a member of COMSAT General, but is instead a member of Headquarters staff, has an impact upon the jurisdictional ratepayer through the inclusion of some COMSAT General costs in the residual pool. Although we do not object to Comsat's continued use of Headquarters staff for COMSAT General legal work and other support assistance, we shall not permit the use of a formula that unfairly allocates the corresponding residual expenses to the ratepayer.[35] Our remedy is twofold: to monitor Comsat's assignment into the residual pool of Headquarters staff expenses that directly support nonjurisdictional elements and to prescribe an allocation formula for the residual expense pool which more accurately reflects Comsat's activities. Such a formula would charge a slightly greater percentage of residual pool expenses to nonjurisdictional accounts.

57. We believe that neither the three factor formula nor the expenditures formula accurately reflects Comsat's increased emphasis on activities which do not have mature capital assets. Both the existing three factor formula and the proposed expenditures formula give considerable weight to capital assets (property). The three factor formula contains capital assets as one of its factors. The expenditures formula includes yearly capital asset outlays. Since the jurisdictional INTELSAT operations of Comsat are mature in their use of capital relative to the nonjurisdictional operations of Comsat, use of either formula proposed by Comsat would shift substantial residual expenses into Comsat's INTELSAT revenue requirement. The same bias, although to a lesser degree, exists in the operating expenses formula which we asked Comsat to consider. This formula includes depreciation, the yearly cost of property. These shortcomings do not exist in a formula which focuses only on cash expenses. A cash expense formula would eliminate the capital cost bias and compensate for leaky residual pool assignments. We therefore prescribe the use of a cash expense formula for allocating residual G&A expenses.

58. A formula based upon cash expenses would properly assign common corporate costs to both developed and developing businesses. A cash expense formula would allocate expenses to Comsat's developing ventures, regardless of their current lack of property. Since developing ventures generate cash expenses either internally or through outside contracts, at least some residual expenses would be assigned to developing ventures based on the cash expenses test. The jurisdictional businesses also generate substantial cash expenses in addition to capital costs. Cash expenses are generated by Signatory meetings, preparation of Signatory papers, participation in INTELSAT and carrier planning meetings, and interaction with customers. Therefore, even under the cash expenses formula, a substantial percentage of expenses allocated to the residual pool would still be charged to jurisdictional accounts.

2. R&D

59. *Scope of Jurisdictional R&D Expenses:* The proper assignment and allocation of all expenses has become more important as Comsat has increased its nonjurisdictional activities. This is particularly true for R&D expenses as R&D performed for the jurisdictional element now also benefits the nonjurisdictional element. In 1983 Comsat labs spent approximately $48,500,000 in operating expenses. Of this amount, Comsat charged approximately $12,000,000 (24%) to nonjurisdictional accounts and approximately $37,000,000 (76%) to jurisdictional accounts.[36] Because of the size and allocation of these expenses we would be remiss not to examine Comsat's practices for charging R&D expenses.[37] Below we examine

[35] Another example is provided by the Corporate Development Staff. This staff works exclusively on developing new projects for the manufacture or sale by nonjurisdictional entities within the corporation. It does not perform project development for WSD, since WSD has its own internal Business Development staff of about 50 people. The only direct relationship to the ratepayer is a small amount of review of the ICS Business Plan performed by one member of the Corporate Development staff. Yet, more than a small amount of expenses from this staff group are paiced in the residual pool for allocation.

[36] Of the jurisdictional total, Comsat directly assigned its entire corporate initiated Category I expenses of $14,000,000 to its INTELSAT ratepayer. It assigned its internal WSD (e.g., ICS and ITS) customer initiated Category III expenses of $4,000,000 to both its INTELSAT and INMARSAT ratepayers. Finally, it assigned its external customer initiated (also called contract) Category III expenses of $19,000,000 primarily to its INTELSAT ratepayers.

[37] We are also concerned because jurisdictional INTELSAT R&D expenses accounted for about 17 percent of operating revenues—an extraordinarily high percentage, considering that INTELSAT, not Comsat, is responsible for development of the INTELSAT global satellite system.

Comsat's practice of charging ratepayers for R&D expenses done under contract for INTELSAT, INMARSAT, and the U.S. government. We also examine Comsat's expense charging practices for R&D not done under contract.

60. *Contractual R&D Expenses:* In the *First Comsat Structure* order we concluded that R&D expenses associated with INTELSAT and INMARSAT contracts are not properly included in jurisdictional accounts because performance of such contracts is not mandated by the Satellite Act. Since U.S. government and commercial contract expenses have no greater jurisdictional connection than INTELSAT and INMARSAT contract expenses, we conclude here that U.S. government and commercial contract expenses should also be excluded from jurisdictional accounts. Moreover, although the performance of contracts for governments and international organizations generates revenues for jurisdictional accounts, our audit indicates that these revenues may not cover expenses. Since the performance of R&D under contract is required by neither the Satellite Act nor the INTELSAT Agreements, and since ratepayers would have to cover any revenue shortfall, we believe that Comsat should exclude all U.S. government and commercial, as well as INTELSAT and INMARSAT, R&D contracts from jurisdictional R&D accounts.[38]

61. We emphasize that we are not here prohibiting Comsat Labs or segments of the WSD from performing contracts for the aforementioned entities if they so choose. In fact, we recognize that permitting Comsat to bid for R&D contracts is beneficial. We are merely stating that the performance of contract R&D is outside of Comsat's mission under the Satellite Act and the INTELSAT Agreements. Thus, all expenses and revenues associated with contract R&D should be placed in nonjurisdictional accounts rather than commingled with jurisdictional expenses and revenues. Comsat claims that it would have to duplicate the contract work if it did not win competitively the right to perform these contracts. This argument is without merit. The results of INTELSAT and INMARSAT contracts are made available to all Signatories, including Comsat, irrespective of the degree of contract participation by the Signatory. Similarly, the results of U.S. government funded R&D contracts are made available to the public (including Comsat) whether or not Comsat acts as a government contractor. Therefore, such duplication would be wasteful and certainly not beneficial to the jurisdictional ratepayer.

62. *Noncontractual R&D Expenses (General):* Comsat also places into its jurisdictional accounts noncontractual R&D which it states is useful to its INTELSAT/INMARSAT ratepayers and consistent with its statutory mission. At the present time Comsat directly assigns WSD initiated (Category III) R&D expenses to jurisdictional accounts, directly assigns subsidiary and partnership initiated (Category III) R&D expenses to nonjurisdictional accounts, and places all other corporate (Categories I and II) R&D expenses in a residual pool. The expenses in the residual pool are assigned pursuant a "primary benefitting entity" test to jurisdictional and nonjurisdictional accounts.[39]

63. The direct assignment of identifiable expenses to a jurisdictional account, is nonjurisdictional account, or a residual pool for subsequent allocation under a formula is consistent with the accounting practices which we have prescribed herein for other expenses. For R&D expenses we expect Comsat to continue to directly assign clearly identifiable expenses in a manner consistent with this order.[40] However, we cannot accept the continued use by Comsat of the "primary benefitting entity" test for allocating the R&D residual pool expenses. We stated in our *First Comsat Structure* order that the "primary benefitting entity" test results in an unreasonably high percentage of R&D being funded by ratepayers. We found that the entire costs of a research project were being funded by ratepayers despite identifiable or reasonably foreseeable benefits to competitive ventures.[41]

64. *Noncontractual R&D Expenses (Residual Pool):* In its filings Comsat has proposed to replace the "primary benefitting entity" test for assigning residual pool expenses with a "matrix" formula. As described in paragraph 16 and footnote 16, the matrix formula assigns residual pool R&D expenses to one of six broad classes of R&D. Then a determination is made as to whether each of these six classes of R&D benefits or will potentially benefit the various lines of businesses, both jurisdictional and nonjurisdictional, of the corporation. (A class of R&D may benefit one or more lines of business and a presumption exists that a class of R&D benefits or will benefit each line of business). Then, the expenses within a particular class are allocated pursuant to an activity formula.[42] For jurisdictional expenses, the numerator of the expenditures formula is the sum of all jurisdictional expenditures, other than R&D. The denominator is the sum of all expenditures, other than R&D, in the lines of businesses which benefit or potentially benefit from the subject R&D class.

65. Comsat's proposed matrix formula assigns particular classes of R&D expenses to some but not all of its lines of businesses. Yet, Comsat assigns all of its classes of R&D to each line of jurisdictional business. Comsat has submitted a "Comsat Laboratories Matrix Analysis" in support of this assignment practice. Except as indicated below, we find that Comsat has not factually supported its proposed approach. As to the issue of excluding certain competitive lines of businesses from supporting certain classes of R&D, we find that all of Comsat's lines of businesses (with the possible exception of Compact Software) have the potential to exploit all of the classes of R&D conducted by the Labs. The classes are broad and the competitive lines of business are not sufficiently narrow for us to conclude that the businesses do not or will not benefit from these classes of R&D. For example, ERT, a subsidiary which sells remote environmental monitoring products and services, has for years been actively considering the interaction of satellite communications with data collection from its remote

[38] The expenses and revenues of other contracts should similarly be excluded from jurisdictional accounts. This includes the expenses and revenues of the WSD's INTELSAT Technical Services (ITS) unit for the so called Technical Services Contract with INTELSAT. The staff also found that ITS performs no jurisdictional functions and provides service only to commercial organizations. In addition, ITS supports Comsat affiliates such as SBS. Therefore, all expenses and capital costs associated with ITS are nonjurisdictonal. The WSD's Maintenance and Service (M&S) center provides support services to commercial entities as well as for INTELSAT earth stations. M&S support services provided under contract for outside entities or internal nonjurisdictional lines of business are nonjuridictional. M&S support services provided to internal juridictional lines of business such as INTELSAT earth stations are jurisdictional and may be included in Comsat's jurisdictional revenue requirements.

[39] Under this test, 100 percent of a project's expenses are assigned by Comsat to either a jurisdictional or nonjurisdictional account, depending on whether the primary benefit (51 percent) of the project flows to the jurisdictional or nonjurisictional element.

[40] Category II R&D expenses—those expenses which are corporate initiated projects for nonjurisdictional entities (subsidiaries and partnerships)—should continue to be directly assigned to nonjurisdictional accounts except for MMIC expenses. See also paragraph 68, *Infra*.

[41] *Comsat Structure*, 90 FCC 2d at 1179.

[42] In its subsequent filings Comsat proposed to use an expenditures activity formula rather than a three factor activity formula.

sensors. If earth station and satellite costs eventually come down, partly due to advances at Comsat Labs, such integration would be marketable. Therefore, the Earth Segment, Space Segment, MMIC and Other Related Technology Development classes of R&D could potentially benefit ERT. Accordingly, these classes of R&D expenses should in the future be assigned to the ERT line of business so that this line of business supports a small fraction of these classes of R&D expenses.[43] Similarly, Comsat General is involved in such a large number of communication services and equipment development activities that it is unreasonable to exclude this line of business from the basic R&D classes of MMIC and Other Physical Sciences. These two classes are the cornerstones of Comsat General's commercial activities. For these reasons, we find that MMIC and Other Physical Sciences expenses should be included in the matrix formula for Comsat General.

66. Comsat also argues that the Systems and Services class of R&D expenses should be excluded from the STC line of business. We do not agree. Systems and Services work includes general studies such as the trade-offs of size/weight/power in spacecraft design. This class of R&D is just as useful for a direct broadcast satellite as it is for an INTELSAT communications satellite. Comsat also argues that the Software class of R&D expenses, including Computer-Aided Design expenses, should not be charged to two subsidiary lines of businesses, Amplica and Telesystems. Again we cannot agree with this proposal. Amplica and Telesystems manufacture and sell a wide variety of high technology products. Computer-Aided Design software is useful to the design, manufacture and eventual sale of this equipment. Therefore, these two lines of businesses should be assigned Software R&D expenses.

67. The only exclusion that we shall accept as arguably justified and is that relating to Compact Software. This organization has no direct business in satellite systems technology or services, but instead serves only to support the Labs in its hardware and software development. Therefore, the relationship between Compact Software activity and the Earth Segment, Space Segment, and Systems and Services classes of Lab activity seems sufficiently remote to permit an exclusion.

68. In addition to advocating the exclusion of some nonjurisdictional lines of businesses from paying for certain classes of R&D expenses, Comsat requests that it be permitted to include the WSD in the allocation of all corporate classes of R&D expenses (including both Category I jurisdictional projects and Category II nonjurisdictional projects). We shall permit Comsat to include a portion of all Category I R&D in jurisdictional accounts according to the allocation formula described below. However, we do not believe that all Category II projects are of benefit to the jurisdictional ratepayer. Many of these projects do not advance the state-of-the-art of satellite technology so as to benefit ratepayers. They do, instead, enhance Comsat's commercial (nonjurisdictional) lines of businesses by researching the application of already developed technology for commercial purposes. As such, ratepayers receive no benefit from these R&D projects and should not be forced to participate in the funding of such products. Of the Category II tasks descriptions submitted to us, we find that only the MMIC class of R&D projects which relate to basic research have any potential benefit to the ratepayer. Therefore, we direct Comsat to exclude all other Category II projects from allocation to the jurisdictional ratepayer.

69. *Noncontracted R&D Expenses (Formula):* Classes of R&D expenses not excluded from a particular line of business by the matrix approach must be apportioned between benefitting lines of businesses. Since the benefits of current R&D work do not ordinarily become apparent for at least three or four years, it is impossible to measure precisely the benefits of all current R&D at the time the work is performed.[44] Thus, while a formula to estimate future benefits is required, as a practical matter, we can use only measurements of current activity in this formula. Comsat contends that most of the benefits of its current R&D program flow to its jurisdictional ratepayers and that the use of an "expenditures" activity formula to allocate R&D expenses would best reflect this flow of benefits. However, as explained below, our examination of Comsat's activities leads us to find that the R&D program substantially benefits Comsat's nonjurisdictional activities and that a cash expense formula would more accurately reflect the flow of benefits.

70. Comsat Labs are engaged in basic R&D which can lead to an infinite variety of new commercial products and services. Even as to R&D relating directly to INTELSAT/INMARSAT earth stations or INTELSAT/INMARSAT service, a great deal of the benefit also flows to the competitive businesses. This result occurs because R&D results generally are reflected in improved equipment which is produced and marketed by unregulated subsidiaries of Comsat and sold back to the jurisdictional entities. Examples of equipment developed (at least in part) at ratepayer expense but marketed by commercial affiliates of Comsat include INTELSAT TDMA terminals, ship terminals for INMARSAT access, echo cancelers, and torus antennas. Based on this flow of actual benefits to competitive entities, we must ensure that these entities fund their fair share of corporate R&D expenses.[45]

71. We believe that the only formula suggested in this docket that adequately accounts for the full range of the benefits of basic corporate R&D to emerging competitive entities as "cash expenses." Our selection of the cash expenses formula for allocating residual R&D expenses is consistent with our selection of this formula for allocating residual G&A expenses. The expenditures formula, on the other hand, does not accurately measure yearly activity. This is so because expenditures takes into account the total costs of additions to property and these additions normally last anywhere from seven to thirty years. The yearly cost of these property additons is not computed in the expenditures approach. If additions to property were to have any relevance to yearly activity, the costs of these additions would have to be divided by the lifetime of the property. Although such a normalized formula is conceivable, it is not one normally used and has not been suggested by any of the parties. Therefore, we do not consider expenditures a meaningful measure of current activity for allocating any residual costs.[46]

[43] In addition, ERT already benefits from the Other Physical Sciences and Technology class of R&D through such projects as sensor research. Therefore, this class of R&D should also be assigned to ERT.

[44] This is particularly true for R&D which may benefit Comsat's nonjurisdictional commercial activities. A period of three to four years is generally thought of as the minimum time necessary to commercialize a discovery made in an electronics laboratory such as Comsat's.

[45] We are also concerned because when a basic R&D project has sufficient commercial potential, the results of that R&D project and, on occasion, the people that have participated in it are transferred to competitive subsidiaries. Therefore, the great bulk of the benefit of this corporate R&D may flow to the competitive side of Comsat. The actual transfer generally occurs through a Category II or Category III program funded by the subsidiary. However, the entire work prior to the actual transfer typically has been funded by the ratepayers.

[46] This conclusion can be contrasted with our recommended use of expenditures to allocate

Continued

72. We also note that cash expenses is the only factor that would allocate R&D expenses to a nonjurisdictrional line of business such as EARTHSTAR (weather and land satellites), on which Comsat has devoted a very large deficit effort internally, but which has never matured into an operational system with property and revenues. While Comsat has directly assigned certain operational and G&A expenses to EARTHSTAR, it has not allocated any R&D expenses to this line of business. The fact that this program was not procured by Comsat is not relevant to the question of whether this or similar ventures could benefit from work done at the Labs. They largely can and do; for without the extensive effort in basic R&D at the Labs, Comsat could not consider entering the vast number of high technology, new businesses programs that are now under its active consideration. Therefore, we reject allocation approaches that do not properly account for all of the benefits of basic corporate R&D to lines of business in various stages of development.

73. *R&D Capital Costs:* We now address the issue of what capital costs associated with R&D, primarily Comsat Labs plant and equipment, is "used and useful" to the jurisdiictional ratepayer and hence should be included in Comsat's jurisdictional rate base. We believe that any capital costs that are wholly identifiable with either jurisdictional or nonjurisdictional Lab projects should be placed in the corresponding account. It is those capital costs which support both jurisdictional and nonjurisdictional projects that must be apportioned. Comsat argues that we should apportion these shared costs based on the ratio of jurisdictional R&D "expenditures" to total R&D "expenditures." We disagree for the reasons given previously, i.e., expenditures unfairly allocates capital costs to INTELSAT ratepayers. We instead direct Comsat to employ the ratio of jurisdictional R&D cash expenses to total R&D cash expenses for this formula. We find that this ratio most logically and fairly allocates the benefits flowing from the use of shared R&D capital assets.

74. *G&A Capital Costs:* Comsat uses fixed percentages for the allocation of capital costs associated with G&A activities. The capital costs involved are primarily those of Comsat Headquarters plant (building and contents) and Comsat computers located both at the Headquarters and Laboratory locations. Comsat allocates 68 percent of Headquarters building and 100 percent of all computer capital costs to jurisdictional accounts. Although G&A capital cost assignments were not specifically addressed in our *First Comsat Structure* order, the Bureau's examination revealed accounting practices which do not accurately reflect Comsat's activities and therefore should be modified.

75. We found in the *First Comsat Structure* order that the fixed allocation of R&D capital costs to the jurisdictional ratepayers to be unreasonable. We therefore prescribed in that order the use of an activity formula to allocate R&D capital costs. We find here that the fixed allocation of G&A capital costs to be equally unsatisfactory. Capital costs of G&A facilities should be allocated according to formulas that fairly reflect the use of the facilities.

76. We believe that the formula for allocation of Headquarters capital costs should be based upon the proportion of Headquarters space occupied by the benefitting entity. If a space is occupied by persons performing direct jurisdictional (i.e. Signatory) functions or direct nonjurisdictional (i.e. Comsat General legal and other support) functions, capital costs of plant proportional to space occupied by these employees would be placed directly into the respective jurisidictional or nonjurisdictional accounts. Thus, if an employee spends a specific percentage of time doing jurisdictional tasks, that percentage of his/her office space would be directly charged to a jurisdictional account. If the space is occupied by persons (such as certain corporate staff) performing functions that support the corporation as a whole (both jurisdictional and nonjurisdictional functions), then capital costs of plant proportional to space occupied would be placed into the appropriate shared corporate account. As we have indicated in our discussion concerning the allocation of shared G&A expenses, expenses for each corporate account are allocated by means of general or special formulas depending on the particular account under consideration (e.g. Finance and Personnel) and the nature of the benefit flowing from that shared account. In a like manner, capital costs associated with shared Headquarters staff functions would be apportioned by the same general or special formulas. Similarly, we believe that a formula for the allocation of computer capital costs should be based upon usage (time) of the computers by the various entities within the corporation. Again, when persons clearly engaged in jurisdictional or nonjurisdictional activities use computer time, proportional capital costs would be placed in the respective accounts. When persons are engaged in corporate wide activities, proportional capital costs would be placed in the corresponding corporate account for final distribution to jurisdictional and nonjurisdictional accounts by means of formulas prescribed for shared G&A expenses. We again direct Comsat to implement this modification and the Bureau staff to monitor the implementation of these formulas.

D. Miscellaneous Issues

77. *Allocation to Comsat Partnerships:* As we have noted, Comsat, in addition to having full ownership of a number of subsidiaries, is also a partner in a number of satellite communications companies. Comsat's major partnership interests are a one-third share in SBS and a one-share in Intelmet. Comsat has argued that, since it does not solely own and control these partnerships, no residual G&A and R&D expenses should be assigned to them. From an accounting perspective, Comsat would treat these as passive investments, somewhat akin to placing funds in a bank account.

78. Based on the examination of our staff, Comsat's position on cost allocation treatment for partnerships does not comport with the reality of its participation. Rather than a passive investor, Comsat is heavily involved in the planning and direction of these partnerships. For instance, Comsat Headquarters staff is represented on various committees composed of the three SBS partners and takes an active role in the activities of SBS. In addition, the 1983 Comsat Laboratories Strategic Business Plan lists support to SBS as part of the statement of purpose for the very existence of the Labs itself. We are not persuaded by Comsat's argument that SBS pays fully for Headquarters and Lab support by the direct charging (or assignment) mechanism. The Bureau's examination found numerous instances of Headquarters support where no direct charge (or assignment) to SBS was made. Therefore, we refuse to recognize typical accounting distinctions for differing treatment of wholly owned subsidiaries from partnerships as being meaningful in this case. Instead, we direct Comsat to treat SBS and other partnerships on the same footing that it treats its subsidiaries for

certain expenses associated with Headquarters Finance. In that situation, we were not measuring current activity, but arriving at a reasonable cost/benefit relationship associated with the expenditure of funds by a portion of corporation staff. We believe that use of expenditures to allocate Headquarters Finance expenses fully satisfies Comsat's concern that we recognize the importance of capital outlays within the corporation.

allocating G&A and R&D expenses. Specifically, Comsat should include in the denominator of its various activity formulas one-third of SBS' and one-half of Intelmet's cash expenses.[47]

79. *Propriety Rights to Patents & Data:* Comsat raised the issue of the assignment of proprietary rights when costs of corporate research and development are shared rather than directly assigned in their entirety to Comsat's jurisdictional and nonjurisdictional activities. Comsat states that its nonjurisdictional affiliates, by funding part of the common R&D costs, should be entitled to share in the resulting benefits. By this, Comsat desires that its affiliates get royalty-free access to any resulting inventions, technology, or data from projects to which they have contributed any portion of the total costs. Comsat also argues that its nonjurisdictional affiliates should legitimately have knowledge of and access to research and development projects which are funded in part by the affiliates before the affiliates' competitors are made aware of these projects.[48]

80. We agree that Comsat's affiliates should get some benefit from projects which they have partially funded. We disagree, however, about Comsat's estimation of the amount of that benefit. We see no reason why the affiliates should pay no royalty whatsoever unless they have funded the entire cost of the project. Barring this, the royalty fees should be apportioned between the jurisdictional and nonjurisdictional entities in proportion to their contributions. For example, if the jurisdictional entity has contributed 50 percent of the cost of a project, it should receive 50 percent of any revenues, royalties or fees for inventions, technology, or data resulting from that project.

81. We reject Comsat's argument that its affiliates should get advance knowledge of any R&D project funded both by the affiliate and by the ratepayer. We stated in our *First Comsat Structure* order that if the jurisdictional entities contribute any part of the costs of a project, then Comsat must grant licenses in all resulting technology and patented inventions to all qualifying third parties—including the competitors of Comsat affiliates—on fair, reasonable, and nondiscriminatory terms. We believe that such a policy would be severely compromised by allowing Comsat's competitive affiliates preferential access to R&D partially funded by the ratepayer. We reason that if these affiliates have early access, they could gain a marketing advantage over competitors based on ratepayer financed work.

82. We note that nonjurisdictional entities may obtain immediate access and royalty-free treatment of Laboratory technology and inventions by fully funding and R&D project they desire from start to finish without ratepayer support. In such cases, the ratepayer would have no financial or informational interest in the project and the project would be the affiliate's property.

83. *Transfer of Technology and Personnel from the Labs:* M/A–COM argues that Comsat Labs should not be permitted to undertake R&D projects for any of Comsat affiliates even where expenses are fairly allocated between jurisdictional and nonjurisdictional accounts. M/A–COM states that Comsat could circumvent non-discriminatory licensing and information flow requirements by simply transferring employees within the Labs or from Comsat Labs to the product development facility at the competitive affiliates. M/A–COM states that the employees could then promply "re-invent" the process, technique or result and integrate it into the affiliate product development process, thereby creating a marketplace advantage over competitors.

84. We shall first address the issue of whether Comsat Labs should be prohibited from doing support projects for its competitive affiliates. We think not. Although M/A–COM is correct that a transfer of personnel may result in a transfer of know-how, this transfer does not disadvantage the ratepayer for several reasons. First, the ratepayer gets the benefit of a reverse transfer of know-how when the Labs does a support project for the jurisdictional entity. Second, under the R&D allocation mechanism we have developed here, the nonjurisdictional entities pay a share of the baisc corporate research involved in generating this know-how and therefore should be entitled to some benefit.

85. Next, we address the issue of whether Comsat should be prohibited from transferring Labs personnel within the corporation in order to prevent Comsat from circumventing our nondiscriminatory licensing requirements. We agree with M/A–COM that such circumvention is theoretically possible. However, we also believe that there could be many legitimate reasons for Comsat to transfer employees from or to its Labs. Absent documented instances of abuse at this time, we would assume that Comsat will abide by the letter and spirit of our information transfer requirements, and therefore we will not now impose a transfer prohibition. We expect our staff to monitor this area and make recommendations to us if additional actions on this issue is warranted.

86. *Reporting Requirements:* In our *First Comsat Structure* order, we asked Comsat to propose modifications to its formal reporting system that would enable us to determine if the corporation was fairly assigning or allocating costs to jurisdictional accounts. Comsat has proposed certain additional schedules to its normal Form M and Form 901 reports. We accept these additional schedules as a preliminary step to achieving a reporting system that adequately addresses our concerns and direct Comsat to make these additional filings. However, we intend in the near future to institute a proceeding devoted exclusively to Comsat's reporting requirements to this Commission, with the expectation of revising and simplifying those filings.

87. *Tariff Filings:* We anticipate that these cost allocation modifications will decrease Comsat's jurisdictional rate base and expenses, thus resulting in a lower revenue requirement. We believe it therefore appropriate to require Comsat to file new rates which reflect this lower revenue requirement. At the same time, since we are aware that Comsat's recent earnings exceed authorized levels, we will expressly require Comsat's retargeted rates to be in compliance with its authorized rate of return (11.48%–12.48%).

Ordering Clauses

88. In view of the foregoing, it is ordered, pursuant to Sections 4(i), 4(j), 201–205, 403, 404, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 201–205, 403, 404 and 410 (1976) and Sections 102, 201(c)(5), 201(c)(11), 305, and 401 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701, 721(c)(5), 721(c)(11), 735 and 741 (1983), that Comsat make changes to its accounting and cost allocation system as set forth herein.

89. It is further ordered, that Comsat implement these accounting and cost allocation changes within 45 days of the release of this order, that Comsat file

[47] The only exception to this policy of allocating all residual Headquarters G&A costs to partnerships is where the partnership can clearly show that it is receiving no support from Comsat because it is performing the function itself. Examples might include personnel, payroll, and trust fund administration. We direct the Bureau to consider any exceptions that Comsat may propose.

[48] First *Comsat Report* at 35–36.

new tariffs based on the resulting revenue requirement changes and its authorized rate of return (11.48%–12.48%) by June 15, 1984 and that the new tariffs be filed to become effective on 45 days notice.

90. It is further ordered, that this proceeding is subject to further order of the Commission.[49]

91. It is further ordered, that the Secretary shall cause a copy of this order to be published in the **Federal Register.**

In addition, the Act excludes from the application of the statute proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting or practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. 601(2).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-12019 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-548; FCC 84-129]

Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers

AGENCY: Federal Communications Commission.

ACTION: Termination of inquiry (report and order).

SUMMARY: This order terminates the Inquiry proceeding, In the Matter of regulatory policies concerning direct access to INTELSAT space segment for the U.S. International Service Carriers (USISCs), 90 FCC 2d 1446 (1982). The order finds that a new policy of direct access would not serve the public interest. The order retains the current policy which provids that the U.S. Signatory to INTELSAT—the Communications Satellite Corporation (Comsat)—has exclusive U.S. ownership interests in the INTELSAT satellite system, and requires the USISCs to lease INTELSAT space segment facilities from Comsat pursuant to tariff.

FOR FURTHER INFORMATION CONTACT: Glenn E. deChabert, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632–4047.

Report and Order

In the matter of regulatory policies concerning direct access to INTELSAT space segment for the U.S. international service carriers; CC Docket No. 82–548.

Adopted: March 30, 1984.
Released: April 25, 1984.

By the Commission.

I. Introduction and Background

1. On August 5, 1982, we adopted a Notice of Inquiry (September 13, 1982, 47 FR 40226) regarding the possible modification of the current arrangements whereby the U.S. international service carriers (ISCs) acquire, through the Communications Satellite Corporation (Comsat), the satellite capacity of the International Telecommunications Satellite Organization (INTELSAT).[1] Specifically, we sought to determine whether carriers other than Comsat should be permitted to obtain so-called direct access [2] to INTELSAT in the form of capitalized leaseholds or investment interests in Comsat's share of INTELSAT space segment facilities.[3] As we discuss below, it has been argued by various parties to other Commission proceedings that modification of the INTELSAT access policy along these lines would enable the ISCs [4] to acquire space segment capacity from Comsat at a price commensurate with that which they would be charged were they to obtain such facilities directly from INTELSAT. Proponents believe that a new policy of direct access, coupled with the unbundling of Comsat's current combined space segment/earth station tariff [5] and a more flexibile earth station ownership policy, would enhance competition in international satellite telecommunications. End-to-end service providers could choose to operate their own international earth stations and invest in Comsat's share of the space segment. The prospect of a return on their invested capital could create incentives for the carriers not only to increase their usage of the INTELSAT system but also to utilize the system more efficiently. Use of existing earth stations and acquisition of INTELSAT space segment capacity from Comsat under traditional lease arrangements would be within the discretion of the individual carrier, operating subject to marketplace forces.

2. Since the inception of the INTELSAT global satellite system, Comsat has served as the U.S. Signatory to INTELSAT, the sole U.S. investor in the system, and the monopoly supplier of INTELSAT space segment services to the ISCs. In turn, the ICSs, as end-to-end service providers, have utilized Comsat-provided space segment facilities, in conjunction with earth stations jointly owned by Comsat, AT&T and the traditional international record carriers (IRCs), to offer international satellite telecommunications services to the public. When we proposed to modify our *Authorized User* [6] policy to permit Comsat to offer service directly to non-carrier customers,[7] various parties urged that we also revise our policy on carrier access to INTELSAT space segment. These parties asserted that such revisions would be necessary to restore competitive balance in the market for international satellite telecommunications services were we to go forward with the new *Authorized User* policy. They claimed that direct access would minimize Comsat's ability to use its monopoly position in INTELSAT to engage in discriminatory space segment price-setting, cross-subsidization and other anticompetitive conduct, thereby placing the carriers and Comsat on equal footing, and producing public benefits of increased customer choice, expanded service offerings and reduced rates of service. They asserted that the issue of direct access was therefore a relevant factor to be considered by the Commission prior to implementing the revised *Authorized User* policy.[8]

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[49] Although Section 601(2) applies to the Regulatory Flexibility Act of 1980 (RFA) (Pub. L. 96-354) regarding rules adopted pursuant to Section 553 of the Administrative Procedures Act, the RFA is inapplicable where, as here, the underlying Notice of Proposed Rulemaking was adopted prior to January 1, 1981. 5 U.S.C. 601 (1980 Supp.).

[1] INTELSAT Satellite Facilities, 90 FCC 2d 1446 (1982) ("Notice" or "NOI.")

[2] As we stated in the NOI, the terms "cost-based," "direct economic," "equitable," and "equal" have been used interchangeably with "direct" to describe the type of access arrangements under discussion. 90 FCC 2d at 1447, n. 2. We chose the term "direct" access merely as a matter of convenience. Clearly, what is at issue here are the merits of the concept, not the term used to describe it.

[3] As of March 31, 1983, Comsat held a 24.36% investment share in the INTELSAT system. INTELSAT 10th Annual Report, April 1, 1982—March 31, 1983, p. 7 ("INTELSAT 10th Annual Report").

[4] The ISCs are American Telephone and Telegraph Company, Graphnet Systems, Inc., Hawaiian Telephone Company, Satellite Business Systems, Inc., Western Union Telegraph Company and the traditional international record carriers (IRCs): FTC Communications, Inc., ITT World Communications Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation and Western Union International, Inc.

[5] Pursuant to its current basic Tariff FCC No. 101, Comsat's charge for a full-time voice-grade half-circuit is $1,125 per month.

[6] Authorized Entities and Users, 4 FCC 2d 421 (1966), *reconsideration granted in part*, 6 FCC 2d 593 (1967).

[7] Aeronautical Radio, Inc., 77 FCC 2d 535 (1980) ("Authorized User NPRM"). We adopted these modifications on August 5, 1982. Authorized User Policy, 90 FCC 2d 1394 (1982) ("Authorized User II").

[8] The U.S. Court of Appeals, D.C. Circuit agreed. It vacated and remanded this decision on the

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3. Having reviewed the record in this proceeding, we conclude that proponents of direct access have failed to establish that it will serve the public interest. We are unpersuaded that, whatever benefits are to be derived, they would be so substantial as to outweigh the adverse consequences which are likely to attend the adoption and implementation of direct access. We are therefore rejecting the direct access proposals before us and terminating this proceeding. As to those concerns upon which proponents of direct access based their support, we shall consolidate into other ongoing Commission proceedings alternative measures to direct access which should substantially enhance the position of the end-user as well as Comsat's carrier customers.[9] However, we emphasize that in terminating the instant Inquiry we are not foreclosing our reconsideration of direct access should our alternative measures prove ineffectual.

4. Below we outline the events which led us to initiate this proceeding, and summarize the Notice of Inquiry and the two direct access options set forth for comment there. Next we review the positions for and against direct access as presented in the comments and replies filed in response to the NOI. We then address the economic and policy issues raised by direct access. Finally, we explain our reasons for declining to establish a direct access policy at this time and for adopting alternative measures in lieu thereof.

A. The Notice of Inquiry

5. In August of 1982, the Commission initiated a series of actions dealing with our international telecommunications market. We adopted a Memorandum Opinion and Order in the *Comsat Structure* proceeding [10] affirming our prior *Comsat Study* determination [11] that Comsat may legally engage in non-INTELSAT/INMARSAT lines of business so long as such activities are not inconsistent with the purposes and objectives of, and Comsat's responsibilities under, the Satellite Act. In so doing, we authorized Comsat to participate in competitive and other activities via fully-separated subsidiaries. In a separate action, we proposed to eliminate certain restrictions which, under the existing *Authorized User* policy, had essentially limited Comsat's role to that of a "common carrier's common carrier." [12] We proposed to permit Comsat to offer end-to-end service to the public through a separate subsidiary and require Comsat to offer basic INTELSAT transmission capacity at U.S. general purpose earth stations to both carriers and non-carrier users pursuant to a single tariff to be filed with the Commission.[13]

6. Several parties, among them the National Telecommunications and Information Administration (NTIA), RCA Global Communications, Inc. (RCA) and Western Union International, Inc. (WUI), responded to the *Comsat Structure* and *Authorized User II* rulemaking proceedings, stating that to permit Comsat to serve the public directly, while allowing Comsat to retain its earth station and space segment monopolies, would place Comsat in an advantageous competitive position *vis a vis* the international service carriers. They argued that by reason of its statutorily-authorized ownership interest in the INTELSAT system, and its dominant position in the Earth Station Ownership Consortium (ESOC), Comsat virtually controlled the U.S. portion of the satellite communications path. Such control enabled Comsat to extract excessive charges from its customers through its combined (bundled) earth station/space segment tariff. Were Comsat to retain control of the earth station segment and direct access to the INTELSAT space segment while providing service to users, these parties argued, Comsat would have economic incentives to maintain the present high level of its tariff rate. It would also be able to manipulate revenues obtained from its INTELSAT-related (jurisdictional) activities so that its competitive subsidiary could underprice end-to-end service offerings to the detriment of the other firms in the market. To safeguard against Comsat's alleged ability to engage in such conduct, these parties urged the Commission to authorize carriers other than Comsat to obtain investment-based interests in INTELSAT space segment and grant them the choice of providing their own earth stations, rather than being constrained to obtaining these facilites from Comsat.

7. *Direct Access Proposals.* The direct access NOI solicited comment on two alternative options. The first, characterized as "capital lease" Option 1 is based on a proposal previously submitted by RCA. Pursuant to this arrangment:

(a) Comsat would continue to make a capital investment in the INTELSAT system;

(b) Comsat would be required to "unbundle" its current basic Tariff FCC No. 101;

(c) the other international carriers would be permitted to lease from Comsat, on a cost-pass-through basis, the INTELSAT satellite facilities they actually use; [14]

(d) the leasing carriers would be required periodically to pay Comsat a ministerial fee to cover any administrative and maintenance costs incurred by Comsat in connection with the provision of the particular facilities leased to them; and

(e) the leasing carriers would be solely responsible for acquiring and separately paying for appropriate earth station access.

With respect to Option 1, we raised the question whether the carriers should be permitted to include the value of their leases in their respective rate bases, and if so, how to avoid the imposition upon the end-user of two returns—those of the carriers on their capitalized leases and Comsat's allowed return on its investment in the leased facilities.

8. The second direct access option set forth in the NOI is the so-called "IRU" option. The IRU option is based upon a capital investment concept proposed by NTIA in its comments to the *Authorized User II* rulemaking.[15] An IRU, or indefeasible right of use, as employed by the ISCs in submarine cables, is a capital investment interest in a facility of which the IRU holder does not obtain rights in management or control. The holder does, however, receive the other benefits normally associated with ownership. Like the capital lease option,

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grounds, *inter alia*, that we had abused our discretion by implementing the new policy prior to considering the merits of direct access. ITT World Communications Inc. v. FCC, No. 79-1046, slip op. at 43, 49, 51 (D.C. Cir. Jan. 13, 1984) ("Authorized User II Opinion"). On March 27, the Court of Appeals denied our petition for rehearing.

[9] *See* Second Memorandum Opinion and Order, CC Docket No. 80-634 ("Comsat Structure proceeding"), FCC 84-128 (adopted March 30, 1984; released April 20, 1984), and Notice of Proposed Rulemaking, CC Docket No. 82-548 ("Earth Station Ownership proceeding"), FCC 84-122 (adopted March 30, 1984; released April 20, 1984). *See also* the letter from the Chief, Common Carrier Bureau, to Lawrence M. DeVore, Vice President, Law and Administration, World Systems Division, Comsat, dated March 30, 1984, concerning the Commission's policy on public dissemination of INTELSAT/INMARSAT documents, technical data and inventions.

[10] Communications Satellite Corporation, 90 FCC 2d 1159 (1982) (hereafter "Structure Order"), *recon. denied*. In the Matter of the corporate structure and operations of the Communications Satellite Corporation, FCC 2d, FCC 83-121 (adopted March 31, 1983; released April 20, 1983).

[11] Communications Satellite Corporation, 77 FCC 2d 564, 610-619 (1980).

[12] *See* Authorized User NPRM, *supra* note 7, at 558-559.

[13] *Id.*

[14] The lease price would reflect only that amount Comsat pays to INTELSAT for these facilities.

[15] CC Docket No. 80-170, NTIA Comments at 19 (August 12, 1980).

Comsat would be required to unbundle its tariff under the IRU approach. Option 2 would permit the international carriers to:

(a) Invest in the INTELSAT space segment by making an appropriate payment to Comsat for that portion of Comsat's share of the space segment which they use; and

(b) Acquire and separately pay for appropriate earth station access.

In turn, the carriers would be required to:

(c) Pay Comsat for Comsat's share of INTELSAT operating costs; and

(d) Pay Comsat a pro-rata share of Comsat's own costs and the use of its corporate facilities for carrying out its U.S. Signatory functions and other duties under the Satellite Act.

9. In addition to soliciting comments on these two direct access options, the NOI invited interested parties to suggest alternative proposals. Further, parties who had previously filed comments in support of "cost-based" or "direct economic" access to INTELSAT space segment were asked to clearly define what they meant by those terms, and to distinguish such access from the access the carriers now have to INTELSAT's facilities. They were also asked to provide technical, financial and any other information which would enable the staff to thoroughly analyze the proclaimed benefits to be derived from such access.

B. Positions of the Parties

10. Comments to this proceeding were filed by: American Broadcasting Companies, Inc. (ABC), CBS, Inc. (CBS) and National Broadcasting Company, Inc. (NBC) jointly (the Networks); American Telephone and Telegraph Company (AT&T); the Central Committee on Telecommunications of the American Petroleum Institute (Central Committee); Communications Satellite Corporation (Comsat); Department of Justice (DOJ); Hawaiian Telephone Company (HTC); Home Box Office, Inc. (HBO); ITT World Communications Inc. (ITIWC); National Public Radio (NPR); RCA; [16] Spanish International Network (SIN); TRT Telecommunications Corporation (TRT); [17] WUI; and Western Union Telegraph Company (WU). Reply comments were filed by: American Satellite Company (ASC); Comsat; Department of Defense (DOD); DOJ; HTC; ITT; NPR; RCA; TRT TRT; and WUI.

11. The parties supporting some form of direct access are: ASC, the Central Committee, DOD, DOJ, HBO, HTC, ITT, the Networks, RCA, TRT, WUI and WU. Of these, the Central Committee, DOD, HBO, ITT, the Networks, WUI and WU would have the Commission adopt either or both of the direct access options set forth in the Notice, or any variations thereof which include the requirement that Comsat unbundle its combined tariff.[18] Typical of the views of these parties are those of the Networks and the Central Committee. In their Comments, the Networks state that:

[I]f the international carriers were allowed some form of direct access to Intelsat space segment at cost-based rates, they should be able to compete effectively with Comsat for the business of end users. By direct access, we simply mean a form of access—by whatever name—which would allow the carriers to obtain intelsat circuits at or near the same price that Comsat pays for these same facilities. Such cost-based access would allow the carriers and Comsat to compete on roughly the same basis for the provision of Intelsat space segment to end users.[19]

12. The Central Committee states that:

* * * regardless of which option the Commission chooses the Central Committee strongly believes that the Commission should require Comsat to "unbundle" its current basic tariff. Without such unbundling, the Commission will have a difficult time determining whether or not Comsat is subsidizing its retail activities with profits derived from its space segment services. Separate charges for ground and space segment facilities is (sic) absolutely essential to a competitive marketplace.[20]

13. While the Central Committee supports both the lease and IRU options, it believes that the Commission can more easily implement the lease alternative because it seems to have fewer ramifications for the current operations of the INTELSAT consortium than does the IRU option. The Central Committee's views are shared by ASC, HTC, and RCA. For its part, RCA not only embraces Option 1 but offers for consideration two additional alternatives: straight (i.e., non-capitalized) long-term and short-term leases.[21] Both are similar to Option 1 in that they would require Comsat to unbundle its combined tariff; permit the carriers to lease INTELSAT space segment from Comsat on either a long or short-term basis and at a price would be based upon the INTELSAT Utilization Charge (IUC) of $390 per voice-grade channel per month;[22] and require the carriers to periodically reimburse Comsat for any coordination and maintenance costs incurred in making available to them the INTELSAT facilities they require. Unlike Option 1, however, both of RCA's lease proposals would permit Comsat to retain its total investment in INTELSAT space segment. As neither proposal would involve rate base treatment of the value of the leases, the prospective "double rate base" problem raised in the NOI would be avoided. For this reason, ASC finds RCA's alternative proposals particularly attractive.[23]

14. The United States Department of Justice also supports direct access as a vehicle for enhancing competition in the international satellite telecommunications market. However DOJ prefers that the Commission require Comsat to make INTELSAT space segment available to the ISCs on an IRU basis (Option 2). DOJ states that as the executive agency responsible for enforcing the antitrust laws and promoting competition, it believes that direct access would diminish any ability Comsat might have to exploit its

[16] Comments were due December 1, 1982. On December 17, RCA filed a motion to provide additional information on potential traffic diversion resulting from Comsat's ability to offer basic transmission service at general purpose earth stations to non-carrier users. We grant this motion because RCA's initial comments were timely filed, the additional information represented the most recent data in RCA's possession, the information is revelant to the financial issues raised by direct access, and the other parties to the proceeding had sufficient time to review and respond to the additional information in their reply comments.

[17] Due to administrative problems, TRT filed its initial comments one day late. We are accepting TRT's filing because it has not prejudiced the other parties to this proceeding.

[18] In its reply comments, DOD argues that the Commission should allow the carriers and other authorized users and entities, including the U.S. Government, to select for themselves the type of direct access arrangements they would prefer. DOD Reply at 4–6.

[19] Networks' Comments at 6. We note that their description of direct access is generally accepted among those advocating its implementation. For example, ASC defines direct access as "the ability of a carrier authorized to provide international service to obtain INTELSAT space segment from Comsat at a price that is reasonably related to Comsat's costs for the facilities and for making those facilities available to the carrier." ASC Reply at 2. We also note that the Department of Defense and the Networks believe the Commission should also consider the question of non-carrier direct access to INTELSAT space segment. Networks' Comments at 2; DOD Reply at 6.

[20] Central Committee Comments at 5.

[21] RCA Comments at 34–5; Appendix 2 (December 1, 1982).

[22] Since 1981, INTELSAT's utilization charge for a telephone circuit has been US $9,360 per annum. See INTELSAT 10th Annual Report, *supra* note 3, at 28. Therefore its utilization charge for a full-time voice-grade half-circuit is $390 per month. As the issue of the appropriateness of the IUC as the price upon which Comsat should base its space segment charge lies at the heart of the direct access controversy, we shall not attempt to explain the concept at this juncture. A full description and analysis is provided below at paragraphs 33–48.

[23] ASC Reply at 4.

position in INTELSAT to impede competition from the international carriers. DOJ asserts that the ISCs should be required to assume some of the risk of investing in INTELSAT by infusing their capital into space segment facilities. In DOJ's view, the IRU direct access option would put all competitors on a more equal footing because their investment in INTELSAT would provide incentives for the carriers to fully utilize the system. As a consequence, carriers and users would be better able to choose between modes of transmission on the basis of economic or technical efficiency rather than regulatory requirements. To this end, DOJ posits that the Commission should also eliminate its composite-rate policy and prescribed-use formulas.[24]

15. DOJ also echoes the sentiments of NTIA. In its comments in the Authorized User II rulemaking and in a letter submitted in this proceeding, NTIA expresses a preference for the capital investment (IRU) approach to direct access because, to the extent that Comsat's competitors would each have some investment in the INTELSAT system, and therefore some incentive to use it, the IRU approach would put all competitors on more or less equal footing with Comsat. Moreover, NTIA believes that Comsat, as U.S. Signatory to INTELSAT and largest user of INTELSAT space segment, must perform many functions that require capital investments and operating costs. NTIA and DOJ believe the IRU option would enable Comsat to earn a return on its investment and be reimbursed for the costs of performing these requisite functions.[25]

16. For the most part, TRT and WUI support the positions of DOJ and NTIA on IRUs, although WUI suggests that since it does not erect a capital investment barrier to market entry, the direct access lease option may prove more attractive to new carrier entrants.[26] DOJ qualifies its support for the IRU option in a different manner. It suggests that the IRU option be applied prospectively, that is, to new investments in INTELSAT. In DOJ's opinion it would be neither practical nor equitable to require that ownership interests in current INTELSAT facilities be transferred to the USISCs.[27]

17. Of the remaining parties commenting in this proceeding NPR reserves judgment on direct access and, as discussed below, AT&T, Comsat and SIN are negatively disposed toward the concept.

Proponents. The principal arguement advanced by the parties supporting direct access is that it would be essential to restoring competitive balance in the international satellite market were we to revise *Authorized User* along the lines we proposed. They contend that since *Authorized User II* would require Comsat to offer basic transmission capacity to the public at the U.S. general purpose earth stations, and authorize Comsat to offer end-to-end service to the public through corporate subsidiaries, the Corporation would have the ability to exploit its Signatory status in INTELSAT to its competitive advantage. The premise underlying this contention is that Comsat and the vast majority of the other international telecommunications entities in the world currently acquire units of space segment from INTELSAT at the IUC rate of $390 per month per full-time voice-grade half-circuit. Yet, because Comsat has chosen to provide these half-circuits under a combined or "bundled" space segment/earth station tariff, the carriers are forced to acquire such facilities at a rate of $1,125 per month. The parties supporting direct access complain that as a result of *Authorized User II* and Comsat's position as sole provider of INTELSAT space segment, Comsat would be able to: (1) Extract payments for INTELSAT space segment far in excess of the costs properly allocable to Comsat's provision of the facilities; and (2) offer customers "space-segment only" facilities at the U.S. general purpose earth stations at rates with which the carriers could not compete without suffering operating losses. Such losses would occur because the new *Authorized User* policy would enable Comsat to offer basic transmission capacity to carrier and noncarrier customers alike at the same tariff rate. Consequently, noncarriers would have little incentive to continue to obtain leased channels from the carriers because the price charged by the latter would necessarily include a profit component. Rather, noncarriers would probably prefer to obtain basic transmission capacity from Comsat and make their own arrangements for interconnection of their leased channels.[28]

19. For the most part, proponents of direct access believe the INTELSAT utilization charge, or IUC, to be the appropriate yardstick for determining the price carriers should be required to pay for INTELSAT space segment.[29] They argue that the IUC is based upon INTELSAT's estimate of its annual revenue requirement per unit of space segment. They cite the *Comsat Study*, in which we stated that the revenues generated by INTELSAT's utilization charges are used to meet the following obligations in order of priority: (1) The maintenance and administrative costs of INTELSAT, (2) operating funds which the Board of Governors deems necessary, (3) depreciation and (4) a 14 percent pre-tax return to Signatories for use of their capital.[30] Based upon this information, the proponents assert that even were the carriers to pay Comsat no more than the IUC of $390 per circuit per month, Comsat would still receive an appropriate return on its INTELSAT investment.

20. In support of their claim that the IUC accurately reflects the cost of a unit of INTELSAT space segment, the advocates of direct access state that the Soviet Union and other entities which are not members of INTELSAT are able to obtain space segment capacity directly from INTELSAT at the IUC rate of $390 per month per half-circuit.[31] They therefore find no economic justification for the sizable differential between the amount non-members pay for space segment and the amount Comsat charges the international carriers to acquire and utilize identical facilities.

21. Most of those who support direct access acknowledge that Comsat must be compensated for costs incurred in securing space segment from INTELSAT, as well as for various administrative, operations and

[24] DOJ Comments at 14–15. The Commission's composite-rate policy requires the ISCs to base the prices they charge their customers on the combined average costs of providing service over both satellite and submarine cable facilities, rather than charging separate prices to customers serviced by satellite and those served by cable. The Commission's prescribed-use formulas were established to require the USISCs to activate satellite circuits in set proportions to the number of cable circuits activated. ITT World Communications Inc. v. FCC, supra, note 8, at 1424.

[25] DOJ Comments at 15; NTIA Comments in CC Docket No. 80–170 at 18 (August 12, 1980). *See also*, letter from Richard H. Shay, Chief Counsel, NTIA, to Gary M. Epstein, Chief, Common Carrier Bureau, August 31, 1982.

[26] WUI Comments at 46–47.

[27] DOJ Reply at 3.

[28] RCA projects that as a result of this aspect of *Authorized User II*, RCA stands to lose 69.7% of all private line channels (33 of 66 cable channels, all 43 satellite channels) it currently leases to DOD. RCA also projects total lost revenues for leased channels and associated equipment of $1,292,300 and $201,600 per month respectively. RCA Comments, Revised Appendix 1, pp. 7–12. We note here that essentially the same allegations for adverse impact were made to the U.S. Court of Appeals for the D.C. Circuit in *ITT World Communications Inc. v. FCC, supra* note 8.

[29] HTC Comments at 16; RCA Comments at 23, 30; DOD Reply at 8; ITT Reply at 4; TRT Reply at 10–12.

[30] *Comsat Study, supra* note 12, at Appendix D (p. 789).

[31] *See, e.g.*, ITT Comments at 5–6; WUI Comments at 45.

maintenance and other costs associated with activities in which Comsat engages in fulfillment of its responsibilities under the Satellite Act. Thus, under direct access, they claim the carriers would be willing to pay Comsat the following: (1) The IUC, (2) any administrative costs directly related to Comsat's provision of space segment capacity and (3) Comsat's Commission-prescribed rate of return of 11.48–12.48 percent. The latter rate would include any net return earned by Comsat on its INTELSAT capital investment based on the total annual circuits actually used.[32] The proponents of direct access believe that the price represented by these three components would be well below that which Comsat currently attributes to the space segment portion of its combined tariff. They therefore maintain that as a matter of policy the Commission should adopt direct access to prevent Comsat from continuing to extract from the international carriers any payments in excess of the above costs.

22. Finally, parties supporting direct access assert that it is legal and appropriate under the INTELSAT Agreements and consistent with the purposes and objectives of the Satellite Act. With respect to the former, they assert that INTELSAT is indifferent as to the financial arrangements develped between a Signatory and domestic entities authorized to utilize INTELSAT space segment. As regards the Satellite Act, the proponents rely substantially on Section 201(c)(2), which charges the Commission to:

> insure that all present and future authorized carriers shall have *nondiscriminatory use of, and equitable access to,* the communications satellite system . . . *under just and reasonable charges,* classifications, *practices,* regulations, and other terms and conditions and *regulate the manner in which available facilities* of the system . . . *are allocated* among such users thereof.[33]

23. These parties also cite with approval Section 201(c)(7). They claim that since this provision expressly grants the Commission authority to authorize U.S. carriers to construct and operate earth stations used in connection with INTELSAT space segment,[34] it necessarily contains incidental authority for the Commission to require that Comsat unbundle its charges for space segment. They also claim that Section 201(c)(11), which authorizes the Commission to "make rules and regulations to carry out the purpose of this Act," [35] furnishes the Commission with substantive rulemaking authority to adopt direct access in furtherance of the intent of Congress as embodied in Section 102(c). In pertinent part, that section states:

> It is the intent of Congress that all authorized users have non-discriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this Act [i.e., Comsat] be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation * * * be consistent with the Federal antitrust laws.[36]

24. In sum, proponents of direct access interpret the Satellite Act as providing the Commission with the authority to oversee the financial relationship between Comsat and the carriers and to revise that relationship to provide for direct access upon a finding that such action would further the public interest.[37]

25. *Opponents.* As noted above, AT&T, Comsat and SIN oppose direct access. AT&T and SIN believe that the proclaimed advantages of direct access are illusory. They contest whether direct access should be adopted as a *quid pro quo* for *Authorized User II.* They argue that the carriers requesting direct access are merely seeking protection against the possibility that customers may choose to obtain basic transmission capacity directly from Comsat at the U.S. general purpose earth stations rather than contracting with the carriers for end-to-end service. AT&T and SIN do not view such protection as consistent with the Commission's pro-competitive policies and they caution the Commission that direct access, the operational and financial arrangements of which are unknown at this time, may lead to substantial diversions of traffic away from Comsat, with resulting increases in rates for the customers remaining with Comsat.[38] Consequently, they urge that, in reaching its conclusions, the Commission weigh the *public* benefits and detriments of direct access, and not merely its proclaimed benefits to the ISCs.

26. While AT&T opposes direct access, it nonetheless takes exception to the suggestion that it be precluded from obtaining direct access should the Commission decide to implement the policy. To do so, AT&T states, would make a mockery of the goal of competition and violate the unlawful discrimination proscriptions of the Communications Act of 1934 and the Satellite Act. AT&T finds no valid distinction to be drawn between it and the other ISCs in terms of eligibility for direct access. Accordingly, it would view any restrictive application of direct access as a "blatant form of discount that benefits a favored group." [39]

27. Comsat opposes direct access on legal and policy grounds. As to the former, Comsat argues that direct access will substantially alter its role in providing international satellite communications service, and, as such, cannot be squared with the existing statutory scheme. First, Comsat cites Section 102(c) of the Satellite Act, which provides that U.S. participation in the system be in the form of "a private corporation." Comsat maintains that this language clearly indicates congressional intent to exclude all other entities than Comsat from representing U.S. interests in INTELSAT.

28. Second, Comsat alleges that Section 305(a)(1) of the Satellite Act provides unequivocally for Comsat's exclusive participation in the ownership of the global system. It believes that by this provision and other subsections of Section 305,[40] Congress chose Comsat and Comsat alone to be the U.S. investor in INTELSAT and the U.S. supplier of space segment to other carriers and authorized entities for hire. Thus, Comsat argues that to the extent either the lease or IRU direct access options would allow for carrier investment in space segment, and rate base treatment of such investment, these approaches are vulnerable to attack on legal grounds.[41]

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[32] *See, e.g.,* HTC Comments at 16–17.

[33] 47 U.S.C. 721(c)(2) (emphasis added).

[34] 47 U.S.C. 721(c)(7).

[35] 47 U.S.C. 721(c)(11).

[36] 47 U.S.C. 701(c).

[37] For example, WUI asserts that under the IRU option, the Commission could authorize Comsat to issue INTELSAT space segment certificates as "non-voting" securities pursuant to Sections 304(a) and 201(c)(8). *See* WUI Comments at 41. Section 304(c) authorizes Comsat "to issue, in addition to the stock authorized . . . nonvoting securities . . . as it may determine" 47 U.S.C. 734(c). Section 201(c)(8) grants the Commission jurisdiction over Comsat's debt and equity financing activities. 47 U.S.C. 721(c)(8).

[38] AT&T Comments at 4–6; SIN Comments at 4.

[39] AT&T reply at 11.

[40] Other provisions cited by Comsat are Section 305(a)(2), which authorizes Comsat to "furnish" channels of communications to U.S. carriers "for hire;" Section 305(b)(2), which permits Comsat to "acquire" communications satellite facilities "by purchase;" and Section 305(b)(4), which authorizes Comsat to "contract" with authorized users for the services of the system. 47 USC Sections 735(a)(2), (b)(2), (4).

[41] Comsat also asserts that in addition to being prohibited by the Satellite Act, any transfer of its space segment investment to the rate bases of the carriers would constitute an illegal confiscation of its property without due process under the Fifth Amendment of the Constitution.

29. Third, Comsat submits that whereas Section 305 grants it exclusive ownership of the U.S. share of the INTELSAT system, the references in Section 201(c)(2) to "nondiscriminatory use of, and equitable access to" the system must be read as pertaining only to the Commission's authority to insure that all who seek to acquire INTELSAT space segment *from* Comsat are subject to the same terms and conditions. That is, were Comsat to establish a corporate subsidiary to offer end-to-end communications services to the public, the parent company, in its capacity as U.S. Signatory, would be required to offer space segment capacity to its subsidiary and to competing carriers under identical terms and conditions pursuant to Section 201(c)(2) and our *Comsat Structure* and *Authorized User II* decisions. Therefore, Comsat disputes that Section 201(c)(2) either authorizes other carriers to acquire space segment capacity directly from INTELSAT or mandates that the Commission require Comsat to offer space segment at the IUC space segment rate.

30. Comsat also objects to direct access as a matter of policy. It believes that under direct access it would be prevented from recovering all of the costs associated with the activities in which it participates as U.S. signatory to INTELSAT. According to Comsat, these activities include its participation in financial, operational and technical planning, in the evaluation of proposals for, and conduct, of INTELSAT research and development at Comsat Labs, in the planning and operation of the U.S. international earth station network, and in other activities which are geared to increasing the quality and efficiency of international satellite communications and reducing the rates of service. Comsat argues that the costs associated with these activities, including an allocated proportion of the costs of its corporate headquarters and Comsat Labs, rightfully should be borne by the ratepayer.[42] In addition, Comsat claims that direct access would not provide for the fair return on its investment to which it is statutorily-entitled in order to compensate its shareholders and attract new capital.

31. Comsat claims that in their attempt to avoid the aforementioned costs, the carriers supporting direct access have misrepresented the function of the IUC. Contrary to their assertions, Comsat characterizes the IUC as no more than an accounting device employed by INTELSAT to balance a Signatory's investment share in the system against its actual use of the system. Comsat asserts that unless its investment in INTELSAT exceeds its usage of the system, a Signatory receives no return on its INTELSAT investment from the IUC.[43] Nor does Comsat as U.S. Signatory receive through the IUC compensation for any of its own legitimate costs (as opposed to those of INTELSAT). Comsat emphasizes that the IUC represents only INTELSAT's costs, which are only a part of Comsat's total costs. Comsat asserts since it is statutorily-entitled to, and does in fact, include in its bundled tariff all costs associated with its provision of INTELSAT satellite capacity to customers in the United States, its space segment rate cannot rightfully be deemed unreasonable solely on the basis that it may be higher than the IUC rate. Therefore, Comsat contends that to the extent that direct access would prevent it from recouping the costs to which it is entitled and earning a fair return on its INTELSAT investment, direct access is inappropriate as a matter of policy.

II. Discussion

A. Overview

32. We initiated this proceeding to consider various proposals to modify the arrangements by which carriers acquire satellite capacity from INTELSAT. The thrust of these proposals is that direct access to INTELSAT capacity by carriers other than Comsat would result in the more efficient provision of international satellite service, thus reducing costs for carriers and rates for users. Our review of these proposals and the record in this proceeding leads us to conclude that direct access in the form of capitalized leases, noncapitalized leases or IRU interests would not produce significant economic savings to carriers or users. We therefore shall not at present proceed further with the direct access proposals before us. At the same time, we do not minimize the problems that the direct access proposals were designed to address. We believe, rather, that the concerns prompting the calls for direct access are better addressed through the traditional regulatory mechanism of Title II of the Communications Act. In addition, we believe that the actions we are taking today in the ongoing *Comsat Structure* and *Earth Station Ownership* proceedings should mitigate concerns regarding the costs which should properly be included in Comsat's space segment rate, thereby obviating the need for direct access. Should these alternative actions prove ineffective, however, we reserve the discretion to reconsider direct access.

B. Issue Analysis

33. Looking first at the cost issue, those filing comments in support of direct access argue that Comsat has loaded the space segment portion of its combined Tariff FCC No. 101 with costs and charges not properly allocable to its provision of space segment to its customers. Under a policy of direct access and mandatory unbundling, these parties assert, Comsat would be precluded from engaging in such conduct because the IUC would serve as the basis of measurement of the reasonableness of Comsat's space segment charges. In other words, the proponents believe that Comsat's rate for INTELSAT space segment is excessive and, since this Commission has been unable to reduce it through traditional regulatory mechanisms, we should now introduce a new device to accomplish this end. We disagree.

34. The IUC is not a measure of Comsat's cost of providing satellite circuits acquired from INTELSAT to its customers in the United States. The IUC was developed by INTELSAT to take into account the fact that INTELSAT, as a non-profit organization established by international treaty, has a unique financial structure. The IUC serves as a measure, expressed on a per-circuit basis, of the costs INTELSAT incurs in constructing and operating the global satellite system. Since 1981, INTELSAT's satellite utilization charge for full-time, voice-grade service has been $390 per month per circuit. The level of the IUC is set so as to recover amortization of capital (depreciation expense), the operating expenses of the INTELSAT system and compensation to Signatories for the use of their capital. (The rate of compensation is targeted at 14 percent per year.) The sum total of the utilization charges INTELSAT receives for its various services constitute INTELSAT's operating revenues alone.[44] The IUC is not

[42] Comsat Reply at 17–20.

[43] "If usage equals ownership share, the net payment by a Signatory equals its share (based on usage) of INTELSAT operating and maintenance expense. The Signatory must then recover these costs and other costs in its rates to customers." Comsat Comments at 17.

[44] In 1981, INTELSAT had total operating revenues of $249 million. Of this amount, $56 million (22.5%) went to cover operating expenses, $75 million (30.1%) went towards depreciation and $118 million (47.4%) constituted compensation for use of capital. Corresponding totals for 1982 were $315 million in total revenues, of which $68 million (21%) represented operating expenses, $89 million (28.2%) represented depreciation and $160 million (50.8%) represented compensation for use of capital. *See* INTELSAT 10th Annual Report, *supra* note 3, at 28.

intended to, and does not include any amount to compensate Comsat for the internal costs which Comsat incurs making satellite circuits available to U.S. customes and engaging in other activities connected with its role as U.S. Signatory to INTELSAT under the INTELSAT Agreements and the Satellite Act.

35. By March 1982, the net capital contribution by INTELSAT Signatories, including contractual commitments for various research and development and facilities planning projects, exceeded $2 billion.[45] Taking into account capital expenditures for the year of $332 million, the total net investment in the INTELSAT system exceeded $1 billion in 1982.[46] As the statutorily-authorized U.S. owner-investor in the system, Comsat must assume its pro-rata share of this investment. It does so through periodic capital payments to INTELSAT. It also, however, receives from INTELSAT reimbursement for the use of that portion of the total INTELSAT system in which it invests but does not use. In other words, Comsat receives payments from third parties who use its excess space segment capacity. The compensation it receives from this service is set by INTELSAT and included as an element of its utilization charge. It is this aspect of the IUC that has led to considerable confusion about how Comsat sets its rate for INTELSAT space segment.

36. Contrary to the assertions of some of the parties to this proceeding, the amount of compensation Comsat receives as a return on its INTELSAT investment through the IUC mechanism does not provide Comsat a full return on its total investment in INTELSAT. Under the complex financing system INTELSAT has constructed, a Signatory to INTELSAT is entitled to invest in and utilize the system, but a Signatory's ownership share does not necessarily have to equal its usage. As we have mentioned, the IUC was devised to compensate Signatories for the use of their share of space segment by third parties. Thus, the IUC rate of $390 per circuit per month, which includes a 14 percent pre-tax return, assumes economic significance for Comsat only to the extent that others utilize a portion of the system in which Comsat has invested. For example, Comsat owned 24.36 percent of the INTELSAT system in 1983; however, Comsat utilized only 21 percent of the system. This means that through the IUC, Comsat earned a return only on that portion of the INTELSAT system which it financed but did not itself use. Had Comsat's usage equalled its ownership interest, it would not have received an IUC-based return from INTELSAT, only use, on a "non-profit" basis, of its proportionate share of the services of the system.[47] Comsat is entitled, of course, to earn a return on its total investment in the INTELSAT system. This return is to be recovered through charges for the satellite circuits it makes available to its customers.[48] Threfore, Comsat includes a return element in its tariff.

37. Since it has been asserted that the carriers should be required to pay Comsat no more than $390 and a fee to cover Comsat's administrative and maintenance costs, we will now examine each of the elements in the two categories of expenses which comprise the space segment portion of Comsat's tariff to determine: (a) Whether they are properly allocated; (b) whether they would be covered by an IUC-Based charge; and (c) whether they would be eliminated or reduced under the direct access proposals before us.

38. Pursuant to basic Tariff FCC No. 101, Comsat leases full-time voice-grade circuits to carriers and other authorized users at a rate of $1125 per month. This price includes the costs both of space segment and earth station facilities. Comsat states in its pleadings that 71 percent, or $800, of its tariff price is allocable to the space segment.[49] As U.S. Signatory to INTELSAT Comsat incurs and recovers through the space segment portion of its tariff two categories of legitimate expenses. The first category consists of the two cost elements associated with Comsat's INTELSAT operational expenses: Comsat's proportionate share of depreciation expenses on INTELSAT satellites; and Comsat's proportionate share of INTELSAT's operating and maintenance expenses. The second category of expenses recovered in Comsat's space segment charge consists of three components which are unique to Comsat as U.S. Signatory: Comsat's internal operations and maintenance, research and development, and corporate headquarters expenses; compensation to enable Comsat to realize its Commission-authorized 11.48–12.48 percent post-tax return on its satellite investment; and Comsat's income tax on the return on its INTELSAT investment.

39. *Comsat's INTELSAT operational expenses.* In the NOI, we requested that interested parties explain how the two direct access proposals would be implemented. With respect to the capitalized lease option, RCA suggests that the carriers pay Comsat the IUC during the term of the lease, any administrative costs Comsat would incur in arranging for the leased facilities, and the present value of the capitalized lease. The latter, according to RCA, would be equal to "the net book value of the leased facilities at the time of the commencement of the lease, less the present value of the residual value of the facilities upon expiration of the lease." [50] In suggesting that the carriers pay the IUC for any facilities leased from Comsat, RCA is really saying that some of Comsat's total capital investment in INTELSAT would be assumed by the leasing carriers under this particular option.[51] This also implies assumption of an equal proportion of Comsat's share of depreciation of INTELSAT satellites. It is clear, however, that a sharing of depreciation expenses would in no way alter the total amount of depreciation INTELSAT takes every year.

40. As to INTELSAT's operating and maintenance expenses, these too would merely be "passed through" Comsat to the leasing carriers as an element of the IUC.[52] Again, however, the nature or level of expenses INTELSAT incurs in operating the global system would not be altered or reduced. These expenses would be separate and distinct from Comsat's own administrative and maintenance costs; i.e. those costs for which the leasing carriers would compensate Comsat through periodic payment of a "ministerial fee" as described in the NOI. Thus, while RCA acknowledges that depreciation expenses on INTELSAT satellites and INTELSAT's operating and maintenance expenses are legitimate cost elements to be shared with Comsat through payment of the IUC, RCA has not shown that the lease option set forth in the NOI would produce any cost savings in these areas.

[45] Comsat Comments at 9.

[46] INTELSAT 10th Annual Report, *supra* note 3, at 28.

[47] For a full description of the financial arrangements under which INTELSAT operates, *see* Statement of Richard R. Colino, Director General-Designate, INTELSAT, before the Senate Foreign Relations Committee, Subcommittee on Arms Control, Oceans, International Operations and Environment, Appendix No. 12 (October 19, 1983) ("Colino Statement").

[48] A relatively small percentage of Comsat's total return is recovered by Comsat from INTELSAT. But, as we have said, this is reflected in the difference between Comsat's investment share and its usage. This constitutes but 14 percent of Comsat's total investment in the system.

[49] Comsat Comments at 25.

[50] RCA Comments at 32–33. Other parties responding to our request for suggestions on the implementation of direct access merely reiterated or lent support to RCA's proposal. *See*, e.g., WUI Reply at 13–15.

[51] RCA Comments, Appendix 2, p. 1.

[52] *Id.*

41. In its comments, RCA also proposed two alternative lease options.[53] The principle distinction between these alternatives and the lease option set forth in the NOI is that under the former, the leasing carriers would not assume any portion of Comsat's investment in INTELSAT space segment.[54] Insofar as the carriers would continue to pay Comsat the IUC for the facilities leased to them, our finding that the space-segment-related expenses currently included in Comsat's tariff would not be reduced under the NOI lease option also holds true with respect to RCA's lease alternatives.

42. There is also no evidence in the record that this category of expenses can be eliminated or reduced under the IRU direct access option. None of the parties preferring the IRU to the lease option (DOD, NTIA, TRT, WUI) has suggested that the total U.S. investment in, and associated depreciation of, INTELSAT satellite facilities would be reduced, rather than shared between Comsat and those carriers electing for IRUs.[55] NOR has the provision of the IRU proposal which would require IRU-holders to "pay Comsat for its share of INTELSAT operating costs" been contested, or the level of these costs been disputed.

43. We find, therefore, that Comsat's portion of depreciation expenses on INTELSAT satellites and INTELSAT's operating and maintenance expenses are legitimate expenses which would be shared by these entities obtaining direct access on a pro-rata basis, whether such access be in the form of leases (in which case the lessees would pay Comsat the IUC for the facilities leased) or IRUs. Further, we conclude that this category of expenses, as presently included in the space segment of Comsat's FCC Tariff No. 101, would not at all be reduced under any form of direct access.

44. *Comsat's internal Signatory and related expenses and return.* As we have mentioned, the space segment portion of Comsat's tariff also includes a category of expenses unique to Comsat as U.S. Signatory to INTELSAT: Comsat's return on its satellite investment; the income tax Comsat is obligated to pay on that return; and Comsat's internal operations and maintenance, research and development, and corporate headquarters expenses. The issues before us are whether these cost elements are properly allocable to Comsat's space segment rate, whether they would be recovered under the direct access options before us, and whether any of them will be eliminated or reduced under direct access. If direct access will produce savings to carriers and users, it will be from costs relating to Comsat's (rather than INTELSAT's) activities and operations.

45. With regard to the allocation question, Congress enacted the Satellite Act for the express purpose of creating a private "for profit" corporation, subject to taxation, to represent the United States in the establishment of a commercial global communications satellite system, and to offer, "for hire," channels of communications to customers in the United States as a common carrier fully subject to the provisions of the Communications Act of 1934.[56] In the *Comsat Rate Case*, we authorized Comsat to earn an 11.48 percent return on investment, with an additional 1 percent for efficiency.[57]

46. Pursuant to the Satellite Act, Comsat is also authorized to engage in research and development in support of its currently-defined mission, and to develop plans for the technical specifications of all elements of the INTELSAT system.[58] In the *Comsat Rate Case*, we determined that a proportion of the costs of these activities may be included in Comsat's revenue requirement.[59] Moreover, Comsat has other expenses associated with its role as a Signatory (*e.g.*, maintenance of a corporate headquarters, attendance at meetings abroad, preparation of documents and position papers, briefings of the Department of State, NTIA and the Commission, compilation and dissemination of documents emanating from INTELSAT). Given the statutorily-based nature of these responsibilities, it is clear that some portion of Comsat's internal administrative, operating, maintenance, corporate headquarters and research and development expenses related to its mission properly should be allocated to the space segment portion of its tariff.

47. Proponents of direct access lease options assume that a price based on the IUC and a "ministerial fee" would enable Comsat to meet its expenses and receive an adequate return on its investment in the system, but would be lower than the space segment portion of Comsat's bundled tariff. They believe, apparently, that the IUC and "ministerial fees" would cover or reduce the Signatory and related expense category currently included in Comsat's space segment charge. Yet the levels of Comsat's pre-tax return on satellite investment should be the same under direct access as under the present tariff scheme. In either case, Comsat's charge to other carriers should depend upon the level of Comsat's total investment in INTELSAT and the appropriateness of the percentage rate of return applied to that investment.

48. All parties concede that the "ministerial fee" is meant to compensate Comsat for internal administrative and other costs related to its provision of space segment facilities, as opposed to those related to Comsat's investment in the system, including taxes. Therefore, INTELSAT's current IUC presumably would serve as the mechanism whereby Comsat would receive a return on its INTELSAT investment under the direct access lease options which have been proposed.[60] Those who expouse this view overlook, however, the crucial fact that their IUC-based payments would not provide Comsat a *full* return on its total INTELSAT investment. As we mentioned earlier, Comsat has been authorized an overall return on investment of 11.48–12.48 percent post-tax. We find the notion of a direct access lease price based upon the IUC ill-founded, insofar as it would appear to constrain Comsat to a post-tax rate of return well below that recognized by the Commission as necessary to its financial well-being.

49. Under the direct access IRU option, a carrier could in effect become an indirect investor in the INTELSAT system. Proponents of the IRU direct access option claim that under this arrangement, economies would be realized as a result a sharing of the risk of investment in INTELSAT between Comsat and the other carriers and more efficient utilization of the system.[61] Presumably, these economies would redound to the benefit of the end-user. This, however, is a matter of speculation. If the carriers investing in IRUs had costs of capital lower than Comsat's then perhaps some economies could be realized. But we doubt that the carriers' respective costs of capital would be appreciably lower than Comsat's in any event. Furthermore, there would be no guarantee that the carriers would flow-through these savings to end-users. It also appears that the magnitude of the potential reduction to users would be limited by other factors. First, even Comsat's combined earth/space segment tariff

[53] *See* para. 13, *supra*.

[54] RCA Comments, p. 35.

[55] *See*, e.g., TRT Reply at 9, NTIA Comments, *supra* note 25, at 16, 19.

[56] 47 U.S.C. Sections 701(a), 731, 735(a),(C), 741.

[57] 56 FCC 2d at 1173, 68 FCC 2d at 950–951.

[58] 47 U.S.C. 735(b)(1), (5).

[59] 56 FCC 2d at 1125.

[60] *See*, e.g., WUI Comments at 24–26; TRT Reply at 11–12.

[61] DOJ Comments at 14; TRT Comments at 12.

rate represents only a portion of an international carrier's typical cost of providing service to the public.[62] Second, while competition is an effective means of eliminating excess profits, the carriers will doubtless concede that there must be some allowance for normal profit. As a result, while IRU-direct access might help trim the cost to U.S. users of INTELSAT space segment, it is doubtful that any savings in this area could exceed a few percentage points of the total cost to U.S. users of a communications channel. Third, unlike cable facilities, the nature of the satellite medium (the variable number of antennas per satellite, the variable size of antennas and the variable density of the traffic stream handled over the antennas) makes it virtually impossible to calculate the base capacity, and hence the base price of a satellite-circuit IRU.

50. Turning to the issue of the impact of direct access on the internal operations and maintenance, corporate headquarters and research and development expenses which are unique to Comsat, the question is whether any form of direct access would reduce these expenses, and consequently Comsat's charges, in the absence of existing regulatory tools. For convenience, we will identify these as "general and administrative" ("G&A") and "R&D" expenses. On the basis of the record, we find that were we to adopt direct access, we would merely be changing the form in which these expenses would be recovered and, in the process, adding an unnecessary layer of regulation with its attendant costs. In short, these legitimate costs would be included in either the IRU price, any lease or the "minsterial fee."

51. Comsat has in recent years expanded its activities into a number of non-common-carrier, non-jurisdictional lines of business. As a consequence, the proper allocation between its jurisdictional and non-jurisdictional accounts of its common G&A expenses has become increasingly problematic. We agree with the proponents of direct access that Comsat's space segment customers should not be made to bear the costs of activities which are unrelated to the provision of jurisdictional services. Theoretically, under the "ministerial fee" of the direct access lease option or the "pro-rata corporate costs-sharing" element of the IRU option, the appropriate level of Comsat's jurisdictional G&A expenses would have to be set. Yet, no one has shown how direct access would alter or enhance the process of determining the appropriate G&A charge. That process would be exactly the same regardless of whether we decided to go forward with direct access, or subjected the G&A component of its tariff rate to regulatory scrutiny.

52. In fact, the issue of Comsat's G&A expenses is currently under review. In our companion order in the ongoing *Comsat Structure* proceeding we determine that certain categories of expenditures do not benefit its jurisdictional-service customers, and direct Comsat to remove them from its jurisdictional revenue requirement. We also refine Comsat's cost allocation formulas. These actions should lead to reductions in Comsat's space segment rate, and we intend to take whatever additional actions are necessary to remove from Comsat's jurisdictional accounts and space segment charge all inappropriate cost elements. It is clear however, that certain G&A expenditures are a legitimate cost of any carrier's business, and may properly be included in its revenue requirement. Direct access would not eliminate the need to determine the level of Signatory-related G&A expenses which properly should be borne by the users of Comsat's services.

53. Much the same is true of Comsat's internal Signatory-related R&D expenses. Here again, with the evolution of the INTELSAT organization, and the change in Comsat's role from manager and sole provider of R&D to INTELSAT to that of one of many competitive bidders for the R&D contracts let by INTELSAT, Comsat's R&D activities have taken a new direction. As Comsat has become more involved in non-jurisdictional activities, a growing portion of its R&D activities has been in support of its competitive ventures.

54. As a result, we are more carefully scrutinizing Comsat's R&D expenditures to ensure that only those which benefit its jurisdictional activities are charged to its jurisdictional ratepayers. In the *Comsat Structure* order adopted today, we direct Comsat to reallocate certain categories of R&D expenditures to non-jurisdictional accounts. We wish to emphasize, however, that Comsat is entitled to engage in a reasonable amount of R&D related to its current mission. Direct access can affect the manner in which Comsat is compensated for this R&D (i.e., as a "ministerial" payment rather than a tariff charge), but not the overall amount of such compensation.

55. In view of all of the above, we conclude that direct access in any form would not appreciably diminish any of the expense elements in the two categories of costs which comprise the space segment portion of Comsat's tariff. Were we to adopt access, at best we would merely be dividing certain fixed space segment-related costs between Comsat and others. We find very little to be gained from such action in terms of cost savings or increased efficiency. Beyond this, we are not persuaded that, apart from the other regulatory measures to which we refer in the preceding paragraphs, direct access will have any unique downward effect on the costs of the other activities in which Comsat engages pursuant to its Signatory role in INTELSAT. Put another way, direct access, in and of itself, will not produce efficiencies and cost savings in this area, the assertions of its proponents notwithstanding.

56. The premise that direct access will significantly reduce the cost to carriers and other authorized entities of INTELSAT space segment serves as the basis for the two remaining arguments in favor of direct access: that it will enable other carriers to compete with Comsat on an equal basis; and that it will prevent Comsat from subsidizing with revenues generated form its INTELSAT business any competitive subsidiary established to offer end-to-end service. These assertions are but reiterations of concerns previously raised and dismissed as premature and lacking in foundation in our *Authorized User II* decision.[63] Having determined above that the premise underlying these assertions is groundless, we would not be inclined to revisit them here. However, the U.S. Court of Appeals for the D.C. Circuit has now vacated *Authorized User II*, and denied our petition for rehearing. In its decision, the court disagreed with our competitive-impact analysis. The court remanded the case of us with specific instructions that we consider the direct access question before any implementation of a new *Authorized User* policy. In that connection, the court enumerated what it believed would be the effects of direct access upon both "intramodal" (satellite

[62] While Comsat's combined tariff rate is $1125, the carriers typically charge approximately $4000 per channel per month for voice-grade (telephone) end-to-end service. *See* Colino Statement, *supra* note 47, at Appendix No. 5, pp. 2–3. *See also* our discussion below at paras. 58–59.

[63] We stated there that none of the carriers had shown that they would be unable to compete with Comsat in the provision of leased-channel service, and hence, there was no basis for us to conclude that there would be any diversion of traffic to Comsat. We also found that, under a worst-case assumption, even were the carriers to lose all or a substantial portion of their leased-channel revenues, they would not be put out of business or rendered incapable of providing good-quality service to the customers of their other services. *See* 90 FCC 2d at 1416.

to satellite) and "intermodal" (cable to satellite) competition, and suggested that we consider these issues in passing on the merits of direct access.

57. The question of the effect of the direct access proposals before us on intramodal and intermodal competition in the international telecommunications market is complex, given the existence of firms whose size, service offerings and investment interests have traditionally dictated their behavior. In fact, it is difficult as a regulatory matter to make theoretical judgments about how such firms would respond to the various direct access alternatives under review. In reaching conclusions on the competitive impact of direct access, as directed by the Court of Appeals, we must consider the pleadings of the parties to this proceeding and the *Authorized User II* case, among other pertinent facts.

58. Looking first at intramodal competition, the court apparently accepted the argument that, absent direct access, no carrier could compete with Comsat in leasing satellite circuits to users under the revised *Authorized User* policy which we sought to implement.[64] The court reasoned that since Comsat would under our policy offer circuits to users at the same rate it offers them to carriers, no carrier could underprice Comsat and all customers would shift to Comsat. We cannot agree with this analysis. At the outset, we note that requiring Comsat's World Systems Division to offer basic transmission capacity to end-users at U.S. earth stations would not put the existing carriers into competition with Comsat. Comsat would derive the same revenues for a satellite circuit (*i.e.*, its tariff rate) whether it leased its circuits to a carrier or directly to an end-user. Rather, the carriers would compete with the end-user's own ability to configure the end-to-end service for itself. It appears that the Court of Appeals misperceived the nature of the services involved when it asserted that "Comsat's basic transmission service and the satellite leased-channel service offered by the IRC's are virtually identical."[65] In actuality, under the policy we had adopted, Comsat would have supplied only a portion of end-to-end leased-channel service: the satellite link (that portion from the earth station to the satellite). Comsat would have had nothing to do with the terrestrial end-links between the earth station and a customer's premises, or with the overseas portion of the full service, under *Authorized User II.*

59. To illustrate this point, we refer to RCA's Emergency Motion to Stay our decision in *Authorized User II* filed with the U.S. Court of Appeals for the D.C. Circuit on December 30 1982. In the following excerpt from an affidavit attached as Appendix A to RCA's motion, an executive officer of the corporation distinguishes between basic transmission capacity (to which he refers as "INTELSAT satellite service") and "through end-to-end" leased channel service:

> To provide [leased channel] communications to its customers, RCA Globcom arranges for the through end-to-end service: that is, we lease from terrestrial carriers the necessary communications lines from the customer's premises to the means of international transmission—*i.e.*, either a satellite earth station or an undersea cablehead.
>
> In addition to the foregoing responsibilities, RCA Globcom typically arranges with the foreign communications administration with responsibility at the overseas end of the leased circuit in question to arrange necessary communications lines from the foreign satellite earth station . . . to the premises where the leased circuit is to terminate.
>
> Also, in establishing a leased channel, RCA Globcom adjusts the transmision quality of the line in question to accommodate the particular type of transmission to be used and tests the circuit before turning it over to the customer. While the circuit is in operation, RCA Globcom technicians monitor it around the clock and, if a fault develops coordinate with any other connecting carriers at the U.S. and foreign points in locating, isolating and clearing the fault. . . .
>
> [I]nternational satellite services are provided by Intelsat . . . The entity designated as owner and representative to Intelsat on behalf of the United States is Comsat.
>
> [W]hen a leased circuit operated by RCA Globcom uses satellite transmission for the international leg, we arrange with and pay a terrestrial carrier (usually AT&T) its tariffed charges for the landhaul line to an earth station (which averages $600 per month for a standard voice circuit) and Comsat its tariffed international charges of $1125 a month per voice circuit for providing its earth station services and for the INTELSAT satellite service [$325 and $800 respectively, according to Comsat].
>
> *Comsat's charges to us are included in RCA Globcom's tariff rates to the customer, together with landline expenses, charges for the services we perform, an allocation of our investment in plant, and an element for our operating overhead and profit* . . . RCA Globcom's current tariff rate to the customer for a leased voice/data circuit between the United States East Coast and the United Kingdom . . . is $3710 per month. (footnote omitted)(emphasis added).[66]

60. We have quoted at length from RCA's motion to indicate the extent to which the carriers themselves have acknowledged that, contrary to the views of the Court of Appeals, end-to-end leased channel service is quite different from, and more expensive than, the basic transmission capacity service we had required Comsat to provide to all customers at U.S. general purpose earth stations under *Authorized User II.* We do not pursue this disagreement with the Court of Appeals just for the sake of argument. We do so on the basis of our knowledge of the industry and the behavior of the firms and customers in the market. Because the court does not purport to be an original fact finder and because it remanded the case to us for further consideration in light of its opinion, we must assume that it intended the Commission on remand to make our analysis of the pertinent facts, taking account of what the court has said. We do not perceive the court's mandate as foreclosing the conclusions we reach now on the basis of further analysis.

61. The Court of Appeals also apparently had an incomplete understanding of the international telecommunications market insofar as it assumed that leased-channel customers are by-and-large sophisticated and able to arrange for their own terrestrial end-links, both domestic and foreign, without recourse to the IRCs.[67] Under the policy we had adopted in *Authorized User II,* it is likely that only those customers with sufficient technical and financial wherewithal would have been able to obtain the Comsat portion directly and make their own arrangements for the terrestrial links from the earth station to their premises and for the overseas portion of the service. In much the same manner as described by RCA, it would have been necessary for end-users to complete the service by assembling the other portions of "through" service, and provide for continuous monitoring/testing arrangements, tasks which clearly would have required considerable effort and cost. Were the existing leased-channel-service carriers, who already have ongoing relationships with foreign communications entities and U.S. domestic carriers, able to package the

[64] ITT World Communicaitons Inc. v. FCC, *supra* note 8, at 44. The court stated, "In light of the leased-channel market's high sensitivity to price, intramodal competition for leased-channel business does not appear feasible under the FCC's *Authorized User II* policy." *Id* at 35.

[65] *Id.* at 44–46.

[66] Affidavit of Kenneth H. Lassig, Vice President— Finance and Teasurer, RCA Global Communications, Inc. at paras. 4–9, attached as Appendix A to RCA's Emergency Petition to Stay; *ITT World Communications Inc. v FCC, supra* Note 8.

[67] *Id.* at 34, n. 8.

elements of end-to-end service more efficiently than the customers themselves, in all likelihood these carriers would have been able to retain their leased-channel business under the policy we adopted in *Authorized User II*. Were there unable to do so, the result would have been lower cost for the end-user serving itself, not a diversion of revenues to Comsat. As we have already stated, Comsat would have obtained the same revenues whether it had leased basic transmission capacity directly to end-users or to carriers for use as in element of their end-to-end service.

62. As to our decision to allow a Comsat subsidiary to offer end-to-end service, including leased-channel service, we find that direct access similarly would not be required to preserve fair competition if the *Authorized User II* policy were retained. We determined that such a subsidiary, if established, would be required to acquire satellite services under the same tariff and at the same rates applicable to the existing carriers. The carriers would, thus, be on the same footing as a Comsat subsidiary in competing for the business of the end-user. Direct access would not alter that situation. It would not be required to prevent Comsat's competitive subsidiary from receiving preferential rates. Nor would it give the carriers any protection from anticompetitive conduct that our separate subsidiary requirement and the Section 214 process would not offer them.[68]

63. Turning to the question of intermodal competition, we continue to believe that the carriers would be able to compete with Comsat under the *Authorized User II* policy if we should decide to retain that policy. That policy would allow the carriers to decomposite their leased-channel rates and to offer separate satellite-based and cable-based rates. None of the carriers has attempted to show that it would be unable to price its cable-based lease-channel services at a rate competitive with the combination of Comsat's basic transmission capacity and customer-provided connecting arrangements, or with a rate charged by a Comsat subsidiary for a satellite-based end-to-end service. We are aware that the court disagreed with this view, apparently believing that cable circuits are more costly than satellite circuits. We, however, know of no data which support such a finding.[69] We find no reason to assume that the carriers would lose all their leased-channel customers. We note, for example, that RCA predicts a diversion to Comsat of 69.7 percent of the leased channels it currently provides to the Department of Defense (i.e., all 43 channels utilizing satellite facilities, and 33 of 66 channels utilizing cable facilities).[70] Yet DOD, the largest U.S. user of leased-channel services, accounting for more than one-third of all such services, has stated that it has no intention of shifting its traffic to Comsat, even if it could deal directly with Comsat.[71] We see no reason to doubt DOD's assertions.

64. Although the Court of Appeals focused almost exclusively on whether intermodal competition would be stimulated or inhibited by a decision to grant some form of direct access to the IRCs, presumably, if there are any economic benefits to the end-user to be derived, then all carriers should be eligible to participate. Thus it appears to us that the effect on intermodal competition of the direct access options described in the NOI would depend to a significant degree on the behavior of AT&T.[72] AT&T occupies a unique position as the major source of traffic and the major owner of cable facilities in the international marketplace. It currently utilizes 90 percent of the space segment Comsat leases to the carriers. Ineluctably, the direct access schemes set forth in the NOI would enable AT&T to exercise control over investment decisions on the U.S. end regarding both terrestrial and satellite facilities. Were AT&T to decomposite its rates, offer separate satellite-based and cable-based rates and route its traffic over the most cost-efficient medium of transmission, then direct access, by permitting AT&T to invest in both satellites and cables, would appear to promote intermodal competition, AT&T's market dominance notwithstanding. On the other hand, through acquisition of direct access capitalized leaseholds or IRUs commensurate with its usage of satellite circuits, AT&T could in effect control investment decisions relating to INTELSAT space segment, by and large removing that function from Comsat. Such a development could be detrimental to the promotion of intermodal competition, insofar as AT&T could bias investment and circuit utilization decisions in favor of one medium over the other. Moreover, unlike earth stations, the Commission would have less effective and timely means of monitoring and curbing AT&T should it attempt to engage in anti-competitive practices with respect to space segment utilization and control.[73]

65. Once again, in analyzing these issues of competitive impact independently, we are not merely adhering to a preconceived view and disregarding the analysis of the Court of Appeals. We believe the court's analysis was based on an incomplete understanding of the industry, and we are endeavoring to analyze the matter anew on the basis of more complete facts, taking full account of the court's views. We do not read the court's

[68] There is some question as to whether Comsat would choose to establish a subsidiary to offer end-to-end service. *See* Comsat Comments at 36, n. 61. Some commenters, in particular DOJ, support direct access only to the extent that Comsat would actually exercise any authority it might obtain to provide end-to-end service. DOJ Reply at 2.

[69] The Court compared the projected cost of a circuit in TAT-8, $19,000, with the annual rental of a satellite circuit, $13,500 (12 x $1125), and concluded that the satellite circuit is cheapter. One cannot compare a yearly rental of a satellite circuit to the capital cost of a cable circuit. For one thing a cable has a useful life of 25 years and its annual per circuit revenue requirement includes a number of expenses, such as maintenance and administrative. The question of how cable and satellites compare in cost is complex and depends on a variety of factors, not the least of which are the distances involved, the level of usage and the density of traffic on particular routes. Differences in service quality and reliability, as well as customer preference, also affect competition between cable and satellite-based services.

[70] RCA Comments, Appendix 1 at 5.

[71] DOD states that it is satisfied, generally, with the service that it gets from the end-to-end service carriers. According to DOD, "only those unique and critical instances of dedicated wideband international satellite links between Standard B earth stations located on military installations, where 'end-to-end' service may be tantamount to what the FCC now terms 'basic INTELSAT transmission,' are candidates for transfer to Comsat". DOD further indicates that as of the date of its statement (February 19, 1983), it had been unable to obtain foreign operating agreements to locate Standard B earth stations on overseas military installations. *See* Affidavit of Lieutenant General William J. Hilsman, Director, Defense Communications Agency, DOD, attached to Opposition of Federal Communications Commission to Emergency Motion to Stay, *ITT World Communications Inc v FCC, supra* note 8.

[72] We do not address RCA's alternative direct access lease proposals in this analysis because they do not provide for rate base treatment of direct access leaseholds as would the lease option presented in the NOI. At any rate, we have already concluded that RCA's proposals are not likely to result in cost savings to the end-user.

[73] The prospect that AT&T could exert control over investment decisions relating to INTELSAT space segment is different from the issue of how to treat AT&T in the area of earth station ownership. Under our proposed new policy of competitive independent earth station ownership, we anticipate considering, on a case-by-case basis under the application processes of Titles II and III, questions of economic harm to Comsat and the impact on other carriers raised by AT&T's position as major owner of cable facilities. As we have not made a final determination on this matter, we provide opportunity for comment in the Earth Station Ownership NPRM adopted today on whether and how we should consider AT&T's unique position in the international arena in formuating our general earth station ownership policy and evaluating specific earth station applications. *See* CC Docket 82-540, FCC 84-122 at note 24.

opinion as making definitive fact findings that bind the Commission on remand, but rather as holding that we did not take adequate account of factors the court believed to be relevant in deciding *Authorized User II*. The Commission has an independent obligation to decide both the direct access and remanded *Authorized User II* matters on the basis of our best knowledge, giving due consideration to the court's own analysis. It remains an open question whether on remand we will reissue our revised *Authorized User* policy, or some modification of that policy. There is no evidence in the record of this proceeding, however, that the revised *Authorized User* policy we originally adopted would result in the competitive harms alleged here. In the absence of such evidence, there is no basis upon which to conclude that there is a need for a remedy. We thus decline to adopt the direct access proposals before us simply on the unsupported assertion that they will foster competition, especially given uncertainties as to the market behavior of AT&T, and therefore, its ultimate impact on intermodal competition.

66. In reaching our decision we noted what appears to us an excessive emphasis throughout the record on the space segment portion of Comsat's tariff. As illustrated in the pleadings filed by RCA with the U.S. Court of Appeals for the D.C. Circuit, Comsat, as U.S. Signatory to INTELSAT, provides satellite and earth station services to authorized carriers at a rate of $1125 per month per channel of communications. Carrier users then provide the facilities necessary to transmit the signal from the earth station to end-users in the United States. In addition, they execute the operating arrangements with foreign administrations necessary to complete the end-to-end service. The typical carrier charge for a voice-grade (telephone) end-to-end service is approximately $4,000 per channel per month. Just as Comsat's rate of $1125 includes its INTELSAT costs, a carrier's $4,000 rate includes Comsats' charge. Also added to the $4,000 are the carrier's cost of providing the link between the earth station and the end-user, the costs associated with providing foreign arrangements and an allowance for a return and taxes. (The actual foreign facilities are billed separately by the PTT, although carriers occasionally pass through this bill to the customer for the PTT as a billing curtesy).

67. These facts are sobering as to the possible end-user benefit of adopting the direct access proposals under review. We have not been presented with any evidence to show that the alleged savings to be realized from these proposals, assuming, *arguendo*, that such are passed-through dollar-for-dollar by carriers to end-users, would exceed more than a few percentage points of the total end-user charge. It is thus noteworthy that for all their emphasis on the issue of the appropriate level of Comsat's space segment charge, not one of the carriers advocating direct access has submitted any information as to the dollar amounts of the reductions to be enjoyed by their end-to-end service customers were we to adopt the proposals they have endorsed.

68. Finally, we note that "direct access", in the forms proposed, could also adversely affect Comsat's ability effectively to express, promote and protect the national and foreign policy interests of the United States before INTELSAT. We are not convinced that the administrative fees the proponents of direct access are willing to pay would adequately compensate Comsat for all the activities it legitimately undertakes as U.S. Signatory. It might require significant regulatory involvement to assure Comsat's receipt of sufficient administrative fees to continue to meet its statutorily-imposed responsibilities.

III. Summary and Conclusions

69. We initiated this inquiry to determine whether, as had long been argued, a new policy of direct access would best enable other carriers effectively to compete with Comsat in the wake of the Commission's decisions in *Comsat Structure* and *Authorized User II*. We have addressed alleged benefits of direct access: (1) That it might serve to prevent Comsat from including excessive costs in its bundled tariff and from loading R&D and administrative costs properly allocable to the earth station segment to the less competitive space segment; (2) that it would prevent Comsat from engaging in cross-subsidization; and (3) that it would enable the IRCs to retain their leased-channel revenues and maintain their financial viability. We have also identified the potential adverse consequences of implementing the direct access schemes presented here. Having weighed their perceived benefits against their drawbacks, we conclude that the direct access concepts before us are too vague and their proclaimed benefits too uncertain to warrant further consideration at this time.

70. As to the issue of the appropriate level of Comsat's space segment charge, there is no evidence in the record which would lead us to conclude that the direct access proposals before us would in any manner aid in that judgment. Rather, we believe that the actions we are taking today in the ongoing *Comsat Structure* proceeding, and those we are proposing in the *Earth Station Ownership* proceeding, should enable us to determine whether Comsat's rates are cost-based. If we find that these actions are not sufficient, we may reconsider direct access or take such additional steps as are necessary, pursuant to Title II of the Communications Act of 1934.

IV. Ordering Clauses

71. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 403 (1970), that the inquiry into the above-captioned matter is terminated.

72. It is further ordered that the Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-12032 Filed 5-3-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chpt. 35).

Type: New Collection.

Title: Cable Television/Emergency Broadcast System Interface Project.

Abstract: Cable television systems represents a tremendous emergency communications resource. Results of this project will provide federal, state and local governments with information to ensure maximum use of available communications resources in time of emergency. Survey respondents consist of cable system managers, operators, and subscribers.

Type of Respondents: Individual or Households, Businesses or other For-Profit.

Number of Respondents: 7,008.

Burden Hours: 1,288.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance

Officer, Linda Shiley, (202) 287–9906, 500 C. Street SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 30, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–12052 Filed 5–3–84; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–703–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–703–DR), dated April 26, 1984, and related determinations.

DATED: April 26, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice:

Notice is hereby given that, in a letter of April 26, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage resulting from severe storms and tornadoes in certain areas of the State of Mississippi beginning on April 21, 1984, are of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, your are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Lafayette, Leflore, Tallahatchie and Yalobusha Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–12050 Filed 5–3–84; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–702–DR]

New York; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of New York (FEMA–702–DR), dated April 17, 1984, and related determinations.

DATED: April 27, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice

The notice of a major disaster for the State of New York dated April 17, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 17, 1984:

Westchester County as an adjacent county for Individual Assistance. This designation includes the City of Yonkers.

New York City for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–12051 Filed 5–3–84; 8:45 am]

BILLING CODE 6718–02–M

[Docket: FEMA–REP–5–IL–5]

Illinois Plan for Radiological Accidents (IPRA)

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local government plans, the State of Illinois has submitted its radiological emergency plans to the FEMA Regional Office. These plans provide the required offsite emergency response to an accident at the Commonwealth Edison Company's Byron Nuclear Power Station which impacts on Illinois and include those local governments near the station located in Ogle County, Illinois.

Date plans received: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. Roche, Sr., Regional Director, FEMA Region V, 300 South Wacker, 24th Floor, Chicago, Illinois 60606, (312) 353–1500.

SUPPLEMENTARY INFORMATION: In support of the Federal requirement for emergency response plans, FEMA Rule 44 CFR 350.12 (FEMA Headquarters Review and Approval) describes the procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to the Rule, the State of Illinois Plan for Radiological Accidents (IPRA) was received by the Federal Emergency Management Agency Region V.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone. For the Byron Nuclear Power Station, plans are included for Ogle and Winnebago Counties.

Copies of the Plan are available for review at the FEMA Region V Technological Hazards Branch, Natural and Technological Hazards Division, Federal Center, Battle Creek, Michigan 49016. Copies will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart 44 CFR Part 5. There are 1029 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Edward J. Roche, Sr., Regional Director, at the

above address within thirty days of this Federal Register Notice.

FEMA Rule 44 CFR 350.10 calls for a public meeting prior to approval of the plans. A public meeting was held on the State and local government plans for the Byron Nuclear Power Station on December 8, 1983, at 7:00 p.m., at the Byron High School Auditorium, Byron, Illinois.

Frank Finch,

Chief, Natural and Technological Hazards Division, FEMA Region V.

April 13, 1984.

[FR Doc. 84-12048 Filed 5-3-84; 8:45 am]

BILLING CODE 6718-01-M

FEMA Advisory Board Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: May 17, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW, Washington, DC 20472.

Purpose: Internal classified status reports of the Board's four Panels and the outcome of civil readiness exercises will be discussed. The views and recommendations of the Board will be provided to the Director of FEMA and his staff.

The Director has determined that the Board meeting should be closed to the public because discussions will involve information that is specifically authorized to be kept Secret in the interest of national defense or foreign policy and is properly classified pursuant to Executive Order.

Bernard A. Maguire,

Associate Director, National Preparedness.

[FR Doc. 84-12049 Filed 5-3-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Auburn National Bancorporation; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than May 30, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Auburn National Bancorporation,* Auburn, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Auburn National Bank of Auburn, Auburn, Alabama.

Board of Governors of the Federal Reserve Reserve System, April 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-12014 Filed 5-3-84; 8:45 am]

BILLING CODE 6210-01-M

Barclays Bank PLC, Barclays Bank International Limited; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) 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 engage *de novo* through national bank subsidiaries in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiaries will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (Press Release of March 23, 1984). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the Board will not act on the applications unless and until a preliminary charter for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they 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.

Comments regarding the applications must be received at the Federal Reserve Bank of the offices of the Board of Governors not later than May 30, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and *Barclays Bank International Limited,* both located in London, England; to engage through the following national bank subsidiaries in deposit-taking; making, acquiring or servicing consumer or mortgage loans (1–4 family dwellings only) or other extensions of credit for the company's account or for the account of others, such as would be made by a consumer finance or mortgage banking company; and to engage in performing a full range of trust services (including activities of a fiduciary, agency, advisory or custodial nature), in the manner authorized by federal or state law: Barclays Bank of Connecticut, N.A., Stamford, Connecticut; Barclays Bank of Florida, N.A., Orlando, Florida; Barclays Bank of Georgia, N.A., Marietta, Georgia; Barclays Bank of Clarkston, N.A., Clarkston, Georgia; Barclays Bank of Indiana, N.A., Clarksville, Indiana; Barclays Bank of Indianapolis, N.A., Indianapolis, Indiana; Barclays Bank of Louisiana, N.A., Metairie, Louisiana; Barclays Bank of Baton Rouge, N.A., Baton Rouge, Louisiana; Barclays Bank of Maryland, N.A., Hagerstown,

Maryland; Barclays Bank of New Mexico, N.A., Albuquerque, New Mexico; Barclays Bank of North Carolina, N.A., Raleigh, North Carolina; Barclays Bank of Ohio, N.A., Columbus, Ohio; Barclays Bank of Cincinnati, N.A., Cincinnati, Ohio; Barclays Bank of Oregon, N.A., Gresham, Oregon; Barclays Bank of Pennsylvania, N.A., Lower Burrell, Pennsylvania; Barclays Bank of Lancaster, N.A., Lancaster, Pennsylvania; Barclays Bank of South Carolina, N.A., Charleston, South Carolina; Barclays Bank of Tennessee, N.A., Memphis, Tennessee; Barclays Bank of Knoxville, N.A., Knoxville, Tennessee; Barclays Bank of Texas, N.A., Plano, Texas; Barclays Bank of El Paso, N.A., El Paso, Texas; Barclays Bank of Virginia, N.A., Virginia Beach, Virginia; Barclays Bank of of Vienna, N.A., Vienna, Virginia; and Barclays Bank of Washington, N.A., Tacoma, Washington. These activities will be conducted nationwide, except that deposit-taking will be conducted statewide from each subsidiary.

Board of Governors of the Federal Reserve System, April 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-12015 Filed 5-3-84; 8:45 am]

BILLING CODE 6210-01-M

CoreStates Financial Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding 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 bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 May 28, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreState Financial Corp.*, Philadelphia, Pennsylvania; to engage *de novo* in the origination and servicing of FHA, VA and conventional mortgage loans and second mortgage loans, nationwide, through its subsidiary, Colonial Mortgage Service Company Associates, Inc., Philadelphia, Pennsylvania.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security State Bank Shares*, Polson, Montana; to engage *de novo* in the activity of making loans to shareholders serving the state of Montana.

Board of Governors of the Federal Reserve System, April 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-12016 Filed 5-3-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Behavioral Risk Factor Surveillance Systems; Availability of Funds for Fiscal Year 1984

The Centers for Disease Control announces the availability of funds for continuing and new cooperative agreements for Behavioral Risk Factor Surveillance Systems. These cooperative agreements are authorized by section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance number is 13.283.

The objective of these cooperative agreement programs is to assist States in monitoring the prevalence of major behavioral risks associated with the 10 leading causes of premature death in the United States and, through this monitoring process, to assist in the develpment of programs designed to reduce major behavioral risks in the population and to determine progress toward achieving intervention goals. The official health agencies of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa are eligible to apply for a cooperative agreement. Applicants must establish or maintain monthly survey procedures of the major behavioral risks associated with the 10 leading causes of premature death in the United States and adhere to procedures for ensuring accurate and uniform information.

Approximately $285,000 will be available in Fiscal Year 1984 for continuing support of 20 cooperative agreements, and approximately $49,000 will be available for support of from three to five new cooperative agreements. The average award of the new cooperative agreements is expected to be $10,000, with individual awards ranging from $10,000 to $15,000. Continuing cooperative agreements will be awarded based on the applicant's demonstrated progress in implementing a Statewide behavioral risk factor surveillance system. New cooperative agreements will be awarded based upon the applicant's experience in collecting and analyzing behavioral risk factor information and the applicant's commitment to continue the surveillance system in future years with State resources contributed to the system.

Programs are funded for a 12-month budget period and a 3-year project period. Continuation awards may diminish based upon future Federal funding and the assumption of support from participating States. The funding estimates described above may vary and are subject to change due to budgetary uncertainties.

During Fiscal Year 1984, the finding criteria for new applications will be:

1. Relevance of the proposal to the scope and objectives provided in the Request for Application.

2. Soundness in describing how the behavioral risk factor surveillance system will be designed, implemented, and managed.

3. Extent of prior experience with collecting and analyzing behavioral risk factor prevalence information.

4. Anticipated impact on State or local intervention efforts.

5. Plans for assuring uniformity in information collection and designing and implementing quality control procedures.

6. Capability of the applicant to perform the tasks required for a behavioral risk factor surveillance system.

7. Appropriateness of the requested budget relative to the work proposed.

8. Commitment of the applicant to contribute personnel and financial resources to the effort.

9. Assurance that standard data items will be used and sufficient flexibility will be maintained so that additional questions of State and national interest can be employed periodically.

Funding criteria for continuation awards will be:

1. Successful implementation of a behavioral risk factor surveillance system as evidenced by:

(a) Designation of interviewing and supervisory staff or designation of a competent contractor for interviewing services.

(b) Use of a standard questionnaire.

(c) Timely collection of information.

(d) Completion of appropriate data processing activities including keypunching and error corrections.

(e) Adherence to a statistically correct sampling plan.

(f) Adherence to appropriate survey procedures including rules of replacement, refusal conversion, and monitoring or verification of interviews.

2. Demonstrated personnel and/or financial support of the system.

3. Plans to increase the sample size.

4. Demonstrated ability to reduce errors.

There will be one annual review cycle for new applications. The original and two copies of the application must be submitted on or before 4:30 p.m. (e.d.t.) on Monday, July 2, 1984, to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 107A, Atlanta, Georgia 30305.

Deadlines. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications. Applications which do not meet the above criteria are considered late applications and will not be considered for review or funding.

Continuation applications must be submitted to the above address on or before Monday, July 2, 1984. Applications are not subject to review as governed by Executive Order 12372; however, they are subject to review as governed by Regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

Information on application procedures, copies of application forms, and other material may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, at the above address, telephone (404) 262-6575, or FTS 236-6575. Technical assistance may be obtained from Gary Hogelin, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georiga 30333, telephone (404) 329-3075, or FTS 236-3075.

Dated: April 26, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 84-12073 Filed 5-3-84; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 80N-0012; DESI 50168]

Cortisporin Ointment; Drugs for Human Use; Drug Efficacy Study Implementation; Reevaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) (1) rescinds a notice of opportunity for a hearing as it pertains to a topical combination drug product containing neomycin sulfate, polymyxin B sulfate, bacitracin zinc, and hydrocortisone, (2) classifies the drug product as effective for the indication stated below, and (3) announces the conditions for its approval and marketing.

DATE: Supplements due on or before July 3, 1984.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 50168, directed to the attention of the appropriate officer named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, except request for opinion of applicability are to be sent to the address listed below.

Supplements to full new drug applications (identify with NDA number): Division of Anti-Infective Drug Products (HFN-140), Center for Drugs and Biologics (formerly National Center for Drugs and Biologics).

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN-530), Center for Drugs and Biologics.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Rm. 216, Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) reclassified certain topical anti-infective drug products for dermatologic use to lacking substantial evidence of effectiveness, proposed to withdraw approval of their new drug applications, and offered an opportunity for a hearing on the proposal. Among the drugs included in that notice were products containing neomycin in combination with a corticosteroid and products containing neomycin sulfate, polymyxin B sulfate, bacitracin zinc, and hydrocortisone. In subsequent **Federal Register** notices (47 FR 17677 and 48 FR 3416), the Director withdrew approval of those products for which hearing requests were not submitted or were later withdrawn by the manufacturers.

In a notice published in the **Federal Register** of March 28, 1984 (49 FR 11888), the Director reclassified as effective topical anti-infective combination drug products containing neomycin sulfate and a corticosteroid labeled for the treatment of corticosteroid responsive dermatoses with secondary infection. The 1981 notice of opportunity for a hearing was rescinded as it applied to those drug products. The Director has now determined that the 1981 notice of opportunity for a hearing should also be rescinded insofar as it applies to the drug product below, and the product

should be classified as effective for the treatment of corticosteroid-responsive dermatoses with secondary infection. Other drug products included in the 1981 notice that are the subject of pending hearing requests will be addressed in future **Federal Register** notices.

(Final rules amending the antibiotic drug regulations have exempted antibiotic-containing drugs for dermatologic use (45 FR 71354; 10/28/80) and, later, all classes of antibiotic-containing drugs (47 FR 39155; 9/7/82) from certification requirements. Under these provisions, approved antibiotic form 5's and form 6's are regarded as new drug applications (NDA's) and abbreviated new drug applications (ANDA's), respectively, and subject to section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The drug product listed below was being certified until it was exempted from that procedure. The monograph or regulation under which it was certified (now retained as the public standard) is shown below in parentheses following the name and address of the NDA holder.)

NDA 50–168; Cortisporin Ointment containing neomycin sulfate EQ 3.5 mg base/Gram, bacitracin zinc 400 units, polymyxin B sulfate 5000 units, and hydrocortisone 1 percent; Burroughs-Wellcome & Co., Inc., 3030 Cornwallis Rd. Research Triangle Park, NC 27749 (21 CFR 448.513c).

Conclusions

The conclusions announced in the 1981 notice regarding Cortisporin Ointment were based on data submitted up to that time in support of the product's labeled indications. The Director has reevaluated these data plus additional data submitted in response to the 1981 notice in light of comments from the American Academy of Dermatology that the clinical benefit from these products would be expected to be greatest during the early phase of treatment. On the basis of the above review, neomycin sulfate in combination with a corticosteroid was classified as effective in the **Federal Register** of March 28, 1984.

The Director has now determined that the addition of polymyxin B sulfate and bacitracin zinc to the combination product of neomycin sulfate and hydrocortisone broadens the antimicrobial spectrum with little, if any, increase in risk. Accordingly, he reclassifies the drug product named above as effective for the treatment of corticosteroid-responsive dermatoses with secondary infection. It should be noted, however, that the steroid-antibiotic combination has not been shown to provide greater benefit than the steroid component along after 7 days for treatment. The Director also rescinds the notice of September 25, 1981, as it pertains to the drug product named above, provided its new drug application is supplemented in accord with this notice to delete all indications other an the indication set forth below. If the new drug application is not supplemented, then the drug product will remain subject to the 1981 notice. Submission of a supplemental new drug application in accord with this notice will constitute a withdrawal of the hearing request previously submitted in response to the 1981 notice; no further **Federal Register** notice will be issued for this drug product.

In addition to the holder of the application specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to the drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above)

Conditions for Approval and Marketing

FDA has reviewd all available evidence and concludes that the drug product is effective for the indication listed in the labeling conditions below.

Conditions for approval and marketing. FDA is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* This preparation is in ointment form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeld to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

For the treatment of corticosteroid-responsive dermatoses with secondary infection. It has not been demonstrated that this steroid-antibiotic combination provides greater benefit than the steroid component alone after 7 days of treatment. (See "Warnings" section.)

c. The "Warnings" section contains the following statement:

Because of the concern of nephrotoxicity and ototoxicity associated with neomycin, this combination product should not be used over a wide area or for extended periods of time.

3. *Marketing status.* a. Marketing of such drug product that is now the subject of an approved or effective new drug application may be continued provided that on or before July 3, 1984, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)).

b. Approval of an abbreviated new drug application (21 CFR 314.2) must be obtained before marketing such product. The requirements for bioavailability testing are waived for topically applied preparations (21 CFR 320.22). Marketing the drug product before approval of a new drug application will subject that product, and those persons who caused the product to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 507, 52 Stat. 1050–1053 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 355, 357)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: April 26, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–12042 Filed 5–3–84; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Advisory Committee to the Director, NIH; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH, on June 1, 1984, at the National Institutes of Health, Bethesda, Maryland 20205. The meeting will take place from 9:00 a.m. to approximately 5:00 p.m. in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to a discussion of the general topic of the use of animals in research supported by NIH, including proposed revisions of Public Health Service policy on humane care and use of animals.

The Executive Secretary, Michael I. Goldberg, Ph.D., National Institutes of Health, Building 1, Room 137, Bethesda, Maryland, 301–496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information.

Dated: April 25, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–12040 Filed 5–3–84; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

[NTP–84–023; NTP–84–024]

National Toxicology Program; Fiscal Year 1984 Annual Plan

The Director of the National Toxicology Program (NTP) announces the availability of the NTP Annual Plan for Fiscal Year 1984, solicits comments on the Annual Plan, and urges all interested persons to propose chemical(s) for testing by the NTP.

Background

The National Toxicology Program develops scientific information about potentially toxic and hazardous chemicals which can be used for protecting the health of the American people and for the primary prevention of chemical-induced disease. The NTP coordinates and strengthens the Department of Health and Human Services' (DHHS') activities in toxicology research, testing, and test development/validation efforts and provides the necessary toxicological information needed by health research and regulatory agencies. Four specific goals continue to be emphasized:

- Expand the spectrum of toxicologic information obtained on the chemicals nominated, selected, and being tested;
- Increase the numbers of chemicals tested within funding limits;
- Develop, coordinate, and validate a series of tests/protocols more appropriate for regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

Currently, the NTP consists of the relevant toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; National Center for Toxicological Research, Food and Drug Administration; and National Institute for Occupational Safety and Health, Centers for Disease Control. The National Cancer Institute, National Institutes of Health, a charter agency, remains active in the program through membership on the Executive Committee.

The NTP Executive Committee provides linkage between DHHS research and regulatory agencies to ensure that the toxicology research, testing and test development activities carried out under the aegis of the NTP are responsive to the needs of those agencies and to the needs of the public. This unique and important aspect of the NTP brings together the research agencies doing fundamental biomedical research and the regulatory agencies. The governmental agencies that comprise the NTP Executive Committee are listed in the 1984 Annual Plan.

The NTP Board of Scientific Counselors provides scientific oversight of the NTP. The NTP Board advises the NTP Director and the NTP Executive Committee on scientific content, philosophy, and policy and evaluates the merit and overall quality of the science conducted in the NTP components. The members (enumerated in the 1984 Annual Plan) are appointed by the Assistant Secretary for Health of the Department of Health and Human Services.

The program segments of the NTP are grouped into two categories—toxicological research and testing, and coordinative management activities. Individual NTP scientists are identified as leaders of the major program segments and subprogram activities and serve as the focus or contact persons for their particular program activities. Program and project leaders are identified in the 1984 Annual Plan.

The development and approval of the NTP Annual Plan remains central to the effective planning, coordination, and operation of the National Toxicology Program. As NTP Director, Dr. David P. Rall (also the Director of the National Institute of Environmental Health Sciences) reports to the Assistant Secretary for Health.

The National Toxicology Program's sixth Annual Plan consists of two parts published separately: (1) "NTP Annual Plan for Fiscal Year 1984" [NTP–84–023] describes current year research, testing, methods development and validation efforts, resources and past year program accomplishments. (Table of Contents follows this announcement.) (2) "Review of Current DHHS, DOE and EPA Research Related to Toxicology" [NTP–84–024] lists chemicals being tested by DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Written or verbal comments on the FY 1984 Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, Assistant to the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, N.C. 27709 (telephone: (919) 541–3971 or FTS 629–3971).

Regarding chemical nomination, NTP urges all those interested in proposing chemical(s) for testing to do so, and at a minimum to give the rationale for the nomination and to recommend the type test(s) to be considered. In addition, it would be desirable (but not essential) to supplement each nomination with the following information, if known.

I. Chemical identification.

II. Production, use, occurrence, and analysis.

III. Toxicology.

IV. Disposition and structure-activity-relations.

V. Ongoing toxicological and environmental studies in Government, industry, and academia.

To receive the NTP Annual Plan for Fiscal Year 1984, or the FY 1984 Review of Current DHHS, DOE, and EPA Research Related to Toxicology please write or call the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, N.C. 27709 (telephone: (919) 541–3991 or FTS 629–3991).

Dated: April 27, 1984.

David P. Rall,

Director, National Toxicology Program.

Note.—All fiscal assumptions are based on the President's proposed FY 1984 budget.

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[FR Doc. 84-12041 Filed 5-3-84; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-33411, Group 176]

Florida; Filing of Plat of Dependent Resurvey

April 27, 1984.

1. The plat of the dependent resurvey of a portion of the boundaries and subdivisions of T. 16 S., R. 24 E., Tallahassee Meridian, Florida accepted January 30, 1984, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 11, 1984.

2. The dependent resurvey was made at the request of the United States Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia, 22304 prior to 7:30 a.m., June 11, 1984.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,
Deputy State Director for Cadastral Survey.

[FR Doc. 84-12045 Filed 5-3-84; 8:45 am]
BILLING CODE 4310-GJ-M

National Park Service

Intention To Negotiate Concession Permit; Jack Dennis Fishing Guide Service

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. Section 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Regional Director, Rocky Mountain Region, National Park Service, proposes to negotiate a concession permit with Jack Dennis Fishing Guide Service, authorizing it to continue to provide guided fishing trip services for the public at Grand Teton National Park, Wyoming, for a period of four (4) years from January 1, 1984, through December 31, 1987.

It has been determined that the proposed renewal of this permit does not have potential for causing significant environmental impact and therefore preparation of an environmental assessment is not required.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing Concessions 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 negotiation of a new permit. This provision in effect, grants Jack Dennis Fishing Guide Service, 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 Jack Dennis Fishing Guide Service. If Jack Dennis Fishing Gide Service, amends its proposal, then the proposed new permit will be negotiated with Jack Dennis Fishing Guide Service.

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 thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, Wyoming 83012, for information as to the requirements of the proposed permit.

Dated: April 11, 1984.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 84-12118 Filed 5-3-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(1) Parent corporation and address of principal office: General Foods Corporation (a Delaware corporation), 800 Westchester Avenue, Rye Brook, New York, (mailing address—250 North Street, White Plains, New York 10625).

(2) Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

(a) Birds Eye, Inc. (Delaware).

(b) Brisk Transportation Inc. (Delaware).

(c) Don's Prize, Inc. (Ohio).

(d) General Foods Caribbean Manufacturing Corporation (Delaware).

(e) General Foods Domestic International Sales Company Inc. (Delaware).

(f) General Foods, Inc. (Puerto Rico).

(g) General Foods Manufacturing Corporation (Delaware).

(h) General Pectin Manufacturing Corporation (Delaware).

(i) Vict. Th. Engwall & Co., Inc. (Delaware).

(j) General Foods Trading Company (Delaware).

(k) Hudson Commercial Corporation (Delaware).

(l) Italsalumi, Inc. (Illinois).

(m) Kohrs Packaging Company (Illinois).

(n) Oscar Mayer & Co. Inc. (Delaware).

(o) Oscar Mayer Export, LTD (Wisconsin).

(p) Oscar Mayer Foods Corporation (Delaware).

(q) Maxwell House, Inc. (Delaware).

(r) Quality Industrial Plastics, Co., Inc. (Delaware).

(s) Birds Eye de Mexico, S.A. de C.V. (Mexico).

(t) Franklin Baker Company of the Philippines (Philippines).

(u) General Foods Inc. (Canada).

(v) Hostess Food Products Limited (Ontario, Canada).

(w) Entenmann's, Inc. (Delaware).

(x) Entenmann's Bakery of Florida, Inc. (Florida).

(y) Entenmann's Frozen Foods, Inc. (Florida).

(z) Otto Roth & Company, Inc. (New York).

(aa) Monterey Cheese Co. (California).

(bb) O. R. Corporation (Pennsylvania).

(cc) Peacock Foods Incorporated (California).

(dd) Ronzoni Corporation (New York).

(ee) Ronzoni Foods, Inc. (New York).

(ff) Ronzoni Macaroni Co., Inc. (New York).

1. Parent corporation: Great Lakes Chemical Corporation, P.O. Box 1878, El Dorado, AR 71730.

State of incorporation—Delaware.

2. Wholly-owned subsidiaries which will participate in the operations:

a. Inland Specialty Chemical Company, Airway Avenue, Bldg. J-3, Costa Mesa, CA 92626.

State of incorporation—Indiana.

b. Hydrotech, 1850 Airport Industrial Park Drive, Marietta, GA 30062.

State of Incorporation—Georgia.

c. E/M Lubricants, Inc., Hwy 52 Bypass So., P.O. Box 2200, West Lafayette, IN 47906.

State of incorporation—Delaware.

d. Will Research Laboratories, Inc., 1407 Montgomery Township Road 805, Rt. 2, Ashland, OH 44805.

State of incorporation—Indiana.

1. The parent corporation and address of its principal office is: Guardian Industries Corp., 43043 West Nine Mile Road, Northville, Michigan 48167.

2. Guardian Transportation Corp., a wholly-owned subsidiary of Guardian Industries Corp., will provide transportation services to the Guardian Industries Corp., wholly-owned subsidiaries listed hereafter.

3. Wholly-owned subsidiaries which will participate in the operations, and their State(s) of incorporation are:

(i) Double Seal Glass Company, Inc., Incorporated in Michigan.

(ii) Glass Guard Industries, Inc., Incorporated in Massachusetts.

(iii) Guardian Glass Company, Incorporated in Ohio.

(iv) Guardian Industries Distribution Center, Inc., Incorporated in California.

(v) Guardian Industries Distribution Center, Inc., Incorporated in Georgia.

(vi) Guardian Industries Distribution Center, Inc., Incorporated in Illinois.

(vii) Guardian Industries Distribution Center, Inc., Incorporated in Kansas.

(viii) Guardian Industries Distribution Center, Inc., Incorporated in Maryland.

(ix) Guardian Industries Distribution Center, Inc., Incorporated in Massachusetts.

(x) Guardian Industries Distribution Center, Inc., Incorporated in Michigan.

(xi) Guardian Industries Distribution Center, Inc., Incorporated in New York.

(xii) Guardian Industries Distribution Center, Inc., Incorporated in Oregon.

(xiii) Guardian Industries Distribution Center, Inc., Incorporated in Texas.

(xiv) Pennsylvania Float Glass, Inc., Incorporated in Pennsylvania.

(xv) Sitelines, Inc., Incorporated in California.

1. Parent corporation and address of principal office: Sandoz, United States, Inc., 608 Fifth Avenue, New York, New York 10020.

2. Wholly-owned subsidiaries which will participate in the operations, and States of Incorporation:

Name of Subsidiary and Jurisdiction in Which Incorporated

Sandoz, Inc. (Pharmaceutical Division) (Colors and Chemicals Division) (Dorsey Laboratories Division) (Delaware).

Sandoz Nutrition Corporation (Delaware).

Northrup King Corporation (Delaware).
Zoecon Corporation (Delaware).
Sodyeco, Inc. (New York).
Rogers Brothers Seed Co. (Delaware).
Ovaltine Products, Inc. (Delaware).
Chicago Dietetic Supply, Inc. (Illinois).
Ex-Lax Pharmaceutical Co., Inc. (New York).

1. Parent corporation and address of principal office: Super Valu Stores, Inc., P.O. Box 990, Minneapolis, Minnesota 55440.

2. *Subsidiaries and State of Incorporation:*

County Seat Stores, Inc., Brooklyn Park, MN (Minnesota).
County Seat Stores, Inc., Dallas, TX (Minnesota).
J. M. Jones Company, Champaign, IL (Delaware).
Lewis Grocer Company, Indianola, MS (Mississippi).
Preferred Products, Inc., Chaska, MN (Minnesota).
Shopko Stores, Inc., Green Bay, WI (Minnesota).
SVS Trucking, Inc., Eden Prairie, MN (Minnesota).
Western Stores Division, Albuquerque, NM (Colorado).
Western Stores Division, Denver, CO (Colorado).
Divisions of Super Valu Stores, Inc.:
Anniston Division, Anniston, AL.
Bismarck Division, Bismarck, ND.
Charley Brothers Division, Greensburg, PA.
Cub Food Division, Stillwater, MN.
Des Moines Division, Des Moines, IA.
Fargo Division, Fargo, ND.
Food Marketing Division, Fort Wayne, IN.
Green Bay Division, Green Bay, WI.
Jacksonville Division, Jacksonville, FL.
Miami Division, Miami, FL.
Minneapolis Division, Hopkins, MN.
Ohio Valley Distribution, Xenia, OH.
Omaha Division, Omaha, NE.
Ryan's Division, Billings, MT.
Ryan's Division, Great Falls, MT.

1. Parent Corporation and Address of Principal Office: Winrock Enterprises, Inc., PO Box 1260, 3201 Old Jacksonville Highway, North Little Rock, AR 72115.

2. Wholly-owned subsidiaries which will participate in the operations:

Jet Stream Plastic Pipe, Inc. (State of Incorporation: Arkansas), PO Box 190, 1900 South Lincoln, Siloam Springs, AR 72761.
Planter's Lumber Company (State of Incorporation: Arkansas), 3209 Old Jacksonville Highway, North Little Rock, AR 72115.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-12074 Filed 5-3-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30202; Docket No. AB-28 (Sub-5) and Docket No. AB-43 (Sub-101)]

Seaboard System Railroad, Inc. and Southern Railway Company—Purchase and Trackage Rights—Between Maplesville and Montgomery, AL; Central of Georgia Railroad Company—Abandonment—Between Union Springs and Montgomery, AL and Illinois Central Gulf Railroad Company—Abandonment—Between Tuscaloosa and Maplesville, AL; Findings

The Commission has found that the public convenience and necessity permit Central of Georgia Railroad to abandon its line between Union Springs, AL (milepost H-374.7) and Montgomery, AL (milepost H-411.5) and Illinois Central Gulf Railroad to abandon its line between Tuscaloosa, AL (milepost 79.0) and Maplesville, AL (milepost 129.0).

Certificates will be issued authorizing these abandonments unless by May 21, 1984, the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently no later than May 14, 1984. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial asistance for continued rail service are contained at 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: April 25, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12076 Filed 5-3-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.
The title of the form.
The OMB and Agency form numbers, if applicable.
How often the form must be filled out.
Who will be required to or asked to report.
Whether small businesses or organizations are affected.
An estimate of the number of responses.
An estimate of the total number of hours needed to fill out the form.
The number of forms in the request for approval.
An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of

Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Office of the Assistant Secretary for Administration and Management
Qualifications Inquiry for Positions in the Local 12 Bargaining Unit—DL 1-1104
1225-0016; PERS-5
On occasion
Individuals or households
1,000 responses; 250 hours; 1 form

This form is required under the Department of Labor's negotiated Merit Staffing Plan for positions in the Local 12 bargaining unit to collect information by the Personnel Office from the applicant's supervisor. The information will be used by raters to evaluate outside applicants against the requirements of the vacancy to be filled.

Extension

Mine Safety and Health Administration
Hearing Conservation Plan
1219-0017
On occasion
Businesses and other for profit; small businesses or organizations
60 responses; 30 hours

Within 60 days after receiving a notice of violation for noise levels in excess of the permissible standard, coal mine operators are required to submit to MSHA for approval a plan for the administration of a continuing, effective hearing conservation program.

Permissible Equipment Testing
1219-0066
On occassion
Businesses and other for profit; small businesses or organizations
3,220 responses; 205,388 hours

Requires application for testing and approval of respirators used during entry into or escape from hazardous atmospheres; of electrically operated mining equipment; of telephone and signaling devices that may be used safely in the mines; of mobile-diesel powered equipment for noncoal mines; of dust collectors for use in connection with rock drilling in coal mines; and of mobile-diesel powered transportation equipment as permissible for use in gassy noncoal mines and tunnels.

Petitions for Modification of Mandatory Safety Standards
1219-0065
On occasion
Businesses and other for profit; small businesses or organizations
196 respondents; 7,840 hours

Requirements for a mine operator or an independent contractor to obtain interim relief from a mandatory safety standard and for a modification of a mandatory safety standard.

Signed at Washington, D.C., this 1st day of May, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-12130 Filed 5-3-84 8:45am]

BILLING CODE 4510-43-M

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the annual list is effective on May 1, 1984.

SUMMARY: The purpose of this notice is to announce a change to the annual list of Labor Surplus Areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service (Attention: TEEPA), 601 D Street, NW., Washington, D.C. 20213. Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in Labor Surplus Areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as Labor Surplus Areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as Labor Surplus Areas pursuant to the criteria specified in the regulations and to publish annually a list of Labor Surplus Areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of Labor Surplus Areas on September 29, 1983 (48 FR 44676).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a Labor Surplus Area under Subpart A. Thus, Labor Surplus Areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a Labor Surplus Area pursuant to 20 CFR 654.5(b) (48 FR 15615, April 12, 1983) and is added to the annual list of Labor Surplus Areas, effective May 1, 1984. The following addition to the annual list of Labor Surplus Areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C., on April 30, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

Addition to the Annual List of Labor Surplus Areas

May 1, 1984

Labor surplus area	Civil jurisdiction included
Louisiana: Iberia Parish	Iberia Parish.

[FR Doc. 84-12131 Filed 5-3-84; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-41; Exemption Application No. D-4030]

Grant of Individual Exemptions; Copley Investors Limited Partnership

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the

Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Copley Investors Limited Partnership Located in Boston, MA

[Prohibited Transaction Exemption 84–41; Exemption Application No. D–4030]

Section I—Exemption for the Acquisition of Partnership Properties and of Partnership Units

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through 4975(c)(1)(D) shall not apply to: (1) The initial or follow-up transfer of certain real estate investments from the general account of New England Mutual Life Insurance Company (NEL) and from Copley Management Limited Partnership (Management LP) to Copley Investors. Copley Investors is a limited partnership in which certain employee benefit plans (Participating Plans) will participate as limited partners. NEL or its affiliates will be parties in interest with respect to the Participating Plans; and (2) the acquisition by the Participating Plans of limited partnership units in Copley Investors provided that the price paid for such limited partnership units is not greater than the fair market value of the limited partnership units at the time of their acquisition by the Participating Plans. The Participating Plans' ownership in Copley Investors will be represented by ownership of Class B limited partnership units.

Section II—Exemption for the Assumption by NEL of Certain Liability of Copley Investors and for the Continuation of Certain Outstanding Mortgages

The restrictions of section 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A), through 4975(c)(1)(D) shall not apply to: (1) NEL's secondary liability for Copley Investors' obligations under stand-by interim financing commitments (the Stand-By Commitments) on two properties in which Copley Investors will have an interest and any possible funding of such commitments by NEL; and (2) the continuation of certain outstanding mortgage loans held by NEL's general account on properties in which Copley Investors will have an interest.

Section III—Exemption for Certain Transactions Involving the Management of Copley Investors

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction described below if the applicable conditions set forth in Section IV are met.

(1) *General Exemption.* Any transaction between a party in interest with respect to a Participating Plan and Copley Investors, or any acquisition or holding by Copley Investors of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the Participating Plan (together with any other plans maintained by the same employer or employee organization) in Copley Investors does not exceed 20 percent of the Class B limited partnership units (i.e. 10 percent of the total limited partnership units of Copley Investors).

(B) The party in interest is not NEL, Management L.P. or Copley Real Estate Advisors (Copley Advisors), or any of their affiliates.

(2)(A) *Acquisition, Sales or Holdings of Employer Securities and Employer Real Property.* Except as provided in subparagraph (B) of this paragraph (2), any acquisition, sale or holding of employer securities or employer real property by Copley Investors which does not satisfy the requirements of paragraphs (a)(1) of this section, if no commission is paid to NEL, any of its affiliates, or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property, and—

(i) In the case of employer real property—

(a) Each parcel of employer real property and the improvements thereon in which Copley Investors has an interest are suitable (or adaptable without excessive cost) for use by different tenants, and

(b) The properties that are leased or held for lease to others, in the aggregate, are dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither NEL nor any of its affiliates is the issuer of the security; and

(bb) If the security is a debt obligation of the issuer, either—

1. Copley Investors owns the obligation at the time the plan acquires an interest in Copley Investors, and interests in Copley Investors are offered and redeemed in accordance with valuation procedures applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by Copley Investors not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such Participating Plan and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subparagraph (2)(A) of this paragraph (a) shall be available only if, immediately after the acquisition of the employer securities or employer real

property, the aggregate fair market value of employer securities and employer real property issued by or leased to the employer (or any affiliate thereof) and held by Copley Investors does not exceed 10 percent of the fair market value of the total assets of Copley Investors as of its most recent valuation date.

(C) For purposes of the exemption contained in subparagraph (A) of this paragraph (2), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a Participating Plan by reason of a relationship to an employer of employees covered under such plan which is described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) *Special Exemptions.* The restrictions of section 406(a) and section 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to any transaction described below, if the conditions of section IV are met.

(1) *Certain Leases, Goods and Services.* The furnishing of goods and services to Copley Investors by a party in interest with respect to a Participating Plan or the leasing of any of the properties in which Copley Investors will have an interest to such a party in interest, and the incidental furnishing of goods to such party in interest by Copley Investors, if—

(A) In the case of the provision of goods or services, they are furnished to or by Copley Investors in connection with properties in which Copley Investors will have an interest;

(B) The party in interest is not NEL, Management L.P., Advisors, or any affiliate thereof; and

(C) The amount involved in the furnishing of goods and services, or the leasing of real property, in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of Copley Investors with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of Copley Investors on the most recent valuation date of Copley Investors prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation in which Copley Investors has an interest to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) *Excess Holdings Exemption for Employee Benefit Plans.* The restrictions of sections 406(a) and 407(a) of the Act shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through Copley Investors) by a Participating Plan if (1) the acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property in which Copley Investors has an interest; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of this Section are met; and (3) the applicable conditions of Section IV of this exemption are met.

(d) *Transactions with Persons Who Are Parties In Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.* The restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transaction between Copley Investors and a person who is a party in interest with respect to a Participating Plan that has an interest in Copley Investors, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, Copley Investors;

(2) The person is not NEL, Management L.P., Advisors or any affiliate thereof; and

(3) The person is a party in interest with respect to a Participating Plan, which Participating Plan's interest in Copley Investors, together with the interest(s) held by any other plans maintained by the same employer or employee organization, does not exceed 20 percent of the total limited partnership units of Copley Investors.

Section IV—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Copley Investors, NEL, or any affiliate thereof, the terms of the transaction are not less favorable to Copley Investors than the terms generally available in arm's-length transactions between unrelated parties.

(b) NEL or any affiliate thereof maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of NEL or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (c) below.

(c)(1) Except as provided in paragraph (2) of this subsection (c) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (b) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representatives of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests of the Participating Plan in Copley Investors, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (c) shall be authorized to examine trade secrets of NEL, any of its affiliates or Copley Investors, or commercial or financial information which is privileged or confidential.

Section V—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries,

controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in, any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of Copley Investors, NEL or any affiliate of NEL occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquire. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section III(a)(1) at such time as the interest of the Participating Plan exceeds the percentage interest limitation of Section III(a)(1), unless no portion of such excess results from an increase in the assets allocated to Copley Investors by the Participating Plan. For this purpose, assets allocated do not include the reinvestment of Copley Investors' earnings. Nothing in this subsection (d) shall be construed as exempting a transaction entered into by Copley Investors which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(e) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of Copley Investors as its proportionate interest in the total assets of Copley Investors as calculated on the most recent preceding valuation date of Copley Investors.

Written Comments

Pursuant to the Notice of Proposed Exemption that appeared in the **Federal Register** on February 29, 1984, the Department received one written comment which was submitted by the applicant. The applicant commented in the following areas.

In the exemption application, the applicant requested an exemption from the restrictions of section 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and section 4975(c)(1) (A) through (E) of the Code for any transactions between Copley Investors and a person who is a party in interest solely by reason of providing services to a Participating Plan or solely by reason of being related to a service provider. Although the Department has granted such relief in certain past exemptions, it declined to propose such relief in the subject exemption request. The applicant specifically maintains that an exemption for transactions involving plan service providers and related parties in interest is needed in connection with the operation of Copley Investors, and without such exemption, necessary and prudent investment transactions involving Copley Investors might be disrupted to the detriment of the Participating Plans. The applicant, as set forth below, cites three examples of transactions involving service providers or related parties in interest that could arise in connection with the operation of Copley Investors where one or more Participating Plans own more than 20 percent of the Class B limited partnership units in Copley Investors.

(a) A bank master trustee of a Plan A is prepared to provide construction financing with respect to a property in which Copley Investors has an interest. Plan A owns more than 20 percent of the Class B limited partnership units (i.e. more than 10 percent of the total limited partnership units). Therefore the general exemption (section III(a)(1)) would not apply to transactions between Copley Investors and parties in interest of Participating Plans. Even though the bank has no authority with respect to the decision to invest Plan A assets in Copley Investors, the bank would be a service provider (and a fiduciary) with respect to Plan A under section 3(14) (A) and (B) of the Act because of its role as master trustee. Thus, the loan transaction would appear to involve an extension of credit prohibited under section 406(a) of the Act.

(b) A person who is a more than 10 percent owner of a real estate joint venture in which NEL is a 50 percent or more owner offers to sell an unrelated parcel of real property to Copley Investors on terms that are advantageous to Copley Investors. The co-joint venturer of NEL might be deemed to be a party in interest with respect to the Participating Plans under section 3(14)(I) of the Act, including the Participating Plans owning more than 20 percent of the Class B limited partnership Units. Thus, without the requested exemption, the proposed sale might be deemed to involve a violation of section 406(a) of the Act.

(c) A property manager of one of the properties owned by Copley Investors wishes to sell another property to Copley Investors on terms advantageous to Copley Investors. The property manager is a party in interest with respect to all of the plans participating in Copley Investors under section 3(14)(B) of the Act and, therefore, the transaction would be prohibited under section 406(a) of the Act, unless the requested exemption is granted.

The Department notes that in the above examples the fiduciary, service provider or related parties have no authority with respect to the investment of the assets of Copley Investors. In this regard, a person who is a plan fiduciary as defined in section 3(21)(A) of the Act, is deemed to be a fiduciary only with respect to those plan assets over which it exercises or has responsibility to exercise those functions which make it a fiduciary (See 29 CFR 26-510.3-21(d)(2)). Thus, a fiduciary will be treated as a party in interest other than a fiduciary (i.e. a service provider) when it engages in a transaction involving a plan asset with respect to which it is not a fiduciary. Accordingly, the Department cannot conclude that additional relief under the self-dealing provisions of section 406(b) of the Act is required for the subject transactions.

The Department does agree with that portion of the comment which requests relief from section 406(a)(1) (A) through (D) of the Act and section 4975(c)(1) (A) through (D) of the Code. In considering relief in this area, however, the Department notes that Participating Plans which own a significant portion of the limited partnership units in Copley Investors may be in a position to improperly influence decisions of the management of Copley Investors. While the Department has incorporated in new section III(d) of the grant, exemptive relief from section 406(a)(1) (A) through (D) of the Act and section 4975(c)(1) (A) through (D) of the Code for transactions with persons who are parties in interest with respect to a participating plan

solely by virture of being certain service providers or certain affiliates of service providers, such exemptive relief, however, is limited only to parties in interest of a Participating Plan where such participating Plan's interest in Copley Investors does not exceed 20 percent of the total limited partnership units in Copley Investors. This limitation is consistent with that which is imposed in Part I(e) of Prohibited Transaction 84–14 ("the QPAM exemption", 49 FR 9494). The Department wishes to stress the importance of diverse ownership such that no one Participating Plan or its parties in interest can dictate the character or terms of specific transactions. In this regard, the Department stresses that, generally, diversification of interest holders is an important factor in decisions by the Department to propose and grant exemptive relief in this area.

The applicant notes that in paragraph 5 of the Summary of Facts and Representations the term "Accredited Investors" is defined. The applicant represents that such definition as set forth by the applicant in the notice of pendency is not totally consistent with the definition contained in the final private placement offering. The applicant requests that the term "Accredited Investors" be redefined in the final exemption as "any qualified Plan and any tax exempt organization described in section 501(c)(3) or Section 511(a)(2)(B) of the Internal Revenue Code of 1954, as amended (the "Code"), which has total assets in excess of $25,000,000. In addition, no Qualified Plan or any investor described in Section 511(a)(2)(B) of the Code that is not also described in Section 501(c)(3) of the Code will be permitted to purchase Units for an aggregate amount exceeding 20% of its net worth. Each subscriber will be required to make various representations in the Subscription Agreement." The Department acknowledges this change in the definition of "Accredited Investors" and incorporates such change in the grant.

The applicant further requested that for clarification certain changes be made concerning the following sections of the notice of pendency. Section II(1) of the notice of pendency which in part, reads "two properties which will be owned by Copley Investors" should read "two properties in which Copley Investors will have an interest" and section II(2) which states "mortgage loans held by NEL's general account on certain of the Investments" should read "mortgage loans held by NEL's general account on certain properties in which Copley Investors will have an interest." Similarly, sections III(b)(1) and III(b)(1)(A) which currently refer to "properties" should read "Properties in which Copley Investors will have an interest." The Department acknowledges these changes and incorporates such changes in the grant. The applicant has requested that the Department clarify that a Participating Plan, or plans related through common sponsorship may acquire or hold more than 20 percent of the Class B Units. A statement indicating otherwise, that was included in paragraph 5 of the Summary of Facts and Representations was incorrect. Nonetheless, as determined by section III(a)(1) and section III(d), parties in interest of Participating Plans holding in excess of 20 percent of the Class B Units may have curtailed relief from the proscriptions of section 406(a) and 406(b)(2) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 29, 1984 at 49 FR 7468.

For Further Information Contact: Richard Small of the Department, telephone (202) 523–7222. This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 1st day of May, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84–12128 Filed 5–3–84; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4340, et al.]

Proposed Exemptions; Middlewest Freightways, Inc., Retirement Trust et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Middlewest Freightways, Inc., Retirement Trust (the Plan), Located in Louisville, Kentucky

[Application No. D–4340]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continuation, past June 30, 1984, of a lease (the Lease) of certain improved real property (the Louisville Property) by the Plan to Middlewest Freightways, Inc. (Middlewest), provided the terms and conditions of the Lease are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 64 participants and total assets of $2,525,155 as of June 30, 1983. The trustee of the Plan and decision-maker with respect to Plan investments is Liberty National Bank and Trust Company (Liberty) of Louisville, Kentucky.

2. Middlewest, which operates a trucking terminal in Louisville, Kentucky, is a wholly-owned subsidiary of Falls City Industries, Inc. (Falls City). Middlewest's board of directors is composed of three officers of Falls City and two officers of Middlewest. Falls City acquired all of the stock of Middlewest on January 1, 1978. Prior to that time, National Industries, Inc. (National Industries), a publicly-held corporation held all of the stock of Middlewest.

3. Falls City's relationship with Liberty spans a fifty-year period. During this time, Liberty has acted as a depositary for Falls City funds in the form of checking accounts and it has assisted Falls City in investing excess cash in short term obligations, certificates of deposit and other financial instruments. As of October 24, 1983, Falls City had $44,199 on deposit with Liberty. As of June 30, 1983, Liberty had total deposits of $1,051,176,000. In 1978, Liberty made a loan in the amount of $3 million to Falls City. The loan was repaid in full on January 31, 1979.

Liberty has also served as trustee of certain plans established by Falls City, including the Plan. Moreover, the former and present chairmen of the board of directors of Falls City serve on the board of directors of Liberty. These individuals collectively own 10,065 shares of Liberty stock; Liberty has 2,697,225 shares of issued and outstanding stock. Neither man has participated in the decision-making process regarding the proposed transaction described in detail below.

4. During 1963 and 1964, the Plan and Middlewest entered into written leases (the Leases) of two parcels of land located at 1660 West Hill Street, Louisville, Kentucky and 1625 East 13th Street, Wichita, Kansas (the Wichita Property). Both parcels were acquired from unrelated parties. The Plan paid $81,000 for the Louisville Property and $30,314 for the Wichita Property. The Plan then leased the property to Middlewest for use as trucking terminals. The Leases were to run for a twenty-year term with each parcel leased for $1,500 per month. The Leases gave Middlewest a ten-year renewal option upon the same terms and conditions. Middlewest also agreed to use the Wichita and Louisville Properties for activities associated with trucking. Further, Middlewest agreed to repair, maintain and insure the premises and pay all related expenses and utilities. On March 31, 1979, the Plan sold the Wichita Property for $65,000 to an unrelated party.

5. An exemption is requested to allow Middlewest to continue leasing the Louisville Property from the Plan.[1] The Lease will be of five years' duration and will commence upon the granting of the exemption. The monthly rental for the Lease will be $1,500. Middlewest will be given an opportunity to extend the lease for three consecutive one-year terms.[2] At the expiration of the five-year term, the Louisville Property will be appraised at its fair rental value. Any extension of the Lease will require a rental payment equal to the property's fair market value at that time. As it has done previously, Middlewest will pay all expenses related to the leasing arrangement.

6. On July 15, 1983, Mr. Robert W. Moore (Mr. Moore), an independent appraiser affiliated with Harry K. Moore and Son Realtors of Louisville, Kentucky, placed the fair market value of the Louisville Property at $140,000. In an addendum to the appraisal dated August 23, 1983, Mr. Moore determined that the fair rental value of the Louisville Property was $1,350 per month.

7. Liberty will serve as the independent fiduciary to the Plan with respect to the proposed tranaction. Liberty represents that it has reviewed the terms of the Lease, examined Mr. Moore's appraisal of the Louisville Property including his addendum to the appraisal, personally inspected the site on which the property is located and has maintained photographs of the property in its files. After considering all the alternative courses of action for the Plan with respect to the Louisville Property,

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[1] Although the exemption application states that the prior leasing of both parcels of real property as well as the continued leasing of the Louisville Property have complied with the terms and conditions of section 414(c)(2) of the Act, the Department expresses no opinion on whether this provision has been met.

[2] According to the exemption application, the rent paid by Middlewest to lease the Louisville Property has not been increased. Several reasons are attributed to this fact. The application explains that the deregulation of the trucking industry has had an adverse economic impact on older trucking terminals such as Middlewest thereby affecting their value. In addition, the application states that a sewer explosion occurring two years ago under the streets on which the Middlewest terminal is located has resulted in a diminution in value of the Louisville Property. The application further states that the Louisville Property is not in proximity to an interstate highway and this factor has affected its value.

Liberty believes the continuation of the Lease under the proposed rental terms is the most appropriate course of action to take. Liberty thinks the continued leasing of the Louisville Property would be in the best interests of the Plan's participants and beneficiaries because it would ensure that the property would be properly utilized inasmuch as the rental amount during the initial five year term of the Lease would be $1,500 per month, and the rent to be paid during each renewal period would reflect the fair market rental value for the Louisville Property as determined by an independent appraiser.

In addition, Liberty thinks a sale of the Louisville Property to an unrelated party would operate to the detriment of the Plan and its participants and beneficiaries because of the depressed business conditions in the trucking industry and the physical layout and restrictions of the trucking terminal comprising the Louisville Property. Liberty further explains that the Louisville Property as an asset of the Plan amounts to only six percent of the Plan's assets and as such represents a small percentage.

As the independent fiduciary, Liberty will monitor the terms of the Lease and ensure that the rent is collected, taxes are paid and proper amounts of casualty and liability insurance are maintained. Liberty will also conduct a physical inspection of the Louisville Property at least once a year. In the event the Employer elects to exercise its option to renew the Lease, Liberty will approve the renewal. Further, Liberty will see that the rent is adjusted at the end of the fifth year of the Lease as well as after each renewal period to reflect the fair market rental value of the Louisville Property.

6. In summary, it is represented that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The interests of the Plan under the Lease will be protected by Liberty as an independent fiduciary; (b) the Plan will receive rent that will be based on the fair market rental value of the Louisville Property as determined by an independent appraiser; and (c) Middlewest will repair, maintain and insure the Louisville Property as well as pay all utility and related expenses.

Notification of Interested Persons: Notice of the proposed exemption will be given to all interested persons within 30 days of the publication of the proposed exemption in the Federal Register. Comments and hearing requests are due 60 days from the date of publication of the proposed exemption in the Federal Register.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

First Federal Savings and Loan Association of Toledo, Amended and Restated Retirement Income Plan (the Plan), Located in Toledo, Ohio

[Application No. D-4344]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of certain mortgages to the Plan by First Federal Savings and Loan Association of Toledo (the Employer) and to the guarantee by the Employer to repurchase any mortgages which are in default and the repurchase by the Employer of such mortgages, provided that the terms of the transactions are not less favorable to the Plan than those obtainable an arm's length transaction with an unrelated person.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire 5 years after the date of grant. Should the Employer wish to continue to sell mortgages to the Plan beyond the 5 year period, the Employer may submit another application for exemption. Repurchase of mortgages by the Employer may take place after the 5 year period provided the mortgages were purchased by the Plan during the 5 year period.

Summary of Facts and Representations

1. The Plan had 222 participants as of June 1, 1983 and assets of approximately $4.5 million. The Plan's investment decisions are made by the Employer.

2. The Employer, in a typical year, issues 1,954 new mortgage loans and has approximately 16,210 mortgages in its portfolio. The Employer in compiling its mortgage portfolio uses the following criteria:

(a) The credit record of the borrower;

(b) Verification of borrower's employment or source of income;

(c) Financial statement of borrower;

(d) Ratio of mortgage payments to borrower's income and assest;

(e) Requiring that the borrower be a particularly good credit risk, the property offered as security to be especially attractive from the standpoint of value and continued marketability, or that the loan presents a lower than usual loan to value ratio;

(f) The borrower must maintain casualty insurance in an amount satisfactory to cover the amount of the mortgage;

(g) The amount of the mortgage is not to exceed 80% of the value of the secured property;

(h) Only first mortgages are available; and

(i) All properties have an appraisal conducted by a skilled, experienced appraiser.

3. The Employer proposes to sell certain of the mortgage notes it originates to the Plan. The primary type of mortgage intended for purchase is residential, however, should a particularly attractive commercial mortgage be available it will also be considered. The applicant represents that no more than 20% of the Plan's mortgage portfolio will be in commercial mortgages. The purchase price for the mortgages will be equal to their fair market value at the time of sale. The Employer represents that it will receive no financial benefit from the sale to the Plan. No costs of transfer will be charged to the Plan and the Employer shall service the mortgage account free of any and all charges for such service.

4. The selection of mortgages will be made by an independent fiduciary, educated, trained and experienced in real estate and mortgage matters (see representation 6). Under no circumstances will the independent fiduciary permit, nor will the Plan accept, any mortgage if the borrower is a party in interest with respect to the Plan. Prior to any selection of mortgages, the independent fiduciary will familiarize himself with the investments of the Plan as well as the Plan's liquidity requirements. The applicant represents that even though the independent fiduciary shall carry no responsibility for the overall investment scheme of the Plan, he will investigate and satisfy himself as to the need and appropriateness of such a mortgage investment each time a transaction is contemplated.

5. The total dollar value of mortgages purchased from the Employer will not exceed at any one time 50% of the aggregate carrying value of the Plan's assets with no more than 5% in any one property and in any one borrower. To the extent possible, the mortgages purchased will be geographically and demographically diversified within the area served by the Employer. In

addition, the Employer will agree, in writing, to repurchase any mortgage that is in default for more than three months as well as to repurchase any mortgage as needed to provide liquidity for the Plan.

6. Mr. Samuel A. Marsico of Toledo, Ohio and Mr. Howard W. Bartels of Sylvania, Ohio have been appointed to be the independent fiduciaries (the fiduciaries) on behalf of the Plan. The fiduciaries have no relationship with the Employer or the Plan. The fiduciaries represent that they were advised by legal counsel with regard to their duties, liabilities and responsibilities under the Act and that they are fully conversant with such responsibilities. The fiduciaries represent that they were both involved in the banking industry for more than 20 years and have substantial backgrounds in transactions of this type.

In selecting any mortgage for purchase by the Plan from the Employer, the fiduciaries will determine that the proposed transactions are at least as favorable to the Plan as those which the Plan could receive in the same type of transaction with an unrelated party. The fiduciaries will make all final decisions with regard to which mortgages are purchased by the Plan. In addition, the fiduciaries will monitor all formerly purchased mortgages, including the servicing of the mortgages, and will take any steps necessary to enforce the rights of the Plan.

In determining which mortgages will be purchased by the Plan, the fiduciaries will use the following criteria:

(a) Mortgages selected for the Plan will be at least one year old and have an established record of timely payments;

(b) Only first mortgages will be considered for purchase by the Plan;

(c) Only those mortgages where the amount of the loan does not exceed 80% of the fair market value of the property as indicated by the original appraisal will be considered;

(d) A visual inspection of the underlying real estate will take palce to assure that there has been no substantial waste or other change decreasing the market value of the property;

(e) An enforceable hazard insurance policy covering the property in an amount at least equal to the current outstanding balance of the mortgage must be in existence;

(f) Mortgages purchased by the Plan will be with recourse against the Employer; [3]

[3] The Plan will receive the higher of: (1) The current fair market value; or (2) the outstanding principal balance plus accrued interest for all mortgages repurchased by the Employer.

(g) Interest rates on any mortgages purchased for the Plan will equal or exceed the current market rates available for similar investments; and

(h) The original loan application and record for any mortgage considered will be reviewed to determine that there has been no substantial change in the position of the borrower.

(7) In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The fiduciaries will decide which mortgages to purchase;

(b) No more than 5% of the Plan's assets will be invested in any one mortgage loan nor will more than 50% of the Plan's assets be invested in mortgage loans;

(c) The Employer will guarantee to repurchase any mortgage loan which is in default over 3 months; and

(d) The exemption is temporary, expiring 5 years from the date of grant.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Morgan Guaranty Trust Company of New York (Morgan), Located in New York, New York

[Application No. D-4546]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

I. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, be reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply effective September 6, 1983, to:

A. The use of assets of the U.S. Steel Corporation Plan for Employee Pension Benefits (the USS Plan), the General Motors Hourly-Rate Employees Pension Plan and the GM Frigidare Special Pension Plan (the Hourly Plan), and the General Motors Retirement Plan for Salaried Employees (the Salaried Plan) to fund a construction loan (the C Loan) to South Street Seaport Limited Partnership (SSSLP), an unrelated party, which will use the C Loan proceeds in part to repay interim loans (the I Loans) originated by the Chase Manhattan Bank (Chase) and Citibank, N.A. (Citibank), parties in interest to the USS Plan, the Hourly Plan and the Salaried Plan (the Hourly Plan and the Salaried Plan hereinafter collectively referred to as the GM Plans);

B. The use of assets of the USS Plan and the GM Plans to fund a permanent loan (the P Loan) to SSSLP, in part, through the direct purchase from Chase and Citibank of their notes and interests in the mortgages securing that portion of the C Loan funded by Chase and Citibank; and

C. Until the earlier of the retirement of the C Loan or December 31, 1985, any transaction between either Chase or Citibank and employee benefit plans (the Collective Plans) participating in the Commingled Pension Trust Fund (Special Situation Investments—Real Estate) (the SSI-RE Fund) maintained by Morgan to which such restrictions or taxes would otherwise apply merely because Chase or Citibank is a party in interest to the Collective Plans solely due to servicing the C Loan.

II. The exemption set forth in section I above shall not apply unless the following conditions are met with regard to each transaction:

A. Each transaction has been or will be negotiated, approved, and, in an ongoing transaction, monitored by Morgan or another fiduciary of the USS Plan, the GM Plans and the Collective Plans (collectively, the Investor Plans) who is unrelated to the party in interest dealing with the investor Plans; and

B. Each transaction has been and/or will be effected on terms as favorable to the Investor Plans as those obtainable with unrelated parties.

Effective Date: If the proposed exemption is granted, it will be effective September 6, 1983.

Summary of Facts and Representations

1. Currently, the GM Plans have approximately 900,000 participants and $15,000,000,000 in assets, the USS Plan has approximately 225,000 participants and $7,000,000,000 in assets, and the SSI-RE Fund [4] has approximately 3,000,000 participants in about 200 participating Collective Plans and $590,000,000 in assets. Morgan is an investment manager for a portion of the assets of the GM Plans and trustee of the SSI-RE Fund, and, in such capacities, makes investment decisions for the GM Plans and the SSI-RE Fund. Morgan is also agent for the USS Plan in which capacity Morgan seeks out and recommends investments to the United States Steel and Carnegie Pension Fund, Inc., the trustee of the USS Plan.

[4] The Bell System Pension Plan and the Bell System Management Pension Plan (collectively, the Bell Plans) and the GM Plans as of April 30, 1983, had interests in the SSI-RE Fund exceeding 5 percent of the total of all assets of the SSI-RE Fund.

2. The Rouse Company (Rouse), in conjunction with the South Street Seaport Museum (the Museum), the City of New York (the City), and the State of New York (the State), is redeveloping the South Street Seaport Historic District (SSSHD) on the East River waterfront in New York City. The redevelopment will provide an integrated complex of commercial, cultural and waterfront activities set within an historic seaport theme. The redevelopment is supported in part by funds provided by an Urban Development Action Grant made by the United States Department of Housing and Urban Development and by funds provided by the City and the State.

Seaport Marketplace, Inc. (SMI), a second tier wholly owned subsidiary of Rouse, is developing the retail portion of the redevelopment (the Project) which will consist of shops and eating places similar in concept and appeal to Faneuil Hall Marketplace in Boston and Harborplace in Baltimore, both of which projects were also developed by Rouse and its affiliates. At the time of the C Loan, development responsibility for the Project was assumed by SSSLP, a Maryland limited partnership of which the sole general partner is SMI and the limited partners are all corporations which are either wholly owned subsidiaries of Rouse or are affiliated with Rouse. Neither SSSLP nor its general and limited partners have a party in interest relationship with the USS Plan, the GM Plans or any Collective Plan having an interest of more than 5 percent of the assets of the SSI-RE Fund.

The Project, which will be completed in three phases, will contain approximately 250,000 square feet of gross leasable retail space located within a four-block area of the SSSHD, known as the Museum Block, the Market Block, the Schermerhorn Row Block and the Telco Block, and on a new pier extending into the East River, known as Pier 17.

SMI will sublease the portions of the Project located on the Museum, Market and Schermerhorn Row Blocks, and Pier 17 under a sublease (the Marketplace Lease) from South Street Seaport Corporation, a New York not-for-profit corporation wholly owned by the Museum, as sublessor, which in turn will have leased those portions of the Project and other premises under a lease from the City, as primary landlord. The Marketplace Lease will have a primary term extending to December 31, 2031, and options to extend the term for two periods, the first for 21 years to December 31, 2052, and the second for 20 years to December 31, 2072.

SMI will lease the portions of the Project located on the Telco Block under a lease (the Telco Lease) from Resnick Water St. Development Co., a New York limited partnership the sole general partner of which is Marburt Holding Corp., a New York corporation closely held by Jack and Burton P. Resnick, and the limited partners of which are individuals, trusts or other entities related to or closely held by or for the principals of the general partner and their employees and business associates. The Telco Lease will have a term extending to December 31, 2072.

3. Chase and Citibank have pre-existing party in interest relationships with the GM Plans and the Bell Plans as a result of providing services to them. There was no party in interest relationship prior to the funding of the C Loan between the USS Plan and Chase or Citibank. However, as a result of the servicing of the C Loan, as more fully described in item 8 below, Chase has and Citibank may become a party in interest to all the Investor Plans and, thus, to all the Collective Plans as well.

Chase and Citibank, acting in their individual corporate capacities and using their own funds, made the I Loans totalling approximately $15,000,000 to finance the preliminary development and construction of the Project pending the closing and initial funding of the C Loan. SSSLP used the proceeds of the C Loan, in part, to repay the I Loans.

4. Morgan, acting on behalf of the Investor Plans,[5] has issued a commitment to provide financing for the Project consisting in part of 50 percent of the $90,000,000 C Loan. Chase and Citibank will each also fund a portion of the C Loan. The initial funding of the C Loan took place on September 6, 1983. As of January, 1984, a total of $44,800,000 of the C Loan had been funded. The following table reflects each investor's share in the C Loan:

[Percent/dollars]

SSI-RE Fund	20.833	18,750,000
GM Plans	16.667	15,000,000
USS Plan	12.5	11,250,000
Chase	27.778	25,000,000
Citibank	22.222	19,999,800
Total	100	90,000,000

The C Loan, which has a maturity date of December 31, 1985, is secured by mortgages on certain leasehold interests of SMI and SSSLP in the Project, and by a guaranty of Rouse. The interest rate on that portion of the C Loan made by the Investor Plans is 17% per annum and the interest rates for the Chase and Citibank portions are variable rates and are determined based on calculations involving certificates of deposit rates.[6]

5. In order to insulate the Investor Plans from liability with regard to transactions involving the Project, Pier 17 Realty Holding Company, Inc. (PRHC), a New York not-for-profit corporation and tax exempt feeder corporation under section 501(c)(2) of the Code, was created. PRHC is used to impose a corporate entity between the Project and the Investor Plans and others [7] participating in the transactions described herein.

PRHC is a conduit which will hold title to property, i.e., mortgages and leasehold interests, collect the income therefrom and turn over such income to the Investor Plans and, in some situations, to the PR Fund and the PH Fund. The assets of the Investor Plans used for the C Loan have been or will be invested in PRHC under building loan bonds and subventions issued or to be issued by PRHC, which bonds will provide the same rate of return as the C Loan and which subventions will channel through any other income derived from the C Loan investment.

The directors and officers of PRHC are all officers of Morgan, which provides all record keeping and other administrative services required by PRHC. Neither Morgan nor its officers receive any additional compensation by reason of the record keeping and other administrative services provided to PRHC or by reason of service as officers and directors of PRHC. Morgan's sole compensation with respect to investments in the Project by the Investor Plans is its investment management fee,[8] which is not

[5] No relief is being provided for the investment by the SSI-RE Fund in the transactions discussed in this notice of pendency of an exemption beyond that available in Prohibited Transactions Exemption 80-51, 45 FR 49709, July 25, 1980, a class exemption providing relief for certain transactions engaged in by bank collective investment funds.

[6] Morgan, which negotiated the interest rate for the Investor Plans, deems the 17% fixed interest rate for the Investor Plans to be more protective of the Investor Plans than a fluctuating rate. The fixed rate has resulted in substantially higher returns to the Investor Plans than the fluctuating rates on Chase's and Citibank's shares of the C Loan have given to them.

[7] The Pooled Investment Fund of the Presbyterian Hospital in the City of New York (the PH Fund) and the Petroleum Research Fund created by Shell Oil Company, Inc. et al (the PR Fund) are participating in the P Loan. Neither the PH Fund nor the PR Fund are employee benefit plans subject to the Act.

[8] No exemptive relief is being provided for Morgan's receipt of investment management fees beyond that which is available under section 408(b)(2) of the Act.

calculated at a higher rate by reason of Morgan placing the Investor Plans in the Project investments. Furthermore, Morgan receives no compensation as a broker or otherwise for placing or finding the Project investments.

6. Morgan, acting on behalf of the Investor Plans, the PR Fund and the PH Fund, also committed to provide permanent financing for the Project consisting of the P Loan in the amount of $89,500,000, and a $500,000 lease assignment and leaseback transaction (the Leasehold Transaction) which is described in item 7 below. The assets of the Investor Plans, the PR Fund and the PH Fund used for the P Loan will be invested in PRHC under permanent loan bonds and subventions to be issued by PRHC, which bonds and subventions will provide the same rate of return as the P Loan and will channel through any other income derived from the P Loan investment. The P Loan will be allocated as follows:

[Percent/dollars]

SSI-RE Fund	45	40,275,000
GM Plans	33⅓	29,833,333
USS Plan	16⅔	14,916,667
PR Fund	3⅓	2,983,333
PH Fund	1⅔	1,491,667
Total	100	89,500,000

The P Loan, which is secured by mortgages on certain leasehold interests of SSSLP in the Project, will mature 30 years from the date on which the initial funding thereof occurs. The P Loan will have a basic interest rate of 11¼% per annum, if earned from the Project. Basic interest not earned in a particular year accumulates and is paid in subsequent years when earned or out of the insurance, condemnation, financing or sale proceeds from the Project. During the first seven years of the P Loan, Rouse will guaranty 10% of the 11 ¼% basic interest rate. There will also be additional interest for each year equal to 60% of the cash flow of the Project until the basic and additional interest and the basic rent, as more fully described in item 7 below, equals 12% of the sum of the principal balance of the P Loan and the purchase price of the Leasehold Transaction, plus 50% of the remaining cash flow of the Project for such year. In addition, there will be supplemental interest equal to a share of any insurance, condemnation, financing or sale proceeds with respect to the Project ranging from 60% to 50% based upon a three year moving average of the return on the P Loan.

In order to avoid duplicate payment of a significant mortgage tax which would be necessary if new notes and mortgages are issued to secure the P Loan, Chase and Citibank will sell their interests in the C Loan to PRHC and assign to it Chase's and Citibank's notes and their interests in the mortgage securing the C Loan. PRHC will then convert all the notes and mortgages securing the C Loan to the P Loan.

7. At the time the first funding of the P Loan occurs, SMI will assign its leasehold interests in the Project to PRHC in consideration of a purchase price of $500,000. This Leasehold Transaction will be allocated on the same percentage basis as the P Loan, as reflected in the following table:

[Percent/dollars]

SSI-RE Fund	45	225,000
GM Plans	33⅓	166,667
USS Plan	16⅔	83,333
PR Fund	3⅓	16,667
PH Fund	1⅔	8,333
Total	100	500,000

SMI's leasehold interests to be assigned to PRHC constitute its interest as a tenant under the Marketplace Lease and the Telco Lease and its interest as initial lessor to SSSLP under a sublease (the Sublease). Upon consummation of the Leasehold Transaction, therefore, PRHC will be the lessor and SSSLP the lessee under the Sublease.

The Sublease will be for a term of 30 years with a possible 18 year, 11 month renewal. It will be an absolutely net lease requiring SSSLP to pay all rent due under the Marketplace Lease and the Telco Lease and all taxes, insurance and other expenses of leasing, constructing and operating the Project and to observe and perform all the terms and conditions of the Marketplace Lease and Telco Lease required to be observed and performed by SMI.

Upon assignment of the Sublease to PRHC, the base rent payable by SSSLP will be 11¼% per annum of the purchase price of the Leasehold Transaction, if earned from the Project. Base rent not earned in a particular year accumulates and is paid in subsequent years when earned or out of the insurance, condemnation, financing or sale proceeds of the Project. Rouse will guarantee 10% of the base rent for the first seven years of the Sublease. The Sublease also provides that, effective upon; and continuing after, the payoff of the P Loan, there will be contingent rent payable under the Sublease in each year equal to 45% of the gross revenues of the Project for each year, not to exceed 60% of the cash flow of the Project for such year, until the basic rent and contingent rent paid for such year equal 12% of the purchase price paid for the Leasehold Transaction, plus 50% of the remaining cash flow of the Project for such year.

The assets of the Investor Plans, the PR Fund and the PH Fund used for the Leasehold Transaction will be invested in PRHC bonds which will provide the same return as the Sublease.

8. PRHC, Chase and Citibank entered into an agreement (the Participation and Servicing Agreement) setting forth the terms upon which they are participating in, and upon which Chase (or, possibly, Citibank) will service the C Loan.[9] Chase will be paid for its servicing of the C Loan by SSSLP, and neither PRHC nor Citibank shall have any liability or responsibility whatsoever to compensate Chase for its services regarding the C Loan.[10]

The Participation and Servicing Agreement provides in relevant part, among other things, that PRHC, Chase and Citibank will at all times own their respective shares of the C Loan and all interest, principal and other payments received with respect thereto which will be received by Chase as servicer will be distributed among the co-lenders and that the proportionate shares of PRHC, Chase and Citibank in the C Loan will at all times be concurrent and coordinate in all respects with each other, with none having priority over or being subordinate to the other. With respect to the material elements of the C Loan, such as consents and waivers of conditions, all decisions are made by PRHC, but any action proposed by PRHC must have the consent of either Chase or Citibank. Chase and Citibank, even acting together, cannot take any action with respect to the C Loan without PRHC's consent.

9. Because of Chase's and, possibly, Citibank's role in servicing the C Loan, they have or may become parties in interest to all the nearly 200 Collective Plans participating in the SSI-RE Fund. Morgan is willing to identify all the Collective Plans having a 5% or greater interest in the SSI-RE Fund, but is unwilling to divulge the identity of the Collective Plans having a smaller percentage interest in the SSI-RE Fund. Therefore, Chase and, possibly, Citibank could engage in unwitting prohibited transactions with the Collective Plans. Chase and Citibank have requested relief for the duration of the C Loan from section 406(a) of the Act and corresponding Code provisions for

[9] The Participation and Servicing Agreement provide that, if PRHC and Citibank terminate Chase's role as servicer, Citibank may become the servicer of the C Loan.

[10] No exemptive relief for the servicing of the C Loan is being provided beyond that which is available under section 408(b)(2) of the Act.

transactions with a Collective Plan for which Chase or Citibank is a party in interest thereto solely by reason of servicing the C Loan.

10. Morgan, acting in its capacity as a fiduciary of the SSI–RE Fund and the GM Plans and as agent for the USS Plan, negotiated the C Loan, the P Loan and the Leasehold Transaction with Rouse and its affiliates. Morgan negotiated all the transactions on an arm's-length basis and believes that all the transactions are in the best interests of the Investor Plans and their participants and beneficiaries. Morgan represents that the transactions are high quality investment opportunities for the Investor Plans, and, with regard to the GM Plans and the USS Plan, consists of less than 1% of their respective assets, and with regard to the SSI–RE Fund, represents less than 7% of its assets.

11. In summary, it is represented that the subject transactions meet the criteria of section 408(a) of the Act because: (a) The transactions between the Investor Plans and Rouse and its affiliates were negotiated on an arm's length basis by Morgan which is unrelated to Rouse and its affiliates, Chase and Citibank; (b) Morgan will monitor repayment of the C Loan and the P Loan and payments made pursuant to the Leasehold Transaction through its involvement in PRHC; (c) the relief requested for transactions between Chase or Citibank and the Collective Plans would be available only for a limited time period and only when Chase or Citibank is not acting in a fiduciary capacity in the transaction; and (d) Morgan has represented that it considers the transactions to be in the best interests of the Investor Plans and their participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 20 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment. Comments are due within 50 days of the date of publication.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Pezrow Companies Profit Sharing Plan (the Plan), Located in Montvale, New Jersey

[Application No. D–4914]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective October 19, 1983, to the loan of $620,000 (the New Loan) to Pezrow Enterprises, Inc. (Pezrow), a party in interest with respect to the Plan; and (2) the guarantee of Pezrow's obligations pursuant to the New Loan by Ken J. Pezrow Corporation (the Employer), the sponsor of the Plan; provided that the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in arm's-length transactions with a third party.

Effective Date: If granted the exemption will be effective October 19, 1983.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with, as of December 31, 1982, 392 participants and total assets of $3,135,252. Messers. William J. F. Daily, Arthur Markowitz, and Joseph J. Oliver, Jr., are the trustees of the Plan (the Trustee) and have complete authority to make investment decisions for the Plan. Each of the Trustees is an officer of Pezrow or the Employer. Pezrow, a wholly-owned subsidiary of the Employer, is involved in the food brokerage business. As of September 30, 1983, the aggregate net worth of Pezrow was in excess of $1 million.

2. On April 2, 1982, the Department granted an individual exemption [PTE 82–61, 47 FR 14242; notice of proposed exemption (the Notice) 47 FR 5522, February 5, 1982] to allow the Plan to loan $700,000 to Pezrow (the Loan). As described in the Notice, the proceeds of the Loan were used by Pezrow to purchase two parcels of improved real propery located in Woburn, Massachusetts. The properties consist of 5.7 acres of land improved by two large commercial buildings and are located at 71 and 73 Pine Street. Mr. Robert L. Lyon of W. H. Lyon Realtors, Inc., located in Lexington, Massachusetts, determined that, as of August 20, 1981, the properties had a total fair market value of approximately $1,300,000.

3. The Loan was for a twenty year term and bore interest at a floating rate of 80 percent of the prime rate as quoted by the Peapack-Gladstone Bank of Gladstone, New Jersey (the Bank), adjusted quarterly. The Loan's terms provided that in no event would the interest rate be less than 12%.

4. The Notice also provided that the Bank would serve as the fiduciary for the Plan with respect to the Loan. The Bank is completely independent of the Employer and its subsidiaries and does not maintain any commercial or banking relationship with the Employer, its subsidiaries or its principals.

5. On October 19, 1983, the parcel of property located at 71 Pine Street was sold by Pezrow to a willing buyer for $625,000. Simultaneously with the sale of the property, Pezrow paid the Plan $27,500 to reduce the prior outstanding debt to $620,000, and executed the New Loan with the Plan. The New Loan provides for quarterly principal payments commencing January 1, 1984, for a period of twenty years with interest accrued on the unpaid balance, payable quarterly (commencing on January 1, 1984), at the rate of 13% per annum. On November 15, 1983, the mortgage note evidencing the New Loan was amended to provide that the interest rate would be reviewed every three years to ensure that the Plan received the greater of 13% interest or the prevailing interest rate on comparable mortgage loans. The security for the New Loan consisted of a duly recorded first mortgage on the 73 Pine Street property. This property was appraised on August 19, 1983, by Mr. Harvey A. Remis, of Remis Associates Inc. located in Marblehead, Massachusetts, to have a value, as of August 10, 1983, of $932,000. This value represents 150% of the New Loan amount.

6.Prior to the sale of the Property and execution of the New Loan, the Bank determined that the execution of the New Loan was appropriate, suitable, and in the best interests of the Plan and its participants and beneficiaries. The Bank specifically represents that it decided to release the 71 Pine Street Property and discharge the prior mortgage only after securing a qualified appraisal of the remaining parcel. Upon receipt of the August, 1983, appraisal the Bank determined that the appraised value of the 73 Pine Street property was on the conservative side. In this regard, the Bank states that the August, 1981, appraisal assigned values of $401,000, and $939,000 to respectively, the 71 Pine

Street and 73 Pine Street properties. Because the 71 Pine Street property was sold in October, 1983, at a price $224,000 greater than its August, 1981, appraised market value, the Bank believes that the 73 Pine Street Property is currently undervalued by the appraiser. Therefore, the Bank represents that the 73 Pine Street parcel is more than adequate to secure the New Loan. The Bank represents that, in its business, where appropriate, it releases collateral on a loan when the remaining collateral is sufficient to secure a loan. The Bank represents that because the Loan had no prepayment penalties, the New Loan can be viewed as a new transaction completely separate and apart from the Loan.

7. With respect to the reduction of the original Loan's balance, the Bank represents that in its negotiations with Pezrow on behalf of the Plan, it was agreeable to all parties to apply the proceeds of the sale to the New Loan but that the Bank believed that, in the current money market, a 13% rate of return from a secure investment, would be the best possible investment for the Plan. In this regard, the Bank represents that it believes that in the near future interest rates will hold or stabilize at current rates for various reasons, and thus the interest rate of 13% was the best possible yield for the Plan. The Bank represents that at the time of the execution of the New Loan, a 13% interest rate was a market rate for 20 year mortgages. The Bank notes that the New Loan represents approximately 16% of the Plan's assets, while the Loan represented, at the time it was entered into, approximately 34% of the Plan's assets.

8. With respect to the terms of the New Loan as compared to the terms of the Loan (i.e. interest at 80% of prime rate with a floor of 12%), the Bank represents that the prime rate would have to go considerably higher than its rate at the date of execution of the New Loan before 80% of the prime rate would exceed the rate of return currently being realized from the New Loan. As mentioned, the Bank believes that interest rates, for various reasons, will hold or stabilize at current rates in the near future. The Bank represents that Pezrow was not charged points upon the execution of the New Loan because such charges would only be applicable when the lender incurs costs associated with the borrowing, such as appraisal costs, insurance coverage on real estate, etc., and here Pezrow incurred all such costs.

9. Throughout the term of the New Loan the Employer will insure at its own expense the property against fire and other hazards for an amount not less than the initial loan amount and will execute a loss payee clause providing for payment of the proceeds of such insurance to the Plan. The Employer will guarantee the obligations of Pezrow under the New Loan.

The Bank will monitor the New Loan on behalf of the Plan and maintain full authority and power to pursue collection on behalf of the Plan. The Bank will insure that throughout the term of the New Loan the property will have a value at least 150 percent of the outstanding New Loan balance.

10. In summary, the applicant represents that the New Loan will satisfy the criteria of section 408(a) of the Act because: (a) The Bank, a qualified, independent party, entered into the New Loan on behalf of the Plan only after the receipt and analysis of the updated appraisal, and only after a thorough consideration that the execution of the New Loan would be appropriate, suitable, and in the best interests of the Plan; (b) the Plan will have a duly recorded first mortgage on an improved parcel of property which has a value 150% of the outstanding New Loan amount; (c) the Bank will monitor the terms and conditions of the New Loan; and (d) the Employer will guarantee the obligations of Pezrow under the New Loan.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Laborers' District Council Vacation Fund for Baltimore and Vicinity (the Vacation Plan), Located in Baltimore, Maryland

[Application No. L–4934]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the transfer of $225,000 in uncommitted reserves by the Vacation Plan to the Construction Workers' Trust Fund (the Welfare Plan). (These plans are collectively referred to as the Plans.)

Summary of Facts and Representations

1. The Vacation Plan is a multiemployer welfare plan established in accordance with section 302 of the Labor Management Relations Act of 1947, as amended. The Vacation Plan was established on April 1, 1971 pursuant to the terms and conditions of a trust agreement between the Laborers' District Council of Baltimore and Vicinity, AFL–CIO (the District Council) and the following employer associations: the Maryland Chapter of the Associated General Contractors of America, Inc., the Employing Plasterers' Association of Baltimore and Vicinity and the Mason Contractors' Association, Inc. of Baltimore and Vicinity. The Vacation Plan constitutes an irrevocable trust providing vacation benefits to its participants as well as providing for the payment of all necessary expenses of operation and administration. During the week preceding December 1, 1982, the Vacation Plan mailed 3,242 vacation benefit checks to participants who had made contributions. The Vacation Fund is funded through employee contributions which are deducted from after tax earnings. As of January 31, 1983, the Vacation Plan had $433,310 in total assets.

2. The Welfare Plan is a multiemployer welfare plan also established in accordance with the Labor Management Relations Act of 1947, as amended. The Welfare Plan operates under a trust agreement which was originally established on June 9, 1952 between representatives of several construction unions and employer associations. The Welfare Plan is currently maintained for the benefit of persons working within the craft jurisdiction of the District Council, Cement Masons Local No. 43, Plasterers Local No. 155, Baltimore Tile, Terrazzo and Marble Finishers Local No. 29 and Glaziers Local No. 329. The Welfare Plan provides medical insurance, life insurance, disability insurance and other medical benefits to its participants. For the quarter ending March 31, 1983, employer contributions to the Welfare Plan were received on behalf of 2,408 persons.[11] As of September 30, 1982, the Welfare Plan had assets totaling $3,971,250.

3. The geographical jurisdictions covered by the collective bargaining agreements under which the Vacation Plan and the Welfare Plan are maintained are the City of Baltimore and surrounding counties in the State of Maryland. Both the Vacation Plan and the Welfare Plan have equal numbers of employer and union designated trustees.

[11] The Vacation Plan and the Welfare Plan cover many of the same participants. The difference in the number of participants in each Plan is attributed to the relevant time periods. The Vacation Plan figure is based on the number of participants who performed work during an entire year whereas the figure for the Welfare Plan represents the number of persons who performed work during a three month period.

Each board of trustees (the Trustees) has eight members, five of whom are common to both boards. The Vacation Plan and the Welfare Plan are not parties in interest with respect to each other.

4. The assets of the Vacation Plan are invested in short-term commercial paper by Mr. Carl J. O'Connell, Administrator of the Vacation Plan. The investments are performed under the supervision of the Trustees of the Vacation Plan.

Lehman Management Company, Inc. (Lehman) of New York has been engaged by the Welfare Plan Trustees to be the investment manager of the Welfare Plan's assets. Lehman's investment strategies and performance are periodically reviewed by the Trustees of the Welfare Plan.

5. The Vacation Plan receives employee contributions, based on rates varying from $.15 to $.40 per hour, for work performed between October 1 of each year and September 30 of the following year. A separate record is kept for each employee's contributions. Shortly after the end of each contribution year, the total of each employee's contributions, plus interest is distributed to him. Since the Vacation Plan's establishment, it has not been possible to distribute all of the contributions to the Vacation Plan because a number of participants cannot be located. As of August 31, 1983, these undistributable assets, which have been accumulating and earning interest, totaled $252,427.

6. In prior years, the Vacation Plan's Administrator attempted to locate the recipients of undeliverable checks by sending letters to their last known addresses informing them that vacation benefits were due to them, by contacting employers for whom the recipients had worked and by attempting to locate the recipients by telephone. This procedure was successful in locating many of the missing participants. In addition, for the 1982 distribution year, the Vacation Plan hired a part-time worker in an effort to deliver more of the vacation benefit checks but this endeavor proved futile. The application notes that many of the undelivered checks are owed to transients who have worked minimal hours in covered employment.

7. Due to the amount of uncommitted reserves involved and the difficulty experienced by the Vacation Plan in locating missing participants, the Trustees believe there is little prospect for distributing a significant amount of the unclaimed benefits. Accordingly, the Trustees request an exemption in order to transfer $225,000 from the Vacation Plan to the Welfare Plan. As the transferred funds are credited to the Welfare Plan, they will be largely used for the benefit of the same group of employees as participate in the Vacation Plan. The funds will not be used to pay the administrative expenses of the Welfare Plan or to offset employer contributions. To the extent the tranfer increases the Welfare Plan's reserves, it may facilitate a future benefit increase decision by the Trustees. Alternatively, it could prevent a future reduction in the level of benefits which might become a necessity due to rising health care costs.

8. It is anticipated that after the transfer, approximately $25,000 will remain in the Vacation Plan as a retained surplus (the Retained Surplus) to pay past benefits. As a further safeguard, the Welfare Plan will enter into an indemnification agreement (the Indemnity Agreement) whereby the Welfare Plan will indemnify the Vacation Plan against prior claims. The obligation of the Welfare Plan under the Indemnity Agreement does not arise unless and until, and only to the extent that, the total amount of liabilities covered by the Indemnity Agreement exceeds the amount of the Retained Surplus. Additionally, the obligation of the Welfare Plan under the Indemnity Agreement is limited to $225,000. Finally, the obligation of the Welfare Plan under the Indemnity Agreement does not arise until the Vacation Plan gives written notice to the Welfare Plan of liabilities exceeding the Retained Surplus.

9. Article VI of the Restated Agreement and Declaration of Trust (the Agreement) creating the Vacation Plan provides that "[t]his Agreement may be amended to any extent and at any time or from time to time at any regular or special meeting or meetings of the Trustees by the concurring vote of all but two of the Trustees then qualified and serving provided, however, that no amendment shall provide for the use of the Vacation Plan's assets then in the hands of the Trustees for any purposes other than those set forth in the Agreement * * *." Article II, Section I of the Agreement provides that the "Vacation Plan is created, established and maintained, and the Trustees agree to receive, hold and administer the Vacation Plan for the purpose of providing vacation benefits and related benefits to eligible employees and their beneficiaries, in accordance with the provisions hereof, the Plan and the Act."

The Trustees have determined that the transfer of the Vacation Plan's surplus assets to the Welfare Plan to help provide health and welfare benefits to participants affiliated with the District Council is for a "related benefit" as provided for under the terms of the Agreement. Prior to their determination, the Trusees requested the opinion of counsel who explained that the benefits provided by the Plans were related within the meaning of section 3(1) of the Act.[12] Counsel also noted that the transfer of the surplus funds from the Vacation Plan to the Welfare Plan would benefit many of the same participants. Counsel believed that a determinaiton by the Trustees that the benefits provided eligible participants by the Welfare Plan were related would be reasonable under the circumstances. Following the opinion of counsel, the Trustees reconfirmed their position that the Welfare Plan provides related benefits as those provided by the Vacation Plan.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The transfer will represent a one-time transfer of assets between the vacation Plan and the Welfare Plan which can be accomplished with little or no administrative difficulty, (b) the rights of Vacation Plan participants will be protected by means of the surplus of assets not being transferred and indemnification by the Welfare Plan for any future claims, rights and interests a Vacation Plan participant could enforce against the Vacation Plan due to the transfer of uncommitted assets; and (c) the Trustees have determined that the proposed transfer is in the best interests of the participants and beneficiaries of both plans.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

The Voluntary Employees' Beneficiary Association Trust of Panhandle Eastern Corporation and Participating Affiliates (the VEBA), Located in Kansas City, Missouri

[Application No. D–5068]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not

[12] This section provides, in relevant part, that [t]he terms "employee welfare benefit plan" and "welfare plan" mean any plan, * * * maintained for the purpose of providing for its participants or other beneficiaries, * * *, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, * * *.

apply to the purchase by the VEBA on behalf of certain plans of certain real property (the Property) from Panhandle Eastern Pipe Line Company (PEPL), the subsequent leaseback of the Property by the VEBA to PEPL under the terms described in this notice of pendency, and the possible repurchase of the Property by PEPL for cash from the VEBA pursuant to the terms of the lease, provided: (1) The VEBA pays no more than the fair market value of the Property at the time of acquisition; (2) the terms of the lease are no less favorable to the VEBA than those obtainable in an arm's length transaction with an unrelated party; and (3) the VEBA receives no less than fair market value for the Property at the time of any subsequent sale back to PEPL.

Summary of Facts and Representations

1. PEPL is a wholly owned subsidiary of Panhandle Eastern Corporation (Panhandle Eastern). Through PEPL and other subsidiaries, Panhandle Eastern is principally engaged in interstate transmission and sale of natural gas, oil and gas exploration and production, domestic and overseas contract well drilling, and coal development. Panhandle Eastern's executive offices are located in Houston, Texas, and PEPL's operating headquarters are located in Kansas City, Missouri.

2. Panhandle Eastern is the sponsor of the VEBA. The purpose of the VEBA is to maintain the assets of certain welfare plans sponsored by Panhandle Eastern and/or its affiliates. There are currently six benefit plans (the Plans) whose assets are held by the VEBA. These include: (1) Panhandle Retiree Life Insurance Plan; (2) Panhandle Disability Income Plan; (3) Employee & Dependent Medical Plan; (4) Dixilyn-Field Disability Income Protection Plan; (5) Dixilyn-Field Retiree Life Plan; and (6) Dental Expense Plan. As of December 31, 1982 the Plans had participants ranging in number between 158 and 8,612.

3. The Property, which consists of an office building, cafeteria and parking area at 3444 Broadway in Kansas City, Missouri, is currently owned by Kansas City Life Insurance Co. (KC Life), an unrelated company, which leases the Property to PEPL. Pursuant to that lease, PEPL has an option to purchase the Property under the lease. The option to purchasse may be exercised on or before December 31, 1986 upon 60 days notice. PEPL proposes to exercise its option to purchase.

4. In order to provide an attractive investment to the Plans, the VEBA intends to purchase the Property from PEPL and, immediately thereafter, to lease it back to PEPL. The purchase price for the Property to the VEBA will be $5,509,878. The annual rental to be paid to the VEBA will be $1,734,000. The proposed lease has an initial term of 30 years. Pursuant to the lease, PEPL as lessee will be responsible for all maintenance, insurance and taxes. The leae provides for reappraisals of the Property at three year intervals with an adjustment in rent to correspond to any changes in fair rental value. At the end of the original 30 year term, PEPL has the option to repurchase the Property from the VEBA. Such a sale would be made for cash, and would be for the fair market value of the Property as determined by an independent appraiser satisfactory to the VEBA's independent fiduciary, Commerce Bank of Kansas City, N.A. (the Bank; see 7 and 8, below). In addition, should the VEBA decide at any time during the 30 year period of the lease to sell all or any portion of the Property, PEPL would have the right to meet any bona fide offer from a third party at the same terms. No resale of the Property by the VEBA to PEPL will take place unless the Bank first determines that the sale is in the VEBA's best interest at the time of the sale.

5. On September 1, 1983, Severeid and Associates (Severeid), independent real estate appraisers and investment consultants in Kansas City, Missouri, appraised the property as having a fair market value of $8,150,000. The VEBA's acquisition price from PEPL of $5,509,878 is less than the appraised value because it represents the amount that PEPL will pay KC Life for the Property under the terms of the option to purchase contained in its lease with KC Life (see 3, above). The lower price was granted the VEBA because of PEPL's desire to allow the VEBA to obtain a higher rate of return on its investment. Severeid appraised the fair rental value of the Property to be approximately $1,062,000 as of September 1, 1983. PEPL will pay a higher rental of $1,734,000 because of two considerations. First, PEPL feels, in view of its experience in the area, that the appraised rental value is extremely conservative, and that the actual rental value is considerably higher. Second, PEPL wishes to ensure that the Plans are fully funded. Given a choice between paying higher contributions to the Plans which will be acquiring an interest in the Property or a higher rent to accomplish this goal, PEPL would prefer the latter option.

6. The investment in the Property is to be allocated among three of the Plans. The Property will represent approximately 13% of the assets of the Panhandle Retiree Life Plan; 19% of the assets of the Panhandle Disability Income Plan; and 24% of the assets of the Employee & Dependent Medical Plan. The other three Plans in the VEBA were excluded from purchasing interests due to their limited assets. The proposed allocation was determined by the desire to spread investment units as evenly as possible, while taking into account the liquidity needs of the Plans and ensuring that the Plans are able to meet their obligations.

7. The Bank is Kansas City's oldest and largest bank. It is the lead bank of 44 associated banks under Commerce Bancshares, Inc., a group with total assets of more than 4 billion dollars of which the Bank's assets approach $1.7 billion. The Trust Division of the Bank administers several thousand accounts for customers with assets approaching $2.3 billion dollars. Several hundred employee benefit plans are administered by the Trust Department, with assets approaching $1 billion. The Bank has extensive experience in management of real properties. The Bank has extended a line of credit of $10,000,000 to Panhandle Eastern, but this was not used in 1982 or 1983. The Bank did participate in a loan to Panhandle Eastern, with the Bank's share being $2.6 million. The loan was repaid in full in June, 1983. Panhandle Eastern and its affiliates keep deposits in the Bank of approximately $650,000, which represents considerably less than 1% of the Bank's total deposits. The Bank represents that it can and will act as an independent fiduciary of the VEBA not subject to any undue influence from Panhandle Eastern as a result of the commercial relationship maintained with the Bank.

8. As the VEBA's independent fiduciary, the Bank has reviewed the specific terms and conditions with respect to the acquisition and lease of the Property by the VEBA. The Bank has considered the purpose of the VEBA, the overall funding policy for the VEBA, its liquidity needs, and alternative investment opportunities of a similar character and nature. The Bank has determined that purchase of the Property and subsequent lease would represent a very attractive investment to the VEBA. The Bank's opinion is based upon the purpose of the VEBA, the safety and security of the investment, and the excellent discounted cash flow return available from the proposed investment as compared to alternative investments available in the marketplace today. The Bank represents that it will monitor the lease and take whatever actions may be necessary to enforce the VEBA's rights. The reappraisals that will be made every

three years (see 4, above) will be made by an independent appraiser satisfactory to the Bank. The Bank recognizes that the rental for subsequent periods may be higher or lower than the initial 3 year period in which PEPL has agreed to pay a rental greater than the fair market rental value. The Bank has determined that the transaction as a whole is in the VEBA's best interest. As stated earlier (see 4, above), the VEBA will not sell the Property back to PEPL unless and until the Bank has determined that such sale is in the VEBA's best interest at the time of sale.

9. In summary, the applicants represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (1) The Property will represent no more than 24% of the assets of any one Plan in the VEBA; (2) the terms of the purchase by the VEBA of the Property and of its lease to PEPL are more favorable to the VEBA than those established by an independent appraiser; (3) the VEBA's independent fiduciary has determined that the proposed transactions are appropriate for the VEBA and in the best interests of the Plans' participants and beneficiaries; (4) the independent fiduciary will monitor the lease and take whatever actions may be necessary to enforce the VEBA's rights; and (5) any subsequent sale of the Property back to PEPL will be at fair market value as established by an independent appraiser satisfactory to the Bank, and must be approved by the Bank as appropriate for the VEBA.

Notice to Interested Persons: Within 30 days of the publication of this proposed exemption in the Federal Register, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicants and the Department. Comments and requests for a hearing are due within 60 days of the date of publication.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 1st day of May 1984

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84–12129 Filed 5–3–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

April 3, 1984.

AGENCY: National Endowment for the Humanities; NEH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). None of these entries are subject to 44 U.S.C. 3504(b).

DATE: June 4, 1984.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, (202) 786–0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, (202) 395–6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, (202) 786–0233 from whom copies of forms and supporting documents are available.

Category: New Forms

Title: Assurance of Compliance—Nondiscrimination in Federally Assisted Programs
Form Number: N/A
Frequency of Collection: Once
Respondents: Grantees
Use: Notify grantee about prohibitions against discrimination. Aid Endowment assessment of grantee compliance with laws against discrimination
Estimated number of respondents: 300
Estimated hours for respondents to provide information: 100

Title: Application for Indemnification
Form Number: FCAH—(7–77)
Frequency of Collection: Once
Respondents: Parties seeking to idemnify exhibits under the Arts and Artifacts Indemnity Act.
Use: Applications are reviewed by the Indemnity Advisory Panel and by the Federal Council to determine whether to issue a Certificate of Indemnity to a traveling exhibit
Estimated number of respondents: 30
Estimated hours of respondents to provide information: 1200

Title: Agency System of Contracting Documents
Form Number: N/A
Frequency of Collection: Once
Respondents: Contractors and Bidders
Use: To obtain agency procurement requirements and to satisfy federal reporting requirements
Estimated Number of Respondents: 100
Estimated Hours for Respondents to Provide Information: 4000

Category: Existing Collection of Information

Title: Nondiscrimination on the Basis of Handicap in Federally Assisted Programs and Activities
Form Number: N/A
Frequency of Collection: Once
Respondents: Grantees
Use: Apprise Endowment about grantee compliance with the regulation prohibiting discrimination on the basis of handicap
Estimated Number of Respondents: 0
Estimated hours for respondent to provide information: 0
Title: Nondiscrimination in Federally Assisted programs
Form Number: N/A
Frequency of Collection: Upon investigation
Respondents: Grantees
Use: To assess grantee compliance with Endowment regulation prohibiting dicrimination in federally assisted programs
Estimated number of respondent: 0
Estimated Hours for Respondent to Provide Information: 0

Dated: April 10, 1984.

Victor Loughnan,

Director of Administration.

[FR Doc. 84-11828 Filed 5-3-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Availability of Advisory Committee Reports

The National Science Foundation has filed with the Library of Congress reports of the NSF Advisory Committees list below.

The reports were filed as required by the Federal Advisory Committee Act and are available for public inspection and use at the Library of Congress, Room 632, Madison Building, First and Independence Avenue, S.E., Washington, D.C. and at the Committee Management Office, Room 217-A, National Science Foundation, Washington, D.C.

The names of the committees and titles of the reports are:

1983 Reports

NSB Commission of Precollege Education in Mathematics, Science and Technology

—Interim Report to the National Science Baord—January 1983
—Educating Americans for the 21st Century: A report to the American People and the NSB—September 1983
—Educating Americans for the 21st Century: Source Materials—September 1983

Advisory Committee for Physics

—Report on the Review of the NSF Gravitational Physics Program—May 1983
—Oversight Review of the NSF Low Temperature Physics Program—December 1982

Advisory Committee for International Programs

—Report of the External Peer Oversight Subcommittee, NSF Advisory Committee for International Program—May 1983

Advisory Committee for Astronomical Sciences

—Report of Subcommittee on Millimeter- and Submillimeter Wavelength Astronomy—April 1983

Ad Hoc Advisory Group on Crustal Studies

—Report to the National Science Foundation—April 1983

Advisory Panel for Behavioral and Neural Sciences

—National Science Foundation Neurosciences Oversight Committee Report—June 1983

Advisory Panel for Social and Economic Sciences

—Oversight Committee; Economics Program—September 1983
—Oversight Committee; Regulation and Policy Analysis Program—September 1983

Advisory Committee for Chemistry

—A Summary of Trends in Chemistry—August 1983

Advisory Committee for Atmospheric Sciences

—Global Atmospheric Research Program Review Subcommittee—November 1982
—Report of the Aeronomy Program Review Subcommittee—November 1982

Advisory Committee for Engineering

—Report of the Meeting of the Subcommittee on Mechanical Engineering and applied Mechanics—October 1982
—Intergrating Concepts of Engineering and Science Into Instruction in Grade Levels K-12-Report of the Executive Committee of the advisory Committee for Engineering—April 1983.

Dated: April 30, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12007 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Industrial Science and Technological Innovation; Meeting

In accordance with the Federal Avisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Industrial Science and Technological Innovation.

Date and Time: May 21, 1984; 8:30 a.m.-5:00 p.m.; May 22, 1984; 8:30 a.m.-12:00 noon.

Place: National Science Foundation, 1800 G Street NW., Room 543, Washington, D.C. 20550.

Type of Meeting: Open.

Contact Person: Mr. Thomas M. Ryan, Program Specialist, Division of Industrial Science and Technological Innovation, Room 1250, National Science Foundation, Washington, D.C. 20550 (202) 357-7875.

Summary of Minutes: May be obtained from the contact person at above address.

Purpose of Committee: To provide advice and recommendations concerning support for research in NSF programs administered by the Division of Industrial Science and Technological Innovation.

Agenda: May 21, 1984; 8:30 a.m.-12:00 noon—Update on Division of Industrial Science and Technological Innovation (ISTI) activities. ISTI Program Review presentation. Long Range Planning—Plenary Session. At the conclusion of this session, the Committee will break out into four mini-groups. Room numbers will be announced at this time.

May 21, 1984; 1:30 p.m.-5:00 p.m.—Long Range Planning mini-group meetings for: Productivity Improvement Research Section; Industry/Unversity Cooperative Research Projects Program; Industry/University Cooperative Research Centers Program; and Small Business Innovation Research Program.

May 22, 1984; 8:30 a.m.-1:00 p.m.—Continuation of Long Range Planning mini-group meetings. Long Range Planning—Plenary Session. Presentation of mini-group reports.

Dated: April 30, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12013 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for International Programs: Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces for the following meeting:

Name: Advisory Committee for International Progrms.

Dates: May 21, 1984, 9:00 a.m. to 5:00 p.m.; May 22, 1984, 9:00 a.m. to 2:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, D.C. 1224.

Type of Meeting: Open.

Contact Person: Dr. Bodo Bartocha, Director, Division of International Programs.

National Science Foundation, Washington, DC 20550.

Summary of Minutes: May be obtained for Contract Person.

Purpose of Meeting: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

Agenda: May 21: Welcome and initial briefing by NSF staff. Reports by Subcommittee Chairpersons. Information reports: Activities of the National Science Board; Study of Bilateral Programs: ASEAN Developments; Participation in UNESCO Studies; NSF Plans and Budget. Subcommittee discussions.

May 22: Information reports on analytical and reporting capabilities related to international science. Revised reports by Subcommittee Chairpersons. Resolutions and assisnments. Future meetings.

Dated: April 30, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12009 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ocean Sciences; 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 Committee for Ocean Sciences.

Date and Time: May 21 and 22, 1984—9:00 a.m. to 5:00 p.m. on the 21st, 9:00 a.m. to 3:00 p.m. on the 22nd.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of meeting: Open.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9639.

Summary minutes: May be obtained from the contact person.

Purpose of committee: To provide advice and recommendation concerning oceanographic research and its support by the Division of Ocean Sciences.

Agenda

Monday 21 May

0900

I. *Opening Remarks, Welcome to the Committee and General Introductions*
Dr. Vera Alexander, Chairperson, and Dr. M. Grant Gross, Director, OCE, will open the Meeting, welcome the Committee and introduce new Committee Members, OCE staff and observers.

II. *Adoption of the Agenda*
Dr. Alexander and Dr. Gross will discuss the Agenda.

III. *Approval of Minutes of the Last Meeting*
Mr. Louis Brown will present the minutes of the Meeting of 27-28 October 1983 for the Committee's approval.

0915

IV. *Briefing on the NSF FY85 Budget*
Dr. Albert L. Bridgewater, Acting Assistant Director, AAEO, will present the NSF budget for FY85. Dr. Bridgewater and Dr. Gross will discuss implications of this budget for ocean sciences.

0930

V. *Review of OCE Interaction with and Support of the National Academy of Sciences (NAS)*
Mr. Brown will introduce this item. Dr. D. James Baker, Acting Chairman of the NAS Board on Ocean Science and Policy (BOSP) and Dr. Nancy Maynard, Executive Secretary of BOSP, will discuss BOSP's plans and financial requirements for 1984-85. Dr. John Perry, Executive Secretary to the NAS Board on Atmopspheric Science and Climate (BASC), will summarize BASC's ocean-related activities. The Committee is asked to provide guidance to OCE on our interaction with and support of these groups over the next three years.

1000

VI. *Long-Range Planning for FY 1987-1996*
The Committee has been invited to assist OCE in development of its long-range planning, especially identification of major new initiatives. As the first step in this process, the Committee established the Subcommittee on Global Ocean Science Planning (GOSP). The Subcommittee will present its draft two-page ocean science planning document. Then the Committee will be given presentations on long-range planning activites of external groups and of the OCE staff. The Committee is invited to review the GOSP draft in the light of these other activities; to revise this draft as necessary; and then to adopt a final GOSP statement.

As the second step in this process, the Committee is invited to assist OCE in preparation of its long-range planning documents. The Committee is invited to review these documents; to recommend changes if needed; and to adopt a work schedule for any follow-up activities that the Committee considers necessary to assist OCE to finalize these documents.

The schedule for the Advisory Committee May meeting's long-range planning activities is as follows:

1000

A. *Introduction of the GOSP Draft Two-Page Document*
Dr. Allan Robinson

1015 Coffee Break

1030

B. *Presentations on External Long-Range Planning Activities*
1. *NAS Board on Ocean Science and Policy (BOSP)*—Dr. D. James Baker, Jr., and Dr. Nancy Maynard
2. *NAS Board on Atmospheric Science and Climate (BASC) and the Climate Research Committee (CRC)*—Dr. John Perry
3. *National Climate Program Office*—Dr. Alan Hecht
4. *NAS Study on "An Ocean Climate Research Strategy"*—Dr. Ferris Webster
5. *Federal Oceanographic Fleet Coordinating Council (FOFCC)*—Mr. Robert Winokur
6. *University-National Oceanographic Laboratory System (UNOLS)*—Dr. Webster

1130 Lunch

1230

C. *Presentations on OCE Staff Long-Range Planning Activities*
1. *Ocean Sciences Research Section (OSRS)*—Dr. Robert E. Wall and the OSRS Group Leaders
2. *Oceanographic Facilities Support Section (OFS)*—Mr. Ronald R. La Count and OFS staff
3. *Ocean Drilling Program (ODP)*—Ms. Sandra Toye and ODP staff

1400

D. *Review of GOSP Document and Adoption of a Final Two-Page Long-Range Ocean Sciences Planning Document*
The Advisory Committee will decide on appropriate distribution for this document.

1700 Adjourn for the Day

Tuesday 22 May

0900

VII. *OCE Response to the Committee's 1983 Oversight Review of OFS*
Mr. La Count and OFS staff will comment on the Review.

0910

VI. *Long-Range Planning for FY 1987-1996 (Continued)*

E. *Review and Analysis of OCE Long-Range Planning Documents*
The Committee will consider the OCE long-range planning documents in comparison with the GOSP two-page document and the other long-range planning presentations. The Committee is invited to provide OCE with any comments and/or proposed changes in the OCE long-range planning documents. The Committee is then invited to (1) identify any further actions that are necessary to assist OCE to finalize these documents and (2) adopt a work schedule for these actions.

1015 Coffee Break

1030

VI. E. *Long-Range Planning for FY 1987-1996 (Continued)*

1130 Lunch

1230

VI. E. *Long-Range Planning for FY 1987-1996 (Continued)*

1445

VIII. *Other Business*
The Committee will set dates for its autumn meeting. Members are invited to suggest items for inclusion on agendas for future meetings.

1500 Adjourn

Dated: April 30, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12010 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry.

Date: Monday and Tuesday, May 21 and 22, 1984, from 9:00 a.m. to 5:00 p.m.

Place: Room 628, National Science Foundation, 1800 G Street, NW Washington, DC 20550.

Type of meeting: Closed.

Contact person: Mary E. Kirtley, Program Director, Biochemistry Program Room 329-D, Telephone: (202) 357-7945.

Purpose of advisory panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

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 (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. 463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: April 30, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12011 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Physiology.

Date and time: May 21, 22, 23, 1984, starting at 9:00 A.M. to 6:00 P.M.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Barbara K. Zain, Assistant Program Director Cellular Physiology, Room 332, National Science Foundation Washington, D.C., 20550, telephone (202) 357-7377.

Purpose of advisory panel: To provide advice and recommendations concerning support of research in cellular physiology.

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 (6) of U.S.C. 552(c), Government in the Sunshine Act.

Authority: 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 determinations by the Director, NSF July 6, 1979.

Dated: April 30 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12012 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception Program.

Date and time: May 21, 22, and 23, 1984: 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G. St., NW., Room 1141 Washington, D.C.

Type of meeting: Part Open—
Closed 5/21—9:00 a.m. to 5:00 p.m.
Closed 5/22—9:00 a.m. to 12:00 noon.
Open 5/22—12:00 noon to 2:00 p.m.
Closed 5/22—2:00 p.m. to 5:00 p.m.
Closed 5/23—9:00 a.m. to 5:00 p.m.

Contact person: Dr. James O. Larimer, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, DC 20550, telephone (202) 357-7428.

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 sensory physiology and perception.

Agenda: Open—General discussion of the current status and future plans of the Sensory Physiology and Perception 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, July 6, 1979.

Dated: April 30, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12008 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel For Measurement Methods and Data Resources; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Measurement Methods and Data Resources.

Date and Time: May 23-24, 1984: 9:00 a.m. to 5:30 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed—May 23-24, 1984: 9:00 a.m. to 5:30 p.m.

Contact Person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Resources, Room 312, National Science Foundation, Washington, DC 20550, telephone (202) 357-7913.

Summary of Minutes: May be obtained from the contact person Dr. Murray Aborn at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research and research-related projects in Measurement Methods and Data Resources.

Agenda: Review and evaluation of research and research-related proposals as part of the award selection process.

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.

Dated: May 1, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12124 Filed 5-3-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export and Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export and import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. That table below lists all new major applications.

Dated this 27th day of April 1984, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT AND IMPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Edlow International, Apr. 24, 1984–Apr. 25, 1984, XSNM02141.	3.65 Percent enriched uranium.	13,327	487	Reload fuel for Takahama 3	Japan.
Nuclear Assurance Corp., Apr. 18, 1984–Apr. 27, 1984, ISNM84005.	93.3 Percent enriched uranium.	205.7	191.5	Return of NRX/NRU fuel for processing at SROO	From Canada.
Transnuclear, Inc., Apr. 26, 1984–Apr. 26, 1984, XSNM02142.	93.3 Percent enriched uranium.	6.43	6.0	Manufacturing of radiation tubes for use in several Euratom reactors.	Belgium, France, West Germany, Netherlands.

[FR Doc. 84-12113 Filed 5-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

General Public Utilities Nuclear Corporation (Three Mile Island Nuclear Station, Unit 1), Issuance of Interim Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued an interim decision concerning a petition dated January 20, 1984, submitted by the Union of Concerned Scientists. The petition requests that the Commission continue the suspension of the operating license unless and until certain modifications are made to the TMI-1 emergency feedwater system.

The Director, Office of Nuclear Reactor Regulation, has determined to tentatively deny the petitioner's request at this time with respect to four of the issues raised in the petition.

The reasons for this decision are explained in an "Interim Director's Decision under 10 CFR 2.206" (DD-84-12) which is available for public inspection in the Commission's Public Document Room. 1717 H Street, NW., Washington, D.C., and in the local Public Document Room for the TMI facility located in the Government Publications Section of the State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of this decision will be filed with the Secretary for the Commission's review.

Dated at Bethesda, Maryland, this 27th day of April 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-12114 Filed 5-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-387, 50-388]

Pennsylvania Power and Light Company, Susquehanna Steam Electric Station, Unit Nos. 1 and 2; Exemption

I

Pennsylvania Power and Light Company (the licensee) is the holder of Facility Operating License Nos. NPF-14 and NPF-22 (the licenses) which authorizes operation of the Susquehanna Steam Electric Station, Unit Nos. 1 and 2, respectively (the facility) at steady state reactor power level not in excess of 3293 megawatts thermal per unit. Authorization to operate Unit 2 beyond 5 % power (164.6 megawatts thermal) is still under consideration and will require Commission approval. The facility consists of two boiling water reactors located at the licensee's site in Luzerne County, Pennsylvania. The licenses provide, among other things, that the licensee is subject to all rules, regulations and Orders of the Commission.

II

10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of § 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F of Appendix E requires each licensee to conduct a full scale emergency preparedness exercise at least annually. The last full scale annual exercise at Susquehanna was held on March 23, 1983.

By letter dated January 23, 1984, the licensee requested that an exemption be granted from the offsite government participation requirements of Section IV.F.1.a of Appendix E, for the April 4, 1984 xercise to be held at the Susquehanna Steam Electric Station. The licensee bases this request for exemption on the pervious successful

participation by State and local agencies in the March 1983 exercise held at this site. The licensee contends that participation in the upcoming exercise would be an unnecesary burden on the State and local agencies.

By letter dated February 23, 1984, FEMA Region III determined that the implementation of corrective actions for deficiencies identified during the March 23, 1983 full scale exercise is progressing adequately and will be completed by April 1, 1984. Based on the evidence of improved response capability and the lack of any indication that response in other areas has degraded, FEMA concluded that the capability of the State, counties and municipalities to protect the public in the event of a radiological emergency at the Susquehanna Steam Electric Station remains adequate.

The NRC staff has reviewed the participation of the State and local governments in the March 1983 exercise at Susquehanna and the FEMA determination and agrees that a full-scale exercise involving State and local governments is not necessary. The staff determined that the agencies demonstrated a capability to respond effectively to nuclear power station emergency conditions. Moreover, although the State and affected county do not intend to participate full scale, both the State and county will participate in the April 4, 1984 exercise by initial implementation of notification and communication requirements.

Based on the above, the staff has concluded that non-participation by State and local government agencies in the April 4, 1984 emergency preparedness exerecise for the Susquehanna Steam Electric Station will not adversely affect the overall state of emergency preparedness at the Susquehanna site 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, the exemption requested by the licensee's letter dated January 23, 1984, as discussed above, 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 exemption from the exercise requirements of 10 CFR Part 50, Appendix E, for state and local governments from participating full scale is hereby granted.

The Commission has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 24th day of April 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-12115 Filed 5-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352/353]

Philadelphia Electric Company, Limerick Generating Station, Units 1 and 2 Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied the Petition and supplementing documents filed under 10 CFR 2.206 by Del-Aware Unlimited regarding the Limerick Generating Station, Units 1 and 2 (the facility).

The Petitioner requested that the NRC staff "reopen" the construction permits heretofore granted to the Philadelphia Electric Company (PECo) authorizing construction of the facility. The petitioners also sought reopening of the Partial Initial Decision issued by the NRC's Atomic Safety and Licensing Board on March 1983 in the operating license proceeding for the facility. That decision discussed supplemental cooling water for the facility. Various issues related to the environmental impacts of the planned supplemental cooling water system were raised by the Petitioner. The Director concluded that a number of those issues were not appropriate for consideration of the Director. Those issues which were considered did not warrant any action with respect to continued construction of the facility.

The reasons for the above conclusions are fully described in a "Director's Decision Under 10 CFR 2.206", dated April 25, 1984, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, NW, Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 25th day of April 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-12116 Filed 5-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co. Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

In accordance with the licensees' application for amendment dated February 17, 1984, as revised March 29, 1984, the amendment would revise the Appendix A Technical Specifications to allow for withdrawal of the axial power shaping rods (APSRs) to accommodate power coastdown for the current fuel cycle (Cycle 4). The Technical Specification modifications would consist of revised regulating rod groups insertion limits, APSR insertion limits, and axial power imbalance limits which would apply beyond 200 effective full power days (EFPDs) of reactor operation if the licensee elects to withdraw the APSRs for power coastdown. Should the licensee elect not to withdraw the APSRs, then the limits presently accepted by the NRC and included in the Technical Specifications will remain in effect.

Additionally, the amendment would revise Table 3.2-2, Quadrant Power Tilt Limits, to incorporate revised steady state and transient tilt limits as determined from the symmetrical incore detector system. The tilt limits as determined by the power range channels and the minimum incore detector system would remain unchanged.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's

regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing examples (48 FR 14870). One example of an action not likely to involve a significant hazards consideration relates to a reactor core reload amendment (Example iii) involving no fuel assemblies significantly different from those previously found to be acceptable to the NRC for a prior core at the licensed facility. The Commission's example assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, that the analytical methods used to demonstrate conformance with Technical Specifications and regulations are not significantly changed, and the NRC has found previously such methods acceptable. Another exemple of an action not likely to involve a significant hazards consideration reltates to a change (Example vi) which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The Davis-Besse Nuclear Power Station is presently in Cycle 4 operation. The Cycle 4 reload application was approved by Amendment 61 to the Davis-Besse Technical Specifications on September 21, 1983. The summary report supporting Cycle 4 operation established a cycle duration of 240 EFPDs. That summary report did not provide for APSR withdrawal to permit power coastdown to extend cycle life. The summary report revision supporting the proposed amendment provides for the option to the licensees to withdraw APSRs at 200 EFPDs to extend Cycle 4 life to 280 EFPDs. This optional operation does not require any fuel assembly removals, additions, or rearrangements from the original approved Cycle 4 operation. The NRC has approved operation by the licensees in this manner for previous reload cycles.

The analytical methods which were used and accepted for the original Cycle 4 reload have also been used to support the proposed amendment. These methods, except for the TACO–2 fuel performance code and the revised cladding models in the Emergency Core Cooling System (ECCS) code package, do not differ significantly from the analytical methods used and accepted for previous cores to demonstrate conformance to acceptance criteria and NRC regulations. The approved TACO–2 code is used to determine the margin for centerline melting and other design calculations for fuel batches 5B and 6. The ECCS analysis utilizes the TACO–2 code and incorporates cladding rupture, strain, and flow blockage models based upon data presented in NUREG–0630. The analysis results in more restrictive operating limits than those determined for previous cycles.

The changes relating to the option permitting APSR withdrawal and subsequent extension of cycle life are similar to example (iii) identified by the Commission since the changes result from a revision to the previously-approved reload report, and identical methods have been used in determining the revisions. Therefore, with respect to the changes which would permit APSR withdrawal, the NRC staff proposes to determine that no significant hazards consideration is involved.

The measurement-independent steady state quadrant power tilt limit is 4.92% for Cycle 4 corresponding to a maximum peaking increase of 7.36% and is unchanged from all previous cycles. The quadrant power tilt setpoint (3.03%) as measured by the symmetrical incore detector system had been calculated previously using a conservation bounding analysis based on the end of life for the rhodium detectors. The revised Cycle 4 reload report submitted with this amendment request includes a recalculated setpoint (3.43%) using actual depletion data for the rhodium detectors at the end of the operating cycle. The transient quadrant power tilt limit setpoint has been recalculated similarly to be 8.93% (vs 8.53%).

The revised quadrant power tilt setpoints are determined using more accurate detector depletion data which reduces excess conservatism in the analysis. The reduced conservatism results in smaller safety margins. However, the maximum peaking increase (7.36%) due to quadrant power tilt would not be exceeded. This change, which results from a refinement in a previously used calculational model, is similar to example (vi) identified by the Commission. Therefore, the Commission's staff proposes to determine that no significant hazards consideration is involved with the request to change the incore detector system setpoints for quadrant power tilt.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attn: Docketing and Service Branch.

By June 4, 1984, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first perhearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing help would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commision by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 27th day of April 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84–12234 Filed 5–3–84; 9:06 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

New York; Region II Advisory Coucil; Public Meeting

The Small Business Administration, Region II Advisory Council, located in the geographical area of New York, will hold a public meeting at 9:30 p.m., on Wednesday, May 16, 1984, at the Jacob K. Javits Federal Building, 26 Federal Plaza, Room 3105 (31st floor), New York, New York, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Mervyn Shorr, Acting District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, New York 10278, (212) 264–1318.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 30, 1984.

[FR Doc. 84–12136 Filed 5–3–84; 8:45 am]

BILLING CODE 8025–01–M

Pennsylvania; Region III Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Pittsburgh, will hold a public meeting at 8:00 a.m., on Thursday, May 24, 1984, at the University of Pittsburgh, Room 244, Cathedral of Learning, Fifth Avenue and Bigelow Boulevard, Pittsburgh, Pennsylvania 15260, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For futher information, write or call J. M. Kopp, District Director, U.S. Small Business Administration, 960 Penn Avenue, Convention Tower, Fifth Floor, Pittsburgh, Pennsylvania 15222, 412/644–4306.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 30, 1984.

[FR Doc. 84–12135 Filed 5–3–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 07/07–0085]

R. W. Allsop Capital Corp.; License Surrender

Notice is hereby given that R. W. Allsop Capital Corporation, 2750 First Avenue, N.E., Suite 210, Cedar Rapids, Iowa 52402 has surrendered its license to operate as a small business investment company under the Small

Business Investment Act of 1958, as amended (the Act). R. W. Allsop Capital Corporation was licensed by the Small Business Administration on September 2, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on March 22, 1984, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 27, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-12139 Filed 5-3-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No 04/04-0230]

North Riverside Capital Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by North Riverside Capital Corporation (North Riverside), which is located at 5775-D Peachtree Dunwoody Road, Atlanta, Georgia 30342, with the Small Business Administration (SBA), pursuant to CFR 107.102 (1984).

The proposed officers, directors and stockholder of North Riverside are as follows:

Samuel N. Zell: Chairman of the Board
Jerry J. Pezzella, Jr.: President, Chief Executive Officer, Director
Sheli Z. Rosenberg: Secretary, Director
Norman M. Field: Treasurer
Ronald L. Glass: Manager, Director
Frank P. Handy: Director
Great American Management and Investment, Inc.: 100 percent Stockholder, and Investment Adviser
Equity Holdings, an Illinois general partnership: 63 percent Stockholder of Investment Adviser

Samuel N. Zell and Robert Lurie and beneficial owners of partnership interests in Equity Holdings.

Great American Management and Investment, Inc. is a publicly traded company, whose shares are traded on NASDAQ. Great American Management and Investment, Inc.'s headquarters are in Atlanta, Georgia. On July 31, 1983, it had assets of $151.9 million.

North Riverside, a Georgia Corporation will begin operations with $1,000,000 of private capital derived from the sale of common stock to Great American Management and Investment, Inc.

The Applicant will conduct its operations principally in the State of Georgia and in the Southeastern Area of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Atlanta, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 26, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-12137 Filed 5-3-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0188]

Twin Ports Capital Co.; Issuance of a Small Business Investment Company License

On November 7, 1983, a notice was published in the **Federal Register** (48 FR 51191) stating that an application has been filed by Twin Ports Capital Company, 1229 Poplar Avenue, Superior, Wisconsin 58880, 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 November 22, 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. 05/05-0188 on March 29, 1984, to Twin Ports Capital Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 27, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-12138 Filed 5-3-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Solicitation of Proposals for Grants: Technology Introduction Program and Innovative Techniques and Methods Program

AGENCY: Urban Mass Transportation Administration.

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) announces in this notice that it is soliciting a second round of 1984 proposals for grants under the Technology Introduction Program and the Innovative Techniques and Methods Program under Sections 3(a)(1)(C) and 4(i), respectively, of the Urban Mass Transportation Act of 1964, as amended. The proposals soliciated are for modifications to existing engines to retrofit existing buses for the use of methanol fuel under Section 3(a)(1)(C) and to encourage safety-related applications of new technology and innovative techniques and methods under both Section 3(a)(1)(C) and 4(i). UMTA will select from among the proposals received, contact the successful parties, and request complete grant applications.

DATE: Proposals are due for both programs by June 4, 1984.

ADDRESSES: Proposals for Section 3(a)(1)(C) and 4(i) grants should be sent to the appropriate UMTA Regional Office.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on procedures should be addressed to the appropriate UMTA Regional Office. Additional technical information on methanol fuel systems may be obtained from Mr. Patrick J. Sullivan (202) 426-4035. Similar technical guidance on safety-related projects may be obtained from Mr. Lloyd Murphy on (202) 426-2896.

Section 3(a)(1)(C): Technology Introduction Program

The Technology Introduction Program was initiated to assist in financing the introduction into public transportation service of new technology in the form of innovative and improved products. Section 3(a)(1)(C) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(a)(1)(C)) (UNT Act) authorizes the Secretary of Transportation to make grants or loans to assist public agencies in financing the introduction into public transportation service of new technology in the form of innovative and improved products.

UMTA's objective in financing new technology is to encourage transit suppliers to produce, and transit operators to use, innovative technology.

Section 4(i): Innovative Techniques and Methods Program

The Innovative Techniques and Methods program is designed to further the national adoption of innovative techniques that will reduce the cost of transportation, increse transit system revenues, and increase opportunities for private sector involvement. Section 4(i) of the UMT Act (49 U.S.C. 1603(i)) authorizes the Secretary to make grants to States and local public bodies for the deployment of innovative techniques and methods in the management and operation of public transportation services.

Experience with UMTA's Service and Methods Demonstration Program indicates that increased acceptance of an innovation requires application of the technique in many geographically dispersed areas. The Section 4(i) program can encourage more widespread adoption of proven innovative techniques and methods in urban transportation.

Methanol Project Proposals Solicited Under the 3(a)(1)(C) Program

An UMTA study has identified methanol as an extremely promising alternative fuel to petroleum for transit buses. It has been projected that by the year 2000 transit bus fuel cost using methanol may be $0.34/vehicle mile and using diesel fuel may reach $0.65/vehicle mile. Methanol is considered a clean fuel in that it reduces oxides of nitrogen, particulates and smoke. Demonstrations using methanol are desired to demonstrate technical and operational readiness prior to a large scale introduction of the use of the fuel.

The Florida Department of Transportation is currently conducting an UMTA Section 6 funded project to develop a modification kit that will allow a standard U.S. transit bus, using a 6V71 engine, to operate on methanol fuel. The modification scheme has been designed and one engine is currently undergoing performance and emission tests.

In respect to the buse methanol fuel systems proposals, the number of buses in each proposal should be no less than three. The application should be for modifications to existing engines to retrofit existing buses for the use of methanol. Each proposal should include a discussion of maintenance and operator training and of the facility requirements for handling, and the availability of, methanol fuel. Grantees will be asked to collect data to support the evaluation of methanol fuel systems using UMTA provided test procedures. UMTA will analyze the data and prepare a final evaluation report.

Safety-Related Projects Solicited Under the 3(a)(1)(C) and 4(i) Programs

Proposals for consideration under the safety initiative should be directed at the application of new technology and innovative techniques to improve the level of safety and security for people, property and the environment associated with urban transit systems. Some examples of such applications would be:

- Innovative measures to combat crime on transit systems and increase the personal security of transit patrons and employees;
- Implementation of new techniques to reduce revenue losses in the collection and handling of transit fares;
- New concepts in fire containiment, detection and smoke control;
- Innovative emergency egress procedures or equipment;
- Development and application of new emergency preparedness training and planning techniques;
- Implementation of innovative vehicle operator training techniques or equipment, including the use of simulators;
- Introduction of improved vehicle command, control, and signaling systems.

Submissions

Prospective 3(a)(1)(C) applicants are referred to the **Federal Register** notice of January 19, 1981, (46 FR 5832), which describes the background and purpose of that program, and proposals under the Section 4(i) program should follow administrative procedures set forth in the December 1, 1980, **Federal Register** notice (45 FR 79670). A complete grant application is not needed at this time. Proposers are reminded that 3(a)(1)(C) and 4(i) project funding is now based on a 75 percent Federal and 25 percent local source of funds.

Proposers not selected for participation in earlier Section 3(a)(1)(C) and 4(i) announcements may, by submitting letters of continuing interest in lieu of new proposals, update and revise earlier submittals for reconsideration under this solicitation.

For purposes of evaluation proposals should contain a detailed project description, budget, outline of benefits, other support or participation, and plans for project continuation. Evaluation and selection will be based on:

1. Cost-effectiveness of the project in meeting the stated objectives of this solicitation;
2. The innovative character of the project;
3. The likelihood of project continuation;
4. Management and technical capability of prospective grantee to successfully conduct and administer the project;
5. The commitment of State and local funding.

Issued: April 30, 1984.

Ralph L. Stanley,

Urban Mass Transportation Administrator.

[FR Doc. 84-12110 Filed 5-3-84; 8:45 am]

BILLING CODE 4910-57-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Holiday Inn Thomas Circle, Massachusetts Ave., at Thomas Circle N.W., Washington, D.C. 20005, on June 27 and 28, 1984. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on June 27 and 28, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator, Cooperative

Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to June 15, 1984.

The meeting will be closed from 8:00 a.m. to 6:00 p.m. on June 27 and 28, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Public Law 94–409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: April 24, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–12036 Filed 5–4–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 88
Friday, May 4, 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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Securities and Exchange Commission	4

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:15 p.m. on Monday, April 30, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a bid for the transfer of the insured and fully secured deposits in West Coast Bank, Los Angeles (Encino), California, which was closed by the Superintendent of Banks for the State of California on Friday, April 27, 1984.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Marriott Marco Beach Hotel, Marco Island, Florida.

Dated: May 1, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-12216 Filed 5-2-84; 8:45 am]

BILLING CODE 6714-01-M

2

FEDERAL HOME LOAN BANK BOARD

[No. 82]

TIME AND DATE: 2:30 p.m., Thursday, May 10, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970.

MATTERS TO BE CONSIDERED:

Practice Before the Board
Organization of the Banks; Selection, Compensation, and Conduct of Officers and Employees
Limitations on Direct Investments
Loans to the Federal Savings and Loan Insurance Corporation

John F. Ghizzoni,

Assistant Secretary.

May 2, 1984.

[FR Doc. 84-12233 Filed 5-2-84; 3:51 pm]

BILLING CODE 6720-01-M

3

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting.

TIME AND DATE: The meeting will commence at 10:00 A.M. and continue until all official business is completed. Friday, May 11, 1984.

PLACE: Legal Services Corporation, 733 15th Street, NW., Eighth Floor, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes February 24, 1984
3. Report from the Office of General Counsel—1601 By-Laws.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

Date Issued: May 1, 1984.

LeaAnne Bernstein,

Secretary of the Corporation.

[FR Doc. 84-12161 Filed 5-2-84; 10:39 am]

BILLING CODE 6820-35-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 7, 1984, at 450 Fifth Street, NW., Washington, D.C.

An open meeting will be held on Wednesday, May 9, 1984, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Wednesday, May 9, 1984, following the 10:00 a.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, May 9, 1984, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment two new registration forms, Forms S-4 (for all registrants) and F-4 (for certain foreign private issuers), which would be available for registration of securities in connection with business combination transactions, including exchange offers. For further information, please contact Eric E. Miller at (202) 272-2589 or Martin L. Meyrowitz at (202) 272-3250.
2. Consideration of whether to reissue for public comment a proposal to adopt Securities Exchange Act Rule 3a4-1 to provide that under certain specified circumstances, persons associated with an issuer of securities who participate in a sale of those securities shall not be deemed "brokers", as defined in Section 3(a)(4) of the Securities Exchange Act of 1934. For further information, please contact Susan J. Walters at (202) 272-2848.
3. Request for a policy exception permitting the use of the pooling method of accounting for a business combination when a company reacquires a material amount of its common stock from a so-called "raider" within two years of initiating the combination. For further information, please contact Michael P. McLaughlin at (202) 272-2157.
4. Consideration of a legislative proposal to implement the Commission's responses to the recommendation of the Tender Offer Advisory Committee. Passage of the proposed legislation would authorize the

Commission to regulate or prohibit (i) "golden parachutes"; (ii) issuer self-tender; (iii) certain defensive issuances of securities; and (iv) "greenmail." Also, the Commission would be granted expanded authority under Section 13 of the Exchange Act in order to close the existing "ten-day window" for Schedule 13D filings. For further information, please contact Alan Cohen at (202) 272–7519.

The subject matter of the closed meeting scheduled for Wednesday, May 9, 1984, following the 10:00 a.m. open meeting, will be:

Dissolution of injunction.
Formal order of investigation.
Settlement of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Opinion.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272–3195.

George A. Fitzsimmons,

Secretary.

April 30, 1984.

[FR Doc. 84–12204 Filed 5–2–84; 1:40 pm]

BILLING CODE 8010–01–M

federal register

Friday
May 4, 1984

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1952

Hawaii State Plan: Final Approval Determination

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Hawaii State Plan; Final Approval Determination

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final State plan approval.

SUMMARY: This document amends Subpart Y of 29 CFR Part 1952 to reflect the Assistant Secretary's decision granting final approval to the Hawaii State plan. As a result of this affirmative determination under Section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Hawaii plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained in the issue of maritime employment in the private sector. Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial-approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

History of the Hawaii Plan

On September 20, 1972, Hawaii submitted an occupational safety and health plan in accordance with the above procedures, and on January 22, 1973, a notice was published in the **Federal Register** (38 FR 2187) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. No comments were received.

On January 4, 1974, the Assistant Secretary published a notice (39 FR 1010) granting initial approval of the Hawaii plan as a developmental plan under section 18(b) of the Act. The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Hawaii Department of Labor and Industrial Relations, which is headed by a Director, is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the Administrator of the Division of Occupational Safety and Health in the Department of Labor and Industrial Relations. The plan provides for the adoption by Hawaii of standards which are at least as effective as Federal occupational safety and health standards, including emergency temporary standards. The plan requires employers to furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with standards applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by the Labor and Industrial Relations Appeals Board.

The notice of initial approval noted a few important distinctions between the Federal and Hawaii programs. The State plan does not cover safety and health in private sector maritime employment. Although State standards are not identical to Federal standards, the plan contains a commitment that standards will continue to be at least as effective as Federal standards. Finally, employees are protected against discrimination not only for exercising their rights under the law but also for refusing to engage in unsafe practices or operate unsafe equipment in violation of the law or regulations.

The Assistant Secretary's initial approval of the developmental plan for Hawaii, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart Y; 39 FR 1010 (January 4, 1974)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the period ending December 31, 1976. These "developmental steps" included amendments to the Hawaii occupational safety and health statute and promulgation of State occupational safety and health standards and program regulations. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, a Field Operations Manual, occupational health program, management information system, agency organizational chart, merit staffing system, and a safety and health poster for private and public employees. These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Hawaii subpart of Title 29 was amended to reflect each of these approval determinations (see 29 CFR 1952.314).

During 1976, the Hawaii plan had met the OSHA requirements for an operational status agreement. A **Federal Register** notice was published on August 13, 1976 (41 FR 34251), announcing that an operational status agreement had been signed on May 19, 1976 for Hawaii. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Hawaii plan.

On May 9, 1978, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Hawaii had satisfactorily completed all developmental steps (43 FR 19849). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Hawaii plan—to be at least as effective as corresponding Federal provisions. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

History of the Present Proceeding

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On September 12, 1983, the Occupational Safety and Health Administration published notice of the eligibility of the Hawaii State plan for a determination under section 18(e) of the Act as to whether final approval of the plan should be granted (48 FR 40902). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the compliance staffing benchmarks established under a court order in *AFL–CIO* v. *Marshall* (CA 74–406).

The September 12 **Federal Register** notice set forth a general description of the Hawaii plan and summarized the results of Federal OSHA monitoring of State operations during Fiscal Year 1982.

In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Hawaii operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the July 21, 1982 Annual Evaluation Report of the Hawaii plan ("FY 1982 Evaluation Report" or "18(e) Evaluation Report"), which was extensively summarized in the September 12 proposal and which provides the principal factual basis for the 18(e) determination, was submitted to the record (Ex. 3–7). Available data on Fiscal Year 1983 State performance through May 1983 was submitted into the record ("FY 1983 data," Ex. 3–8) and was fully considered in the final approval process. The FY 1983 data is generally comparable to that covering FY 1982. In addition, copies of all OSHA evaluation reports on the plan since its inception were made part of the record. To assist and encourage public participation in the 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region IX office in San Francisco, California, in the OSHA Area office in Honolulu Hawaii and at the offices of the Hawaii Division of Occupational Safety and Health in Honolulu. A summary of the September 12 proposal, with an invitation for public comments and testimony, was published in Hawaii on September 24, 1983 (Ex. 19).

The September 12 proposal invited interested persons to submit, by October 10, 1983, written comments and views regarding the Hawaii plan and whether final approval should be granted. Four comments were received in response to this notice. Two comments were received from organized labor, one from an employer group in Hawaii, and one from another State with an occupational safety and health plan.

Public participation was also invited at an informal public hearing which was held on October 27, 1983 at the Federal Courthouse in Honolulu. Appearing at the hearing were a panel of Federal officials responsible for evaluating and monitoring the plan including Russell B. Swanson, OSHA Region IX Regional Administrator, and Bruce Hillenbrand, OSHA's Director of Federal-State Operations in Washington, D.C. Hawaii Director of Labor and Industrial Relations Joshua C. Agsalud and the Administrator of the Division of Occupational Safety and Health, Wayne Mount, gave testimony regarding the Hawaii plan. Five representatives of organized labor, four individuals representing businesses or business organizations, representatives of two professional safety and health groups, a representative from the City and County of Honolulu, and a representative of a public employees association participated in the hearing by presenting oral or written testimony (Ex. 7 through 18).

At the close of that hearing OSHA requested, and the presiding Administrative Law Judge granted, a 30-day post-hearing comment period for the submission of any additional written testimony and comments. One comment was received from the State of Hawaii (Ex. 21).

The closing of the record for this 18(e) proceeding was certified by the Chief Administrative Law Judge, who presided at the October 27, 1983 hearing, on January 25, 1984.

Summary and Evaluation of Comments Received

At numerous times during this rulemaking, OSHA has encouraged interested members of the public to provide information and views regarding operations under the Hawaii plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration.

In response to the September 12 **Federal Register** notice, OSHA received comments from the State of Michigan

Department of Labor, Doug Earle, Director, Bureau of Safety and Regulation (Ex. 2–1), the American Federation of Labor and Congress of Industrial Organizations, Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (AFL–CIO, Ex. 2–2), the United Steelworkers of America, Mary-Win O'Brien, Assistant General Counsel (USWA, Ex. 2–3), and the General Contractors Association of Hawaii, Richard Vieira, Chairman, Safety Committee (Ex. 2–4). During the additional time that the record was left open after the hearing, the Hawaii Department of Labor and Industrial Relations submitted comments which responded in detail to the issues raised by the AFL–CIO and the USWA (Ex. 21).

Several of the comments of the AFL–CIO and the USWA, as well as the comments from the State of Michigan, did not discuss actual State performance but rather were directed toward OSHA's system for monitoring and evaluation of State plans and the requirements that a State must meet to be eligible for final approval.

As stated at the hearing, the evaluation of the Hawaii plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program. (Ex. 7).

The AFL–CIO took exception to several of the measures used by OSHA in evaluating the effectiveness of the Hawaii State plan. The AFL–CIO "believes that many of the 'effectiveness indicators' used in the current evaluation scheme are arbitrary and inappropriate, and that the method fails to accurately reflect the overall conduct of the program" (Ex. 2–2). In this regard, the AFL–CIO notes its concern that OSHA's monitoring system has the result of penalizing State performance which is statistically superior to Federal performance, by requiring further review of differences in data. OSHA has never intended that superior State performance would result in any negative action. A statistical outlier is only a sign of difference, not an indication of deficiency. If upon further review an outlier is determined to be the result of stronger State performance, clearly no negative determination will be reached.

The USWA believes that the 18(e) Evaluation Report should include more narrative information relative to OSHA's conclusions on State plan performance. For example, the USWA requests OSHA to provide summaries of discrimination cases and contested cases and to furnish the case file data used by OSHA to reach conclusions on such items as abatement assurance (Ex. 2–3).

OSHA believes, however, that a narrative, anecdotal approach to State plan evaluation of the kind suggested by these comments is too subjective to serve as a reliable basis for either routine monitoring or an 18(e) determination. OSHA has specifically rejected this approach in designing its new State plan monitoring and evaluation procedures, which have been utilized in monitoring and evaluating the Hawaii plan. The Act requires OSHA to determine whether a State's overall program is "at least as effective" as that of Federal OSHA. OSHA strongly believes that the most effective way to do so is through direct comparison of State and Federal program performance. Moreover, as the State points out in its response to these comments, the public review of background data would "place the public * * * in the role clearly assigned to the Secretary in section 18(f) of the Act." (Ex. 21).

Additional comments from the AFL–CIO and the USWA were directed to OSHA's findings on areas of State performance as described in the FY 1982 Evaluation Report. All of these comments relate to specific indices of effectiveness or factors for determination in making a decision on final approval of a State plan (see 29 CFR 1902.3, 1902.4 and 1902.37) and are therefore addressed in the Findings and Conclusions section of this notice.

The State of Michigan objected to OSHA's requirement that a State must participate in the Unified Management Information System (Uni-MIS) in order to be eligible for final approval (Ex. 2–1). As discussed above, OSHA's evaluation of State performance is based on a comparison of Federal and State statistical data. Since the majority of this data is provided through State participation in the Uni-MIS, such participation is appropriate and essential to OSHA's ability to make substantiated determinations under section 18(e) of the Act as to whether a State plan in actual operation is "at least as effective" as the Federal program. Thus, OSHA believes that the Uni-MIS is a reasonable and highly useful exercise by OSHA of its statutory authority to obtain from States "information in such form as the Secretary shall from time to time require," 29 U.S.C. 667(c)(8).

The General Contractors Association of Hawaii commented that it favors final approval for Hawaii because of the State's demonstrated ability to tailor standards to meet unique local conditions and to respond promptly to requests for assistance (Ex. 2–4).

Thirteen public witnesses presented oral or written testimony at the October 27 hearing. The testimony unanimously supported final approval for the Hawaii plan. Tim Lyons, Executive Vice President of the Hawaii Business League, indicated his organization's support for final plan approval because the State is able to accomplish its goals in a non-adversarial manner and, in many cases, is more effective than the Federal program (Ex. 10).

Representing the International Longshoremen's and Warehousemen's Union, Local 142, Fred Lee, Contracts Administrator, asserted that the State program meets local needs and conditions more effectively than a centralized national administration would and that standards and enforcement procedures are effective (Ex. 11).

Representing the Hawaii Iron Workers Training Trust Fund, Edison Keomaka, Training Coordinator, requested that OSHA grant final approval because the Hawaii program is effective and meets local conditions (Ex. 9–A), and T. George Paris, Safety Coordinator, in a statement read into the record on his behalf, asserted that the Hawaii program is able to maintain high safety and health standards while tailoring its program to local conditions (Ex. 9).

Mel Higa, on behalf of the Hawaii Government Employees Association, Local 152, American Federation of State, County and Municipal Employees, of which he is Executive Assistant, stated that the Hawaii program effectively provides worker protection in the public sector (Tr. pp. 47–51).

Representing the Hawaii Sugar Planters' Association, Robert Hughes, president, stated that Hawaii has demonstrated its willingness and ability to accept its obligations and achieve the goals established under OSHA (Ex. 12).

Roy Y. Takekawa, on behalf of the Hawaii Section of the American Industrial Hygiene Association, of which he is president, requested OSHA to grant final approval because the State's program is effective, and

problems can be more easily addressed at the local level (Ex. 13).

Walter H. Kupau, president of the Hawaii State AFL–CIO, in a statement read into the record on his behalf, stated that despite some reservations about the State's program, particularly its coverage of unorganized workers, his organization favors final approval because "* * * the State OSH program is more effective in carrying out the purposes of the OSH law and in providing protection to the working men and women of Hawaii." (Ex. 14).

Lefty Muramoto, representing the Public Employees Management Association of Hawaii, of which he is Executive Secretary, noted the State's ability to administer the occupational safety and health program in a fair and equitable manner, and stated that the Hawaii occupational safety and health program has been responsive to requests for assistance from the public sector (Ex. 15). Another public sector representative, Charles R. Carpenter, Chief of Industrial Safety and Workers' Compensation of the City and County of Honolulu, testified that the Division of Occupational Safety and Health has been readily available to work with the city in developing programs to abate hazards, leading to safer worksites (Ex. 17).

R. C. Botti, President of the Legislative Information Service of Hawaii, while maintaining that Federal jurisdiction would lead to fewer inspections and would be acceptable to the business community, cited the good working relationship that the State has maintained with employers and expressed his organization's support for final approval (Ex. 16).

Frank Drzymala, Safety Coordinator, Hawaiian Telephone Company, testified that the State conducts inspections in an unbiased objective and professional manner, and that requests for assistance are answered promptly. His organization supports final approval because the State program is effective and administered in a professional manner (Ex. 18).

Dan Barnes, Chairman of the Big Island Safety Association, stated that his organization favors final approval and that Hawaii has done an exceptionally good job (Tr. pp. 71–73).

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Hawaii State plan. This information has included all previous evaluation findings, especially those for Fiscal Year 1982, data for Fiscal Year 1983 from October 1982 through May 1983, and information presented in written submissions and at the informal public hearing held on October 27, 1983. Findings and conclusions in each of the areas of performance are as follows:

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Hawaii State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the September 12 notice, the Hawaii plan provides for the adoption of standards and amendments thereto which are identical to or at least as effective as Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Ex. 3–2; 3–4), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

Testimony at the hearing confirmed that the State has adhered to its standards promulgation procedures, including participation of interested persons. Witnesses representing the International Longshoremen's and Warehousemen's Union, the State AFL–CIO and the City and County of Honolulu testified that they had participated in the standards promulgation process and were pleased with both the process and the results (Testimony of Fred Lee, Ex. 11; Testimony of Walter Kupau, Ex. 14; Testimony of Charles R. Carpenter, Ex. 17).

As noted in OSHA's FY 1982 Evaluation Report and summarized in the September 12, 1983 **Federal Register** notice, Hawaii had between 1979 and 1982 experienced difficulty in complying with the six-month time frame for responding to Federal standards changes required by 29 CFR Part 1953. It appears, however, that this was a result of an enactment by the legislature in 1979 requiring the State to readopt all safety and health standards in a standardized format, which posed a tremendous administrative burden on the promulgation process. Since completion of that activity, in December 1982, the State has adopted all subsequent Federal standards changes in a timely manner. This is demonstrated by the FY 1983 data, which indicates that both standards due for State promulgation by May 1983 were adopted on time. Previous to the legislative mandate, and subsequent to plan certification, the State had adopted standards equivalent to the Federal within the six-month time frame. In addition, the designee has provided written assurance of continued timeliness in standards adoption (18(e) Evaluation Report, p. I–1).

All comments at the hearing on the quality of State standards were favorable. Several witnesses testified that State standards are often more effective than Federal standards and are adapted to local needs. For example, two witnesses cited the hearing conservation standard as an example of a State standard which is more effective than the comparable Federal standard, especially in its coverage of agricultural workers (Testimony of Fred Lee, International Longshoremen's and Warehousemen's Union, Ex. 11; Testimony of T. George Paris, Hawaii Iron Workers Training Trust Fund, Ex. 9). The statement from the State AFL–CIO maintained that the threshold limit values for hazardous substances from the American Conference of Governmental Industrial Hygienists for

1974 adopted by the State "provide worker protection substantially in excess of that provided by current OSHA standards." (Ex. 14).

The State has generally adopted standards interpretations, which are at least as effective as the Federal, in a timely fashion. OSHA monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to State standards have occurred in Hawaii.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Hawaii program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Hawaii State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval any permanent variance granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); any temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the FY 1982 Evaluation Report and the September 12 notice, one permanent variance was granted in FY 1982. The action on this request was in accordance with the State's procedure and the granted variance provided protection equivalent to that provided under the standard. No temporary variances were requested (18(e) Evaluation Report, p. II–1). No variances were granted in FY 1983. Accordingly, OSHA finds that the Hawaii program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)). The Hawaii Occupational Safety and Health Law (H.R.S. Chapter 396, "Hawaii Law") and implementing regulations previously approved by OSHA establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms virtually identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). Both the FY 1982 Evaluation Report and FY 1983 data find no lack of adherence to such procedures.

(a) *Inspections.* A State plan must provide for inspection of covered workplaces, including inspections in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). When no compliance action results from inspection of violations alleged by employee complaints, the State must notify the complainant of its decision not to take compliance action by such means as written notification and opportunity for informal review (29 CFR 1902.4(c)(2)(iii)). The FY 1982 Evaluation Report and FY 1983 data note that Hawaii provided appropriate feedback on all complaints (FY 1982 Evaluation Report, p. VIII–1). As noted in the September 12, 1983 **Federal Register** notice Hawaii follows a policy of responding to all employee complaints by either conducting an inspection or sending a letter to the employer but responds to most through inspections (69.3% in FY 1982). Two commenters note that the data in OSHA's FY 1982 Evaluation Report indicate that a number of complaints during the period received no response (comments of AFL–CIO, Ex. 2–2, and USWA, Ex. 2–3). The State of Hawaii, however, points out in its November 9, 1983 response that the apparent lack of response is due to errors in data which have been corrected and that the State does respond to all valid complaints (Ex. 21). At the hearing, the representative from the International Longshoremen's and Warehousemen's Union testified that the State's response to complaints has been timely and effective (Ex. 11).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Data contained in the 18(e) evaluation and FY 1983 data indicate that 100% of State programmed (general schedule) inspections are conducted in high hazard establishments (18(e) Evaluation Report, p. VII–1). It should be noted that the method for compiling the high hazard inspection list used in scheduling State inspections differs from that used Federally, in that the State system is based on establishment-level data obtained from disability compensation records. Analysis of such data allows scheduling inspections of those employers who have the highest incidence of injuries and illnesses. In the construction industry scheduling is based on construction permits.

The AFL–CIO and USWA assert that while Hawaii's use of workers' compensation data may be useful for targeting safety inspections, such data provide an insufficient basis for scheduling health inspections (Ex. 2–2 and 2–3). In its November 9, 1983 response, the State points out that it has supplemented its use of workers' compensation data for health targeting with, among other things, OSHA's high hazard industry listing for Hawaii, locally obtained data, the NIOSH National Occupational Hazard Survey, and a special survey prepared by the State. The State believes that it utilizes all available information in developing its health targeting system (Ex. 21). Monitoring results showing that a high percentage of the State's health inspections result in citations (66% in FY 1982; 81.9% in the FY 1983 data) indicate that the health targeting system is effective in locating those establishments where hazards exist.

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). In FY 1982, 98.8% of all State inspections included either an employee representative on the walkaround or interviews with employees (18(e) Evaluation Report, p. XI–1). Both the AFL–CIO and the USWA assert that the data indicate a relatively low utilization of rights by employees in Hawaii; for example, the AFL–CIO points out that of 3212 inspections during FY 1982, only 95 were in response to complaints. Additionally, only 2.2% of all inspections included an employee representative on the walkaround. The unions believe that this evidence of low employee participation reflects adversely on the State's efforts (Ex. 2–2 and 2–3). The State acknowledges the relatively low exercise of walkaround and complaint rights; however, it points out that considerable efforts have been undertaken in training employees

regarding their rights and the means available to them to exercise their rights. The State maintains that ensuring that workers are apprised of their rights is a responsibility shared by organized labor (Ex. 21).

OSHA's monitoring of the State during this and previous evaluation periods indicates that the State encourages employee participation in inspections and conducts significant training to advise employees of their rights and promote the exercise of these rights. Testimony at the hearing confirmed that the State provides training to employees on their rights under the State program (Fred Lee, International Longshoremen's and Warehousemen's Union, Tr. p. 43).

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Hawaii requires that a poster, which was previously approved by OSHA (40 FR 6336), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard.

One comment on this subject was received from the USWA, which inquired if the evidence indicates whether posting violations recur and how the State determines that employers are complying with the posting requirements (Ex. 2–3). In this regard, the FY 1982 evaluation results and FY 1983 data reflect a relatively low incidence of posting violations as a percentage of total violations observed. This indicates that the posting requirements are effectively enforced. All violations of posting requirements are penalized.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Hawaii Law and regulations provide for discrimination protection which is at least as effective as the Federal and in some respects more protective. The State received and investigated three discrimination complaints during FY 1982 and determined that all three were non-merit cases. Federal evaluation of these cases indicates that the State action was proper (18(e) Evaluation Report, p. XVI–1).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and Field Operations Manual which are substantially identical to the Federal. The FY 1982 Evaluation Report and FY 1983 data indicate that there were no imminent danger situations identified nor any instances of complaints about protection of trade secrets.

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Section 4(b)(1) of the Hawaii Law authorizes the Director to enter and inspect all covered workplaces in terms virtually identical to those in the Federal Act. In addition, the Director is authorized to petition the appropriate circuit court for a search warrant permitting entry to inspect any workplace where entry has been refused; such orders are enforceable through contempt proceedings. The Hawaii Law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. During the FY 1984 evaluation period, Hawaii received nine refusals of entry. The State successfully obtained warrants in seven of these cases, was permitted a consensual investigation in one, and determined that it lacked jurisdiction in the final instance (18(e) Evaluation Report, p. X–1). The FY 1983 data showed comparable performance.

The USWA commented that the number of denials of entry during FY 1982 and 1983 (20 denials) seemed high but noted that OSHA had no measure for evaluating the level of denials (Ex. 2–3). Hawaii notes in its comments that one employer was responsible for six of the 20 denials (Ex. 21). OSHA believes that no measurement for rate of denials of entry would be appropriate. Since the exercise of a constitutional right is a matter left solely to the individual, the relative frequency of such exercise between jurisdictions would be a random variable which does not demonstrate deficiency in State performance. Rather, the appropriate measure of State performance is the State's response to denials of entry.

There was one instance of advance notice during the FY 1982 evaluation period. OSHA's review of the inspection file revealed that the advance notice was given for legitimate reasons (18(e) Evaluation Report, p. XI–1). There was one instance of advance notice during the FY data. The USWA comments requested further information concerning the one instance of advance notice (Ex. 2–3). The State provided additional information in its response to the USWA comments (Ex. 21).

In light of the above, OSHA finds the Hawaii program to have met the requirements of the criteria for right of entry and advance notice.

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Hawaii plan through its law, regulations and Field Operations Manual, which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information and proposing penalties. As discussed in the FY 1982 Evaluation Report, Hawaii's provisions governing classification of violations differ in some respects from the Federal. During much of the evaluation period, the State's system for calculation of penalties differed from that used by Federal OSHA; both systems were revised in FY 1983 and are now more comparable (18(e) Evaluation Report, p. XII–1).

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first-instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Comparison of Federal and State data, as discussed in the FY 1982 Evaluation Report and the FY 1983 data, shows that the State finds more violations per initial inspection (2.2 in FY 1982; 1.9 in FY 1983 data) than Federal OSHA. Additionally, data show that the State finds a higher percentage of programmed establishments not in compliance (78.1%, in FY 1982; 65.8% in FY 1983 data) than Federal OSHA. However, the State finds a lower percentage of serious violations (safety 7.8%, health 2.3% in FY 1982; safety 5.8%, health 4.3% in FY 1983 data) than Federal OSHA. The AFL–CIO and the USWA suggest that the disparities in the above discussed rates indicate some degree of inadequacy in the State's ability to identify and properly classify hazards (Exs. 2–2, 2–3). In particular, the USWA questions why the State does not find more serious violations in the service and retail trade industries. The USWA also disputes OSHA's conclusion that the decline over time in the number of violations found per inspection is due in part to the frequent State inspection of establishments, asserting that the decline could also be due to changes in enforcement policy.

As stated in the FY 1982 Evaluation Report, the industry mix in the State, specifically the low representation of manufacturing establishments, where most serious violations are found Federally, contributes to the difference in the rate of serious violations. For example, in FY 1982, 27.1% of the workforce under Federal jurisdiction and 34.8% of Federal inspections were in the manufacturing industry, and these inspections produced 54.4% of all serious violations. In Hawaii, only 3.8% of employees are in the manufacturing industry. Five percent of Hawaii's inspections in FY 1983 were in the manufacturing industry, and these inspections produced 2.5% of the serious violations found (18(e) Evaluation Report, p. VII–1, VII–3). The State points out in its comments that, while many injuries in the service and wholesale and retail trade industries do not appear to be related to violations of standards, it has instituted special procedures to observe and control unsafe work practices which may be addressed under the general duty obligations (Ex. 21). On-site monitoring of State inspections by OSHA, moreover, confirms the ability of State inspectors to recognize and properly classify violations (18(e) Evaluation Report, pp. VII–1—VII–3, XII–1—XII–3).

The State also notes that there have been no policy changes which might produce a decline in cited violations (Ex. 21). This is confirmed by the results of OSHA monitoring throughout the history of the plan as contained in the evaluation reports made a part of the record in this proceeding (Ex. 4). In addition, the written testimony of the State AFL–CIO noted that the union sees "no signs that the State is moving away from a vigorous enforcement posture." (Ex. 14).

The USWA also inquired about the State's rationale for grouping violations less frequently than OSHA (Ex. 2–3). The State in its response noted that Hawaii will group violations if the coexistence of the violations increases the risk to workers but will not group solely for the purpose of increasing the penalty. The State Attorney General has stated that this procedure alleviates the problem that a failure to support one of the grouped violations could affect the other violations (Ex. 21). The State's procedure does not affect abatement of the violations.

Notice of citations, penalties and abatement periods are issued in a timely manner (3.7 days from inspection to issuance of citation and proposed penalty in FY 1982 and 4 days in FY 1983 data). Adequate information to support citations is obtained as demonstrated by the low rate of contest in Hawaii (0.5% in FY 1982 and 0.6% in FY 1983 data) and the upholding of all violations involved in formal hearings in FY 1982.

During the evaluation period, State average proposed penalty levels were below those proposed by Federal OSHA ($74 for safety and $87 for health in FY 1982). The AFL–CIO and the USWA questioned whether the low penalties could serve as an effective means of ensuring compliance (Ex. 2–2, 2–3). The State in its comments asserted that its penalty provisions are effectively and consistently applied in such a way as to assure compliance with the standards, which is the ultimate goal of the Law. No testimony at the hearing appears to contradict this assertion nor does OSHA have any other evidence to indicate that Hawaii's lower penalties are not achieving the desired end. The goal of the program is the achievement of abatement, rather than assessment of penalties, and Hawaii has been vigorous in pursuing abatement.

Hawaii conducts a proportionately greater number of follow-up inspections than does Federal OSHA (10.6% of total inspections in FY 1982; 6.3% in FY 1983 data). The results of these follow-ups indicate that abatement is being achieved. Abatement periods are generally shorter than those set Federally (4.1 days average for safety; 10.9 days average for health in FY 1982 and 4.0 for safety and 11.8 for health in FY 1983 data). Hawaii attempts to document abatement in all cases, and the 18(e) evaluation indicates acceptable performance (18(e) Evaluation Report, pp. XIII–1—XIII–2). The USWA's comments do not appear to disapprove of Hawaii's abatement program; however, they inquire as to what criteria Hawaii uses for conducting follow-up inspections as opposed to other means of abatement confirmation. The State's criteria for scheduling follow-up inspections is contained in its Field Operations Manual which was made part of the record for this proceeding (Ex. 3–10).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Hawaii's procedures for employer contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the Law, regulations and Field Operations Manual made a part of the record in this proceeding and are substantially identical to the Federal procedures. Appeals of citations, penalties and abatement periods are heard by the Labor and Industrial Relations Appeals Board and may be further appealed to the appropriate circuit court.

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)).

Only 12 cases in FY 1982 resulted in contests, representing 0.5% of all inspections with citations. OSHA believes this low contest rate indicates a lack of adversarial relationships between the State and employers and supports the conclusion that the State's enforcement actions are adequately supported. The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the Hawaii plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Hawaii plan are appropriate to the special needs of the State, competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

Hawaii's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During FY 1982, the State conducted 109 inspections in the public sector and cited 424 violations. Proposed penalties were comparable to those in the private sector.

While injury and illness rates in the public sector are comparable to those in the private sector (10.9 combined State and local government all case rate; 5.9 combined State and local government lost workday case rate in 1981), local government rates are high. As discussed in the FY 1982 Evaluation Report, the high local government rates are due in part to the statistical inclusion of employees of educational institutions, a low-rate grouping, in the State, rather than local government, as well as the inclusion of police and firefighters whose exposure to occupational hazards is not comparable to any element of the private sector (18(e) Evaluation Report, pp. VI–1, 2). The USWA took exception to the evaluation's deletion of police and firefighters for statistical purposes (Ex. 2–3). OSHA asserts that police and firefighters by the nature of their work are exposed to hazards which are generally not enforcement-preventable. The presence of such unique hazards in public sector employment inevitably skews the injury data. The deletion of this data was not intended to lower the rates but to serve as an analytical tool and provide a meaningful assessment of the data.

At the public hearing, the representative of the Hawaii Government Employees Association (AFSCME, Local 152, AFL–CIO) stated that the Hawaii program for the public sector is as effective as that for the private sector. He testified that the State has been responsive to complaints and requests for assistance from the public sector and has conducted thorough inspections even within its own Department (Tr. pp. 47–51). The other representatives of the public sector at the hearing concurred that the Hawaii program provides effective worker protection for the public sector (Testimony of Lefty Muramoto, Public Employees Management Association, Ex. 15; Testimony of Charles R. Carpenter, City and County of Honolulu, Ex. 17).

Because the State treats the public sector in the same manner as the private sector, as evidenced by its written procedures, which are applicable to all covered employees, public or private, and by testimony at the hearing that the State does not, in practice, differentiate between the public and private sectors, OSHA concludes that the Hawaii program meets the criterion in 29 CFR 1902.3(j).

(5) *Staffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, CA 74–406) to calculate for each plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program; States must allocate sufficient staff to meet these levels or "benchmarks" in order to qualify for final approval. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Hawaii to allocate nine safety compliance officers and nine health compliance officers to conduct inspections, under the plan. Hawaii has allocated these positions, as evidenced by the FY 1983 and 1984 Applications for Federal Assistance (FY 1983, Ex. 3–6), in which the State has committed itself to funding the State share of salaries for eighteen safety inspectors and nine health enforcement officers.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for Hawaii (49 FR 19849), all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission.

As discussed in previous evaluation reports made part of the record in this proceeding (Ex. 4), all new State compliance officers receive six weeks of intensive basic training. The State also provides continuing training for its staff. The FY 1982 Evaluation Report notes that the State conducted two one-week training sessions for all professional employees, which concentrated on upgrading professional competency and cross training in safety and health. Much of the training material was provided by the OSHA Training Institute (18(e) Evaluation Report, p. V–1). The FY 1983 data also indicate an average of approximately two weeks of training per professional employee for the eight-month period.

Several witnesses at the hearing expressed an opinion that the State provides more staff than could be expected under Federal jurisdiction (Testimony of Mel Higa, Hawaii Government Employees Association, Tr. pp. 47–51; Testimony of Walter Kupau, Hawaii AFL–CIO, Ex. 14; Testimony of R. C. Botti, Legislative Information Service of Hawaii, Ex. 16). Several witnesses also expressed appreciation for the State's distribution of staff, noting that the presence of State staff on islands other than Oahu enables the State to respond promptly to requests for assistance (Testimony of Fred Lee, International Longshoremen's and Warehousemen's Union, Ex. 11; Testimony of Mel Higa, Hawaii Government Employees Association, Tr. pp. 47–51; Testimony of Dan Barnes, Big Island Safety Association, Tr. pp. 71–73).

Because Hawaii has allocated sufficient enforcement staff to meet the benchmarks currently in effect for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order and 1980 Report to the Court in *AFL–CIO* v. *Marshall, supra*, are being met by the Hawaii plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its

standards. The Hawaii plan was funded at $1,764,352 in FY 1982, $2,118,886 in FY 1983, and $2,110,028 in FY 1984. (For each year, 50% of the funds was provided by Federal OSHA and 50% was provided by the State).

As noted in the FY 1982 Evaluation Report, Hawaii's funding appears sufficient in absolute terms; moreover, the State compares favorably to Federal OSHA with respect to expenditures per covered employee (18(e) Evaluation Report, p. XVIII–1). The FY 1983 data are consistent with these findings. On this basis, OSHA finds that Hawaii has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and Reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Hawaii's employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the September 12 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Hawaii has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

During the FY 1982 evaluation period, Hawaii provided training to 360 employers and supervisors and 3240 employees. Of the employees trained, 97% were in high hazard industries.

In the private sector, Hawaii provides on-site consultative services to employers under a cooperative agreement with OSHA made pursuant to section 7(c)(1) of the Act and 29 CFR Part 1908. On-site consultation for the public sector is provided through the Hawaii State plan. During the FY 1982 evaluation period, 77 on-site consultative visits were conducted in the public sector.

In its comments the USWA expressed concern about the State's public sector consultants' ability to properly classify hazards (Ex. 2–3). As Hawaii points out in its comments, with one exception all consultants were trained and initially served as compliance officers (Ex. 21). Federal monitors have found very few errors in Hawaii's hazard classifications over the last several years (FY 1982 Evaluation Report, p. III–1). This conclusion is buttressed by the fact that data concerning observation of hazards per public sector consultation is consistent with data relating to violations observed in public sector compliance inspections. Moreover, as the State points out, follow-up action is taken on all hazards identified (Ex. 21). At the hearing, the representative from the International Longshoremen's and Warehousemen's Union stated that Hawaii's training and consultation services are of high quality, are conveniently scheduled and reflect knowledge and concern for local issues (Ex. 11).

The USWA objects to the absence of data concerning employee participation during consultation visits (Ex. 2–3). Since consultation visits are conducted at the request of employers, employee participation is encouraged but not required.

Accordingly, OSHA finds that Hawaii has established and is administering an effective voluntary compliance program.

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)). As noted in the 18(e) Evaluation Report, Hawaii's reportable injury and illness rates in absolute terms are higher than the Federal averages. It should be noted, however, that this comparative difference existed prior to the time of the inception of the Hawaii plan in 1974. The overall trend in worker safety and health injury and illness rates since the State began enforcement of its plan compares favorably to that under the Federal program. For example, for the period 1973–1981, the all case rate for all industry declined 20% in Hawaii, and the lost workday case rate for all industry in Hawaii declined 6%. The rates for particular segments of the State's employment (i.e., manufacturing and construction) show even greater declines. For example, the all case rate for manufacturing declined over 35%, and the lost workday case rate for manufacturing declined over 59% (18(e) Evaluation Report, p. XIX–2). In its comments, the General Contractors Association of Hawaii maintained that a contributor to the high injury rates in Hawaii is improper logging of injuries (Ex. 2–4).

Comments from the AFL–CIO and the USWA point out that Hawaii's rates are above Federal averages in absolute terms and dispute OSHA's analysis of overall trends as a valid indicator of State performance. Additionally, these comments note that Hawaii's rates during the period of 1979–1980 showed an increase rather than a decline (Exs. 2–2, 2–3). OSHA believes that the objection to analysis of the trend of injury and illness rates is misplaced. While ultimate achievement of a uniformly low absolute rate is a worthy goal, which both OSHA and the State are anxious to reach, such achievement is not a prerequisite for final approval. In order to account for differences in State rates, the analysis must focus on trends in order to appropriately assess performance. The State's performance must be determined to be at least as effective as Federal performance in reducing injury and illness rates. OSHA does not believe that the relatively minor increase in several rates between 1979 and 1980 is statistically significant in light of an overall nine-year downward trend.

Based upon the State's overall downward trends in injury and illness rates, OSHA finds that the trends in illness and injury statistics in Hawaii compare favorably with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments and testimony received thereon. The present Federal Register document sets forth the findings and conclusions resulting from this review. In light of all the facts presented on the record, the Assistant Secretary has determined that the Hawaii State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. The Hawaii State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective April 30, 1984.

Under this 18(e) determination, Hawaii will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Hawaii must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effects of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Hawaii plan terminates OSHA authority for Federal enforcement of its standards in Hawaii, in accordance with section 18(e) of the Act, in issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a) (2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any ocupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under Section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a) (2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Hawaii plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement in May 1976.)

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Hawaii plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private sector maritime employment, since the issues of maritime safety and health are excluded from coverage under the Hawaii plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in its plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart Y of Part 1952 to reflect the final approval of the Hawaii plan.

A new paragraph § 1952.313 has been added to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

A new § 1952.314, Level of Federal enforcement, has been added to reflect the State's 18(e) status. The new paragraph replaces former § 1952.312, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on May 19, 1976. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Hawaii, and the Operational Status Agreement is no longer in effect. Section 1952.314 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart Y has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.310 to clearly identify the 1973 initial plan approval decision to which it relates, and deletion of former § 1952.315, which pertained to approval of miscellaneous, unrelated plan changes. The addresses of locations where State plan documents may be inspected have been updated and are found in the new § 1952.315.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Hawaii under any new or different requirements nor would any additional burden be placed upon the

State government beyond the responsibility already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Secs. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Honolulu, Hawaii this 30th day of April, 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

PART 1952—[AMENDED]

Accordingly, Subpart Y of 29 CFR Part 1952 is hereby amended as follows:

1. Section 1952.310 is amended by revising the heading to read:

§ 1952.310 Description of the plan as initially approved.

§ 1952.313 [Redesignated as § 1952.311]

§ 1952.314 [Redesignated as § 1952.312]

2. The following paragraphs of Subpart Y are redesignated as follows:

A. § 1952.311 Where the plan may be inspected is redesignated as § 1952.315.

B. § 1952.312 Level of Federal enforcement is redesignated as § 1952.314.

C. § 1952.313 Development schedule is redesignated as § 1952.311.

D. § 1952.314 Completion of developmental steps and certification is redesignated as § 1952.312.

3. New § 1952.313 Final approval determination is added and newly redesignated §§ 1952.314 and 1952.315 are revised as follows:

§ 1952.313 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after a determination that the State met the "fully effective" compliance staffing benchmarks established in response to a Court Order in *AFL CIO v. Marshall*, (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Hawaii State plan for a period of at least one year following certification of completion of developmental steps (May 9, 1978, 43 FR 19849). Based on the Evaluation Report for FY 1982 and available FY 1983 data, and after opportunity for public comment and an informal public hearing held on October 27, 1983 in Honolulu, Hawaii, the Assistant Secretary determined that in actual operations, Hawaii is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Hawaii plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective April 30, 1984.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Hawaii except that, in the private sector, the plan excludes the issue of maritime safety and health.

(c) Hawaii is required: to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

§1952.314 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Hawaii plan under section 18(e) of the Act, effective April 30, 1984, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Hawaii plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violation of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Hawaii plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Hawaii State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§1952.315 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected

and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3700, Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 11349 Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102; and Office of the Administrator, Hawaii Department of Labor and Industrial Relations, Division of Occupational Safety and Health, 677 Ala Moana, Suite 910, Honolulu, Hawaii 96913.

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federal register

Friday
May 4, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC84–3009	Apr. 6, 1984.
Iowa: IA84–4006	Feb. 17, 1984.
Maryland: MD84–3011	Apr. 20, 1984.
Virginia:	
VA82–3033	Dec. 3, 1982.
VA82–3034	Do.
VA82–3035	Do.
Michigan: MI83–2008	Feb. 11, 1983.
Oregon: OR83–5100	Feb. 18, 1983.
Texas:	
TX84–4001	Jan. 20, 1984.
TX84–4002	Jan. 27, 1984.
TX84–4005	Feb. 24, 1984.
TX84–4015	Mar. 16, 1984.

Supersedes Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedes decision numbers are in parentheses following the number of the decisions being superseded.

Nebraska:	
NE84–4094 (NE84–4029)	Jan. 13, 1984.
NE84–4083 (NE84–4030)	Nov. 14, 1983.
Pennsylvania: PA82–3007 (PA84–3012)	Feb. 26, 1982.
Texas: TX83–4080 (TX84–4028)	Oct. 21, 1983.

Signed at Washington, D.C. this 27th day of April, 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits
DECISION NO. DC84-3009-MOD. #1		
(49 FR 13800-April 6,1984)		
DISTRICT OF COLUMBIA,MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES,THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA AND ARLINGTON AND FAIRFAX COUNTIES		
CHANGE:		
LABORERS:		
BUILDING CONSTRUCTION (EXCLUDING THE CITY OF ALEXANDRIA, VA.) & HIGHWAY CONSTRUCTION (WASHINGTON D.C. ONLY):		
Plasterers'Tenders	$12.21	1.73
Operators of scootcretes, buggy mobiles, and mixer operators (not in conjunction with plasterering machine on plasterering work) (All areas)	12.55	1.73
Mixer operators in conjunction with plastering machine	12.89	1.73
MILLWRIGHTS	15.61	1.56
PILE DRIVERMEN	15.25	1.56
PLUMBERS:		
WASHINGTON D.C.:		
Apartment buildings over 4 stories:		
Journeyman	10.05	1.47
Mechanical helper-loading unloading, distribution & stockpiling of materials and equipment; loading & unloading of tools, tool repair, cleaning & pick-up activity; job clean-up activity,cleaning of fixtures and equipment; cutting, patching and grouting under the direction of a joureyman; service contractor equipment; coring; setting up and tearing down scafford	8.04	1.47
REMAINING AREAS:		
Apartment building over 4 stories, schools, colleges speculative office buildinds, strip shopping centers,churches,water coolers, room air conditioning units,appliances,packaged ice machines, and light commercial and/or air conditioning systems serving a single business in a single story building and not to exceed 5 h.p. or tons (self-contained package unit up to and including 5 h.p. or tons)		
Journeyman	10.05	1.47
Mechanical Helper(same duties as Washington D.C.'s)	8.04	1.47
STEAMFITTERS,REFRIGERATION & AIR CONDITIONING MECHANICS:		
Light commercial refrigeration and/or air conditioning systems serving a single business- air conditioning systems shall not total more than 7½ tons and the refrigeration system shall not total more than 7½ tons;apartment buildings over 4 stories with individual units not to exceed 5 tons; heat pumps (package units) not to exceed 5 tons (excluding split units)	9.48	3.31
Mechanical helper-loading unloading, distribution and stock piling of materials and equipment; loading and unloading tools;tool cleaning and pick-up activity; job clean up activity,cleaning of equipment, cutting, patching and grouting under the direction of a journeyman,service contractor's equipment; setting ip and tearing down of scaffolding:		
Washington D.C.- Apartment buildings over 4 stories	8.00	1.55
Remaining areas-Apartment buildings over 4 stories, schools. colleges,speculative office buildings, churches, and strip shopping centers	8.00	1.55

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MD84-3011-MOD. #1		
(49 FR 16930-April 20,1984		
Baltimore County, Maryland		
DELETE:		
Asphalt Paver	$12.14	3.05
CHANGE:		
Bituminous concrete paver	10.59	
DECISION NO. VA82-3035-Mod. #5		
(47 FR 54747-December 3, 1982)		
YORK COUNTY, & THE CITIES OF HAMPTON & NEWPORT NEWS (INCLUDING LANGLEY AFB, FORT EUSTIS & FORT MONROE)		
CHANGE:		
LABORERS:		
Unskilled	7.95	.71
Tenders, motorized Georgia buggy operators,nozzlemen (gunite or sandblasting), concrete saw operators,air tool and vibrator operators	8.05	.71
Mortar mixers, hod carriers, pipelayers, caulkers, marble, tile and terrazzo worker helpers	8.20	.71
Burners (wrecking)	8.30	.71
Floor, base, and terrazzo grinder	8.35	.71
Wagon drill and air trac	8.45	.71
Powdermen	8.70	.71
DECISION NO. VA82-3034-MOD. #4		
(47 FR 54746-December 3, 1982)		
The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH		
CHANGE:		
LABORERS:		
Unskilled	7.95	.71
Tenders, motorized Georgia buggy operators, nozzlemen (gunite or sandblasting), concrete saw operators, air tool and vibrator operators	8.05	.71
Mortar mixers,Hod carriers, pipelayers,caulkers,Marble,Tile, and Terrazzo workers helper	8.20	.71
Burners(wrecking)	8.30	.71
Floor, base and Terrazzo grinders	8.35	.71
Wagon Drill and Air Trac	8.45	.71
Powdermen	8.70	.71
DECISION NO. VA82-3033-MOD. #6		
(47 FR 54744-December 3, 1982)		
HENRICO COUNTY & THE INDEPENDENT CITY OF RICHMOND		
CHANGE:		
LABORERS:		
Unskilled	7.95	.71
Tenders, motorized Georgia buggy operators,nozzlemen (gunite or sandblasting), concrete saw operators, air tool and vibrator operators	8.05	.71
Mortar mixers, hod carriers, pipelayers, caulkers, marble, tile and terrazzo worker helpers	8.20	.71
Burners (wrecking)	8.30	.71
Floor, base, and terrazzo grinder	8.35	.71
Wagon drill and air trac	8.45	.71
Powdermen	8.70	.71

DECISION NO. OR83-5100 - Mod #12
(48 FR 7379 - Feb. 18, 1983)
Statewide Oregon

	Basic Hourly Rates	Fringe Benefits
ADD:		
All projects involving the construction, alteration or repair of buildings and structures under $1.5 million not including the cost of utilities and all projects under $1 million where no building is included in the project, Surfacing and paving included but utilities are excluded, For the following crafts only:		
CARPENTERS:		
Group 1	12.95	3.47
Group 2	13.07	3.47
Group 3	13.15	3.47
Group 4	13.27	3.47
Group 5	13.03	3.47
Group 6	13.11	3.47
LABORERS: (Base Rate, Zone 1):		
Group 1	10.27	4.50
Group 2	10.55	4.50
Group 3	10.79	4.50
Group 4	10.99	4.50
Group 5	8.00	4.50
POWER EQUIPMENT OPERATORS: (Base Rate, Zone 1):		
Group 1	12.00	4.35
Group 2	12.14	4.35
Group 3	12.26	4.35
Group 4	12.42	4.35
Group 5	12.45	4.35
Group 6	12.54	4.35
Group 7	12.59	4.35
Group 8	12.70	4.35
Group 9	12.77	4.35
Group 10	12.83	4.35
Group 11	12.85	4.35
Group 12	12.92	4.35
Group 13	13.00	4.35
Group 14	13.18	4.35
Group 15	13.34	4.35
Group 16	13.53	4.35
Group 17	13.68	4.35
Group 18	13.87	4.35
Group 19	14.02	4.35

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (Base Rate, Zone 1):		
Group 1	11.75	3.94
Group 2	11.79	3.94
Group 3	11.83	3.94
Group 4	11.87	3.94
Group 5	11.91	3.94
Group 6	11.99	3.94
Group 7	12.07	3.94
Group 8	12.15	3.94
Group 9	12.23	3.94
Group 10	12.37	3.94
Group 11	12.45	3.94
Group 12	12.53	3.94
Group 13	12.61	3.94
Group 14	12.69	3.94
For Zone Differentials and rates for projects over $1.5 million, see Wage Decision		

DECISION NO. TX84-4001 - MOD. #4
(49 FR 2604 - 1/20/84)
Bexar County, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Roofers:		
Roofers; deckman	$ 9.67	.50
Kettlemen	8.58	.50
Waterproofers	9.10	.50
Helpers-assists journeyman in loading, unloading, distributing, handling materials, clean up work site & any duties that don't require any qualifications or skills	4.51	.50

DECISION NO. TX84-4002 - MOD. #2
(49 FR 3575 - 1/27/84)
Lubbock County, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers - Group 1	7.56	1.05
Group 2	7.83	1.05
Group 3	7.76	1.05
Group 4	7.91	1.05
Group 5	8.16	1.05

DECISION NO. TX84-4005 - MOD. #2
(49 FR 7069 - 2/24/84)
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator constructors:		
Mechanics	16.175	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	

DECISION NO. TX84-4015 - MOD. #1
(49 FR 10008 - 3/16/84)
Wichita County, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator constructors:		
Mechanics	16.175	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	

DECISION NO. IA84-4006 - MOD. #6
(49 FR 6206 - 2/17/84)
Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Counties, Iowa

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Zone 6	$ 9.75	2.35+ 3-3/4
Zone 7	13.90	2.35+ 3-3/4

DECISION NO. MI83-2008MOD#5
(48 FR 6456 - February 11, 1983)
Alger, Baraga, Chipewa, Dickinson, Delta, etc., Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
Change:		
Plumbers & Pipefitters	$14.48	$4.00

SUPERSEDEAS DECISION

STATE: Nebraska

COUNTIES: Cass, Douglas, Sarpy, Washington, and that portion of Saunders Co. East of Highway #109

DECISION NO.: NE84-4029

DATE: Date of Publication

Supersedes Decision No. NE84-4094 dated January 13, 1984 in 49 FR 1851.

DESCRIPTION OF WORK: Heavy construction (excluding Washington County, Cass County and that portion of Saunders County east of Highway #109) and Highway construction (excluding bridges across navigable waterways) in all counties.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Carpenters	$13.33	2.10
Sawmen & Piledriver	13.455	2.10
Creosote	13.58	2.10
CEMENT MASON	12.17	2.45
IRONWORKERS:		
Reinforcing & Structural	14.10	2.90
LABORERS:		
Class 1 - General Laborers	9.70	1.80
Class 2 - Towboats & Dredge Deckhands	9.82	1.80
Class 3 - Rakers & Screedman on Asphalt; Mortar Mixer Concrete Saw Operator Pipelayer & Chain Saw Operator	10.05	1.80
	9.99	1.80
Class 4 - Laborer, Welder	10.10	1.80
Class 5 - Form Setters & Precast Manhole Setter, Inlet Builders	10.43	1.80
Class 6 - Tunnelers, Free Air	10.28	1.80
LINE CONSTRUCTION		
Linemen	15.37	3⅛ +.65
Cable Splicers	16.51	3⅛ +.65
Equipment Operator	13.83	3⅛ +.65
Truck Driver	11.10	3⅛ +.65
Groundmen	10.03	3⅛ +.65
TRUCK DRIVERS:		
Douglas & Sarpy Cos.:		
Single Axle, Jack & Spreader, Tandem Axle Euclid Trucks, Power Lift Form Trucks & Jack & Spreader Trucks, Lowboys, Tractor Trailer Water Pulls, Tandem Dump w/auxiliary End, Dump Trailer	10.27	1.75
Water Pulls	10.62	1.75
Lumber Carrier	10.82	1.75

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1: Oilers, Greasers	8.31	2.00
Group 2: Oiler, Driver	8.40	2.00
Group 3: Tractors under 35 h.p., Air Compressors, Pumps, Welding Machine, Spray Machine, Form Trenchers, Belt Machine	10.69	1.40
Group 4: Concrete Mixer, Forklift Operator, Hydro-hammer	11.13	1.40
Group 5: Spreader Oiler	12.17	1.40
Group 6: Concrete Spreader, Concrete Finishing Machine, Concrete Pump Operator, Bulldozer, Roller, Traxcavator, 1 Drum Hoist, Oiler Distributor, Asphalt Roller, 1 Drum Winch Truck	12.42	1.40
Group 7: Blade (Patrol), Scraper	12.82	1.35
Group 8: Hoist, 2 Drums; Trenching Machine; Paving Mixer; Piledriver; Heavy Duty Mechanic & Welder; Shovel; Dragline; Clamshell; Orange Peel; Backhoe; Derrick; Crane; Locomotive; Fireman on Boiler; Laydown Machine; Two Drum Winch Truck; Side Boom Cat; Pug Mill Operator on Asphalt Plant; Leverman on Dredge; Engineer on Dredge; Tugboat Operator; Gradall Operator; Rotary Well Drilling Operator; Hydrocrane; Cleveland Type Backfiller; Self-Propelled Spreader Vibrator; Slip Form Paver	13.01	1.35

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Nebraska

COUNTIES: See Below*

DECISION NO.: NE84-4030

DATE: Date of Publication

Supersedes Decision No. NE83-4083, dated November 14, 1983 in 48 FR 51897.

DESCRIPTION OF WORK: Heavy and Highway Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

*Statewide (except Douglas, Sarpy, Washington and that portion of Saunders County East of Highway #109 and Highway Construction in Cass County

	Basic Hourly Rates	Fringe Benefits
CARPENTER	$8.00	
CARPENTER HELPER	5.75	
CEMENT FINISHER	7.75	
CEMENT FINISHER HELPERS	5.75	
CONCRETE SAW OPERATOR	7.30	
FORM SETTER (ROAD)	7.30	
FORM SETTER (STRUCTURES)	6.20	
LABORER	5.00	
MANHOLE BUILDER	6.50	
PAINTER	5.20	
PILE DRIVER LEADSMAN	5.20	
POWER EQUIPMENT OPERATORS:		
All Purpose Spreader	6.20	
Asphalt Distributor	5.95	
Asphalt Distributor Helper	5.55	
Asphalt Heaterman	5.55	
Asphalt Paving Machine	8.00	
Asphalt Paving Machine Screedman	6.50	
Asphalt Roller, Self-propelled	7.45	
Stationary Pl. (base or Stabilization)	7.30	
Stationary Pl. (asphalt or concrete)	8.30	
Beginner Operator	6.50	
Bulldozers:		
Less than 115 Drawbar H. P.	7.45	
115 Drawbar H. P. and over	8.30	
Cement Handler	5.20	
Clamshell, Dragline, Backhoe, Crane, Pile Driver or Shovel	8.40	
Concrete Mixer	5.20	
Concrete Paver	7.30	
Slip Form Paver	8.30	
Concrete Finishing Machine and Spreader	8.30	
Conveyor	5.20	
Crusher (incl. those with integral screening plant)	7.45	

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Cont'd):		
Dredge Pump Under 10"	$6.20	
Dredge Pump 10" and over	7.30	
Fireman (boiler)	5.55	
Front End Loader:		
3-1/2 Cu. Yds. or less	7.30	
Over 3-1/2 Cu. Yds.	8.00	
Mechanic	8.40	
Mechanic Helper	7.30	
Motor Grader	8.40	
Oiler or Greaser	7.30	
Roller or Compactor (earthwork) self-propelled	6.50	
Scraper:		
Under 16 Cu. Yds.	7.45	
16 Cu. Yds. and Over	8.30	
Power Grade Machine (trimmer & profiler)	8.30	
Tractor:		
Farm Type	6.20	
Less than 115 Drawbar H. P.	7.45	
115 Drawbar H. P. and Over	8.00	
Traveling Plant (stabilization)	7.45	
Traveling Plant Helper (stabilization)	6.20	
Trenching Machine	6.50	
TRUCK DRIVERS:		
Single Axle	5.20	
Tandem Axle	6.10	
Semi-Trailer	6.20	
Transit Mix	6.20	
Lowboy	7.30	
WATER TANKER, 6,000 GAL. & OVER	7.45	
WELDER	8.00	
HYDROHAMMER	6.15	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA

COUNTIES: Bucks, Chester, Delaware, Montgomery & Philadelphia

DECISION NO.: PA84-3012

DATE: Date of Publication

Supersedes Decision No.: PA82-3007 dated February 26, 1982, 1982 in 47 FR 8529

DESCRIPTION OF WORK: Building Construction, including single family homes and garden type apartments up to and including 4 stories (Chester County Building, Construction Only)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
ZONE 1	18.75	4.45
ZONE 2	16.32	4.455
BOILERMAKER	18.88	2.865
BRICKLAYERS:		
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:		
ZONE 1	10.48	1.84
New Residential:		
Under 4 stories	16.07	2.57
All other work:		
ZONE 1	15.21	3.32
ZONE 2	16.06	4.39
ZONE 3	16.02	3.80
CARPENTERS:		
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently resident use:	12.52	4.42
Residential Under 4		
Bucks, Delaware and Montgomery Counties	15.72	5.51
Philadelphia County	12.52	4.41
All other work	15.82	5.51
CEMENT MASONS:		
Rehabilitation work to include demolition, on any existing structure of not more than four (4) stories which is intended for predominently residental use:		
ZONE 1	10.02	4.29
All other work:		
ZONE 1	14.00	6.04
ZONE 2	14.60	2.75
ZONE 3	10.79	1.65
FINAL CLEAN-UP CREW:		
When construction cleaning completed and general contractor and all construction sub-contractors are off the job:		
Janitorial Cleaner	4.68	.43+a +b
Window Cleaner	5.99	.43+a +b
DRYWALL FINISHERS:		
Rehabilitation work to include demolition, repair and alteration, on any existing structures of not more than four (4) stories which is intended for predominently residential use:	9.50	2.47
All other work:	15.03	5.69
ELECTRICIANS:		
Rehabilitation work to include demolition, repair & alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:		
ZONE 1	14.92	15%+ 2%
ZONE 2	10.74	1.60+ 3%
ZONE 3	9.75	1.19+ 3%
ELECTRICIANS		
ZONE 1		
Commercial	19.43	23%
Residential up to and including 4 stories	18.21	22%
ZONE 2		
Commercial	18.61	15.5%
Residential up to and including 3 stories	16.61	15.5%
ZONE 3		
Commercial	17.68	22½%
Residential up to and including 3 stories	11.40	22½%

DECISION NO. PA84-3012	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS CONTINUED		
ZONE 4		
Commercial	17.92	2.48+ 3½%
ZONE 5		
Commercial	16.46	1.89+ 3%
ZONE 6		
Commercial	16.70	1.57+ 10%
ZONE 7		
Commercial	15.35	1.84+ 3%
Residential up to and including 4 stories	8.50	.84+3%
ZONE 8		
Commercial	19.68	16 3/4 %+1.00
ZONE 9		
Commercial	14.15	.64+3%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	18.665	3.00+c +d
Elevator Constructors Helpers	70%JR	3.00+c +d
Elevator Constructors Helpers (Prob.)	50%JR	
GLAZIERS		
ZONE 1	16.04	3.55
ZONE 2	14.04	1.465
IRONWORKERS:		
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:		
ZONE 1	11.62	2.54
All other work		
ZONE 1	16.20	8.00
ZONE 2	16.70	5.75
ZONE 3		
Structural & Ornamental	16.75	6.30
Reinforcing	16.82	5.75
Rigger, machinery mover	17.95	3.45
LABORERS:		
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:		
CLASS I	8.55	1.55
CLASS II	8.65	1.55
CLASS III	8.70	1.55
CLASS IV	8.85	1.55
CLASS V	8.95	1.55
CLASS VI	8.49	1.55
LABORERS:		
New Residential under 4 stories	9.08	1.775
All other work		
CLASS I	12.55	3.05
CLASS II	12.65	3.05
CLASS III	12.70	3.05
CLASS IV	12.85	3.05
CLASS V	12.95	3.05
CLASS VI	12.49	3.05
LANDSCAPE LABORERS:		
CLASS I	8.30	1.80+e
CLASS II	8.80	1.80+e
LATHERS		
ZONE 1	15.82	5.61
ZONE 2	16.82	3.23
ZONE 3	11.61	1.01
ZONE 4	11.40	.57
LEAD BURNERS	10.75	.66+f
LINE CONSTRUCTION		
ZONE 1		
Linemen	20.51	.80+6%
Groundmen	12.31	.80+6%
Winch truck operator	14.36	.80+6%
ZONE 2		
Linemen, cable splicers, heavy equipment operator, truck driver	15.27	.80+10 3/4%
Groundman, winch operator	12.22	.80+10 3/4%
MARBLE SETTERS	14.20	3.50
MARBLE FINISHERS	10.59	3.75
MILLWRIGHTS	16.32	5.51
PAINTERS:		
Rehabilitation work to include demolition, repair, and alteration, on any existing structures of not more than four (4) stories which is intended for predominently residential use:		
ZONE 1	10.00	1.885
All other work		
ZONE 1		
Brush	15.00	2.78
Spray, steel & swing	15.55	2.78
Roller	15.00	2.78

DECISION NO. PA84-3012

	Basic Hourly Rates	Fringe Benefits
PAINTERS CONTINUED		
ZONE 2		
Commercial, brush	14.83	2.75
Commercial, spray	15.33	2.75
ZONE 3		
Brush	12.15	2.25
Steel and spray	13.20	2.25
Roller	12.15	2.25
ZONE 4		
Brush	15.56	3.48
Steel	16.31	3.48
PAPERHANGERS:		
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:	10.89	1.58
PILEDRIVERMEN	14.82	6.16+g
POINTERS, CAULKERS AND CLEANERS	14.87	3.10
PLASTERERS:		
Rehabilitation work to include demolition, repair, and alteration, on any existing structure or not more than four (4) stories which is intended for predominently residential use:		
ZONE 1	9.49	.94
All other work		
ZONE 1	18.24	1.53
ZONE 2	10.81	1.66
ZONE 3	15.37	.91
PLUMBERS:		
Rehabilitation work to include demolition, repair, and alteration, on any existing structure or not more than four (4) stories which is intended for predominently residential use;		
ZONE 1	12.13	2.25
All other work:		
ZONE 1	18.78	3.59
ZONE 2	18.38	3.59
ROOFERS:		
Shingle, slate, and Tile	13.65	2.10
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean-up debris	6.25	2.10
All other work:	18.17	2.73+h
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment; clean-up debris	8.25	2.73+h
SHEET METAL WORKERS	17.18	4.04
SOFT FLOOR LAYERS:		
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:	9.08	4.16
All other work	15.23	5.81
SPRINKLER FITTERS		
ZONE 1	16.92	3.23
ZONE 2	15.62	2.50
STEAM FITTERS		
ZONE 1	18.56	3.81
ZONE 2	18.16	3.81
STONE MASONS		
ZONE 1	14.20	3.50
ZONE 2	16.02	3.80
ZONE 3	15.21	3.32
ZONE 4	14.20	3.50
SOUND AND PUBLIC ADDRESS INSTALLATION TECHICIANS (Existing building only)	9.50	3%
TERRAZZO WORKERS	14.20	3.50
TERRAZZO FINISHERS	10.57	3.75
TILE SETTERS		
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:	10.25	1.79
All other work:	12.50	4.10
TILE SETTERS FINISHERS	10.36	3.75
POWER EQUIPMENT OPERATORS		
GROUP 1	17.22	26.6% +j
GROUP 2	16.96	26.6% +j
GROUP 3	15.70	26.6% +j
GROUP 4	15.39	26.6% +j
GROUP 5	14.02	26.6% +j

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS CONTINUED		
GROUP 6	13.51	26.6% +j
BUILDING CONSTRUCTION TRUCK DRIVERS		
CLASS I	11.35	2.5425 +k+l
CLASS II	11.45	2.5425 +k+l
CLASS III	11.65	2.5425 +k+l
TRUCK DRIVERS:		
HEAVY & HIGHWAY INCLUDDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
CLASS 1	11.20	2.5425 +o+p
CLASS 2	11.30	2.5425 +o+p
CLASS 3	11.50	2.5425 +o+p

Paid Holidays (Where Applicable): A-New Year's Day; B-Memorial Day; C-Indenpence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: New Year's Day; Lincoln's Birthday; Good Friday; Decoration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day, plus vacation pay for employee who have been employed by the empolyer for one year may receive five paid holidays; two years ten paid holidays, five years twelve paid holidays; ten years fifteen paid holidays, eighteen years twenty paid holidays, twenty five years twenty five paid holidays.

b. Funeral Leave: Employee's shall be granted three consecutive calendar days in the case of a parent, spouse, child, brother, or sister of an employee, if the employee normal time off falls within the three day period, the employee will be reimbursed for that portion of time normally scheduled for work, should death occur during an employee's schedule vacation, there will be no funeral leave payment. Funeral leave under no circumstances results in a change in employee's basic weekly salary.

c. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

d. Holidays: a through f, plus the Friday after Thanksgiving Day.

e. Holidays: July 4th; Labor Day and Thanksgiving Day.

f. Holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

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FOOTNOTES CONTINUED.

g. Holidays; A through F, Washington's Birthday, Good Friday and Christmas Eve providing the employee has worked 45 full days for the same employer during the 120 calendar days prior to the holiday & is available for work the day preceding & following the holiday.

h. Holiday: Election Day.

j. Paid Holidays: A through F, providing the employee works the day before and after the holiday.

k. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) calendar year. During each two(2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years of more senority shall be eligible for two (2) weeks of vacation.

l. Paid Holidays: Memorial Day; Independence Day; Labor Day; Veterans Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

o. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation.

p. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the schedule work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holidays will be as follows; Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all personal holidays.

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WELDERS - rate prescrived for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1)(ii))."

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durhan, Lower Makefield, Middletown Falls, Morristown, New Hope, Newton, Noxkamixon, Plumstead Riegelsville, Solebury, Tullytown, Tinicum Upper Makefield and Yardley Townships in Bucks County

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks, Chester, Philadelphia Counties, Radnor and Haverford Township in Delaware County, Lower Marion, Abington, Upper Moreland and Cheltenhan Townships in Montgomery County

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia Counties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford, Kenneth Square, Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County

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AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along Route 152 to the Humeville Road, east on Humeville Road to Route 333, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded.

starting at the Delaware at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River.

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest on North Lane to Schuylkill River and continuing southeast in a line to the Spring Mill Road and southwest on the Spring Mill Road to Delaware County.

DECISION NO. PA84-3012

AREA COVERED BY ELECTRICIANS ZONE CONT'D

Philadelphia County - in its entirety.

ZONE 2

Bucks County - Hilltown and New Britain Townships in their entirety; that portion of telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U.S. Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, Southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U. S. Highway 30.

Delaware County - That portion of Radnor Township north of U.S. Highway 30 and west of State Highway 320.

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest onthe Penllyn and Blue Bell Pikes to the Wissahickon Creek to the Butler Pike, southwest Wissahickon Creek to the Butler Pike, southwest on the Butler Pike, to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 2 CONT'D
Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street, to High Street, east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive Road, northeast on the Beehive Road to the Township Line at Mervine Street in the State Of Pennsylvania.

ZONE 3
Chester County - That portion south of U.S. Highway 30 and north and west of U. S. Highway 1

Delaware County - That portion south of U.S. Highway 30 and north of that part of U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 betwen U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania.

ZONE 4
Chester County - Oxford, Avondale and Kenneth Square Twps.

ZONE 5
Chester County - West Clan, West Brandywine, Honey Brook, Wallace, West Nantmeal, East Nantmeal, Warwich, South Coventy, Valley Twps. and Coatesville.

Montgomery County - West Pottsgrove, Upper Pottsgrove, Douglas Twps., Pottstown.

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 6
Bucks County - Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7
Bucks County - East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships west of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8
Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmevilla Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included.

ZONE 9
Chester County - That portion of Sadsbury and West Sadsbury Township north of U. S. Highway 30.

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AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Surham, Springfield, Richlandtown, Sqoherton, Nockamixon Townships in Bucks County, Warwick, S. Coventry, E. Coventry, N. Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton, Greeland, Upper Hanover, New Hanover, Douglas, Marlboro Twps. in Mongtomery County

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Bucks County

ZONE 2 - Chester County

ZONE 3 - Delaware, Montgomery and Philadelphia Counties

LABORERS CLASSIFICATIONS DEFINITIONS REHABILITATION AND ALL OTHER WORK OTHER THAN RESIDENTIAL

CLASS I - Striping & dismantling concrete form work, loading, carry 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools, building scaffolds, raking shoveling 7 tamping of asphalt, spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard Workers

LANDSCAPE LABORERS CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Farm tractor driver, hydroseeder nozzle man and mulcher nozzle man

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AREA COVERED BY LATHERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford, Trumbersville, Richland, Quarkertown, Springfield, Durham, Riegelsville, Bridgetown, Noxkamixon, Tinicum, Plumstead, Dublin, Bedminister, Haycock, East Rockhill, Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown Townships in Bucks County

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Remainder of Bucks County, Chester, Delaware, Montgomery, Philadelphia Counties

ZONE 2 - Buck county: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 113, north on Tr 113 to Tr 232 at Anchor Inn, northeast on Tr 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Borough of New Hope and Bristol are included.

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Haverford, Newton, Randnor, Maple, Springfield, Upper Darby, Barby, Ridley, Tinicum & Yeondon Townships in Delaware County, Cheltenahm, Abington, Uper and Lower Morland, Springfield Whitemarsh, Plymouth, Upper Dubling, Horsham, Whitpain, Upper and Lower Gwynodd, Lower Marion, Upper Southampton, Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delawre County

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ARE COVERED BY PAINTERS ZONES CONTINUED

ZONE 3 - Pottstown, Pottsgrove, New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks, Delaware & Philadelphia Counties; remainder of Chester County, Remainder of Montgomery County

ZONE 2- Pennsburg Township in Montgomery County

ZONE 3 - Longwood, Kennett Square, Avondale and Oxford Townships in Chester County

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware, Chester, Montgomery, Philadelphia Counties; remainder of Bucks County

ZONE 2 - Bridgton, Durnham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield Townships in Bucks County

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks, Chester, Delaware & Montgomery Counties

ZONE 2 - Philadelphia County

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia Counties, Remainder of Bucks County

ZONE 2 - Bucks County; Townships of Bridgton, Durham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield

AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

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POWER EQUIPMENT OPERATIONS CLASSIFICATIONS

WAGE GROUP I - Handling steel and stone in connection with erection, cranes doing hook work, any machines handling machinery, cable spinning machine, helicopters, and machines similar to to the above.

WAGE GROUP II - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, paver 21E and over, all types over-head cranes, building hoists - double drum (unless used as single drum), mucking machines in tunnel, gradalls, front-end loaders, boat captain, tandems scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, drills self-contained (drillmaster type), fork lift (20 ft. and over), batch plant with mixer, scrapers & tournapulls, rollers (high grade finishing), mechanic-welder, spreaders, bulldozers and tractors, and machines similar to the above.

WAGE GROUP III - Conveyors (except building conveyors), building hoists (single drum), asphalt plant engineers, high or low pressure boilers, concrete pumps, well drillers, fork lift trucks of all types, ditch witch type trencher, motor patrol, concrete breaking machines, rollers, and machines similar to the above.

WAGE GROUP IV - Seaman pulverizing mixer, tireman on power equipment, farm tractors, fine grade machines, form line graders, road finishing machines, power broom (self-contained), seed spreader, grease truck, and machine similar to the above, maintenance engineer (power Boat)

WAGE GROUP V - Conveyors (building), welding machines, heaters, wellpoints, pumps, compressors, and machines similar to the above.

WAGE GROUP IV - Fireman, oilers and deck hands (personnel boats), grease truck helpers

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING CONSTRUCTION)

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body Truck (tandem)

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TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS (CONTINUED)

CLASS III - Euclid type-off highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

TRUCK DRIVERS, HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION CLASSIFICATION DEFINITIONS

CLASS 1 - Helpers, Stake Body Truck (single axle, dumpster)

CLASS 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

STATE: Texas COUNTY: Brazos
DECISION NO.: TX84-4028 DATE: Date of Publication
Supersedes Decision No.: TX83-4080 dated October 21, 1983 in 48 FR 48911
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.19	3.23
BOILERMAKERS	16.40	2.645
BRICKLAYERS & STONEMASONS	16.45	2.25
CARPENTERS:		
Carpenters	12.80	
Millwrights	15.285	
CEMENT MASONS	15.80	2.18
ELECTRICIANS	16.18	1.60+ 12%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.85	3.00 +a
Helpers	70%JR	3.00 +a
Helpers (Prob.)	50%JR	
GLAZIERS	13.39	1.575
IRONWORKERS	13.14	3.50
LABORERS:		
GROUP 1	6.30	1.00
GROUP 2	6.40	1.00
GROUP 3	6.50	1.00
GROUP 4	6.45	1.00
GROUP 5	6.55	1.00
GROUP 6	6.70	1.00
LINE CONSTRUCTION:		
Linemen & cable splicers	16.91	.80 +3½%
Groundmen	9.81	.80 +3½%
MARBLE, TILE & TERRAZZO WORKERS	16.42	1.75
PAINTERS:		
GROUP 1 - All brush, hand roller, steam cleaning, all pneumatic tools	15.535	2.725
GROUP 2 - All spray, sandblasting, water-blasting	15.91	2.725
GROUP 3 - Tape, float & drywall	15.66	2.725
GROUP 4 - Steeple jack work, hot materials	16.16	2.725
PIPEFITTERS	18.25	2.53
PLASTERERS	16.55	1.94
PLUMBERS	19.72	1.75
POWER EQUIPMENT OPERATORS:		
GROUP 1	13.80	2.54
GROUP 2	12.22	2.54
GROUP 3	11.69	2.54
GROUP 4	11.51	2.54

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS	$17.44	2.09+ 3%
SOFT FLOOR LAYERS	14.90	2.06

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G- Christmas Day

FOOTNOTE FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos. - none; 6 mos. to 5 yrs.- 6%; over 5 yrs. - 8% of basic hourly rate; Seven Paid Holidays A thru G

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. TX84-4028 PAGE 2

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Construction labor, including excavation, concrete work, reinforcing, mason handler & wheeler (stock pile), asphalt ironer & raker, pipe layer (non-metallic), pump crete pipe (handling & laying) & all building construction labor excepting that hereinafter classified;carpenters tender, cement masons tender, vibrator operator, other mechanic tender (except as otherwise classified); dumper & spotter

GROUP 2 - Air tool operator

GROUP 3 - Well driller

GROUP 4 - Cutting torch man; mason tender; mason handler & wheelers handling from first stock pile; concrete pipe (handling & laying); sand blaster; power buggy operator; plasterer tender & hod carrier; lather tender; well driller tender

GROUP 5 - Tool room tender; mortar mixer (hoe or otherwise); blaster, powder man; gunnite worker

GROUP 6 - Gunnite nozzleman

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic; blade grader, self-propelled; bull clam; back filler; derrick - power operated (all types); clam shell; dragline; push cat; bulldozer & all types cat tractor; cable-way; backhoe; shovel, power operated; crane, power operated (all types); elevating grader, self-propelled; hoist, motor-driven, two drums or more; mix mobile; water well drilling machines, used on construction; building elevator, used on construction; tug boat operator, assigned to construction; winch truck; locomotive crane; concrete mixer, 14 cu. ft. or more; paving mixer (all types); pile driver; scraper, heavy type, over 3 cu. yds.; trenching machine (all sizes); gradall; high-lift; foundation boring machine; gasoline or diesel-driven welding machines, 7 or more; pumpcrete machine; turnapulls; DW-10 Caterpillar, S-18 euclid & similar tractors; asphalt plant mixer operator on job; crusher operator on job; scoopmobiles; forklift used on construction (not including warehousing); well point pump; concrete batch plant; pneumatic rollers, self-propelled

GROUP 2 - Air compressors; blade grader, towed; flex plane; form grader; concrete mixer, less than 14 cu. ft.; pumps; pulsometer; truck crane driver; gasoline or diesel driven welding machines (on 3 or more, up to 6 machines); hoist, single drum; scraper, 3 cu. yds. or less; wagon drill operator; conveyor; generator, gasoline or diesel driven, over 1500 watts; rubber tired farm tractor with attachments; a light equipment operator may run 1 or 2 105 cfm compressors

GROUP 3 - Fireman

GROUP 4 - Oiler

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BILLING CODE 4510-27-C

federal register

Friday
May 4, 1984

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 35

Lead-Based Paint Hazard Elimination in Certain Residential Structures; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 35

[Docket No. R-84-1165; FR-1748]

Lead-Based Paint Hazard Elimination in Certain Residential Structures

AGENCY: Office of the Secretary, HUD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: HUD invites public comment concerning amendment to its regulations regarding elimination of hazards due to lead-based paint in HUD-associated existing housing. Particular attention is given to the nature of lead-based paint hazards as currently understood, the appropriate scope of HUD regulations, treatment of intact paint, monitoring and enforcement. HUD's reconsideration of its current regulations arises from (i) advances in knowledge regarding causes of elevated blood lead levels of children and regarding hazard detection and abatement techniques, and (ii) a judicial decision mandating agency rulemaking on specific issues concerning intact lead-based paint and monitoring and enforcement of regulatory compliance.

DATE: Comment due date: July 3, 1984.

ADDRESS: Comments should be sent to: Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles G. Field, Office of General Counsel, (202) 755-8247 Room 10216, or Patricia Hampton, Acting Director, Technical Support Division, Office of Public and Indian Housing, (202) 755-4956, Room 6248, Department of Housing and Urban development, 451 Seventh Street SW., Washington, D.C. 20410. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. Overview
- A. The Need for Regulatory review and Revision
- B. Purpose and Format of This Notice
- C. Listing of Principal Issues and Questions

II. Statutory and Regulatory Framework
- A. The Statutory Scheme
- B. The Regulatory Scheme

III. The Ashton Decision

IV. The Changing Nature of the Lead-Poisoning Problem
- A. Early Data Sources: Pre-1976
- B. New Information For Current Rules Revisions
- C. Sources of Environmental Lead
- D. Relationship Between Lead-Based Paint and Elevated Blood Lead Levels

V. Hazard Elimination Costs

VI. Regulatory Issues
- A. Hazard Determination
- B. Program Coverage
- C. Notification
- D. Monitoring and Enforcement

Appendixes
- A. Regulations
- B. Handbook and Notice References

I. Overview

Congress first addressed the public health problem of lead poisoning in 1971 when it enacted the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, et seq. ("LPPPA"), which provided Federal grants to local lead poisoning prevention programs, established a Federal research and demonstration project into the extent of lead-based paint poisoning and methods for lead-based paint removal, and authorized agency action to prohibit the future use of lead-based paint in Federal or federally-assisted residential construction or rehabilitation.

Section 302 of LPPPA, with which this Notice is principally concerned, was added in 1973. It required the Secretary of HUD to establish procedures for the elimination, as far as practicable, of the hazards of lead-based paint in existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by HUD. HUD regulations implementing Section 302—which are found at 24 CFR Part 35—were promulgated in 1976 and continue in force with little revision. Part 35 as presently in effect is set out in full in Appendix A to this Notice.

The development and implementation of an effective lead hazard abatement program are important national objectives and require an indepth knowledge of the nature, sources and extent of lead hazards. In the early 1970's, when the LPPPA was enacted, lead-based paint was identified as the major cause of elevated blood lead levels in children. Subsequent research has increased understanding of the contribution of other causes.

A. The Need for Regulatory Review and Revision

When Congress enacted Section 302 in 1973 and HUD promulgated Part 35 in 1976, experts generally assumed that lead-based paint was the primary source of lead in children who had elevated blood lead levels. The state of knowledge about the extent, causes and effects of lead in blood has substantially improved since the passage of the LPPPA. Surveys show that over the past decade there has been a dramatic decline in the blood lead levels for all population groups, children included. Lead poisoning, associated with very high blood lead levels, is now a rare occurrence; elevated blood lead levels still occur but in a declining proportion of the child population.

Studies have shown that other sources contribute significantly to elevated blood lead levels. The certainty with which the prevalence of elevated blood lead levels was held to be due primarily to lead-based paint no longer exists. Because the present regulations were promulgated with that certainty in mind, they were broadly defined covering many types of dwelling units without consideration of whether the paint contained lead or whether children resided in the units. This broad coverage may be ineffective from a health perspective and inefficient from a resource expenditure perspective. A lead-based paint abatement program directed at the known health problem situations could be a more efficient and effective approach today.

Reconsideration of its current regulation by HUD also is mandated by a recent Court of Appeals decision. In *Ashton* v. *Pierce,* 716 F.2d 56 (D.C. Cir. 1983), the District of Columbia Circuit Court of Appeals affirmed a District Court order that HUD must "undertake further rulemaking to establish appropriate procedures for the elimination of lead-based paint hazards in federally associated public housing, including so-called tight paint." *Id.* at 64. The Court of Appeals also affirmed a portion of the District Court's order which directed the Department to "identify the specific steps it will take to monitor and ensure compliance by local housing authorities with the revised lead-based paint elimination requirements." *Id.* at 66.

B. Purpose and Format of This Notice

This Notice serves as a vehicle for stating HUD's understanding of lead-based paint hazards and for soliciting public views on the issues, as well as for initiating HUD's response to the *Ashton* decision. Reference is made to scientific studies to enrich the public discussion and outline known facts. HUD seeks public comment, data and other experiential evidence that illuminate the issues and options involved.

A full discussion of issues requiring public comment would be an overly complicated undertaking because of the highly technical scientific and medical issues involved and the problems of fitting regulatory requirements to many diverse programs. A fuller exposition of all matters would greatly expand the length of this Notice with limited benefit. Fortunately there are published documents that authoritatively address many of these matters to which commenters can refer, many of which are listed in the footnotes to this Notice. A fuller exposition would also probably cloud what HUD considers to be significant issues on which it seeks comment.

To knowledgeably comment on these issues, one must first understand the contexts within which the regulatory issues are framed. Section II of this Notice describes HUD's statutory responsibilities and current regulatory provisions. Section III summarizes the *Ashton* decision as it pertains to this rulemaking. Section IV sets a broader context by summarizing statistics on blood lead levels. Section V reviews data regarding costs of hazard elimination as affected by variables regarding, among other things, surfaces and paint conditions covered and abatement techniques utilized. Against these contexts Section VI raises major regulatory issues of particular concern to HUD: (1) Hazard determination, (2) program coverage, (3) notification requirements, and (4) monitoring and enforcement procedures. The solicitations of public comment is not limited to issues referred to specifically but extends to all potential issues raised by Section 302 of the LPPPA.

C. Listing of Principal Issues and Questions

Major questions are first identified to highlight HUD's primary concerns regarding each regulatory issue. These questions are compiled below as an aid to the reader.

A. Hazard Determination

Should HUD adopt elements of a "health approach"? Is such an approach more feasible in some HUD program contexts than others?

Are screening programs sufficiently broad in coverage to justify reliance by HUD on their availability? Should the HUD abatement requirements be activated by a referral from a screening program or should the party responsible for abatement be under an additional duty to seek screening data from health agencies?

How should HUD requirements deal with States where lead screening is not available?

Are there issues of confidentiality or administrative feasibility in securing screening data on particular individuals for use by HUD or parties required to undertake inspection and abatement actions?

If a health standard is adopted, what standard should be used?

Should HUD prescribe particular detection or abatement technologies?

Should hazard elimination requirements pertain to all accessible surfaces? accessible chewable surfaces only? exterior surfaces? What level of lead content in intact paint should be considered an "immediate hazard"? Should there be an interrelation between lead content of paint and blood lead level of children?

Is there a reasonably satisfactory cut-off date of construction so that units constructed after such date need not be considered for any purpose? as to intact paint only?

What newly developed techniques used by localities for the abatement of lead-based paint that is intact on accessible and chewable surfaces (e.g., outside corners and edges of window sills, frames, doors, cabinets, stairs, balusters, etc. within reach of children)? What are the problems, effectiveness, availability and costs of such techniques?

Is there a need for notice of the hazards arising from abatement techniques?

To what extent, or in what manner, should HUD requirements take State or local requirements and procedures into account? Can HUD accept evidence of local inspection and compliance in localities having standards substantially equivalent to HUD standards? What refinements have occurred in State and local standard-setting and enforcement procedures which should be instructive to HUD?

B. Program Coverage

1. Section 8 Existing Housing Program

Should the hazard elimination requirements, as they may be applicable to the Section 8 Existing Housing Program, be limited (i) to units constructed prior to a certain date and, if so, what date, and (ii) to units for which application is being made by a family which includes children under 7 years of age? (This question is not intended to exclude other possibilities, such as adopting a fuller "health approach" based on determined blood lead levels of children.)

2. Community Development Block Grants

What mechanisms, now not in place, for assuring compliance with any requirements imposed by HUD hazard elimination regulations can be integrated into the inspection processes likely to be utilized by grantees under the block grant program with respect to residential rehabilitation funded under the program? What hazard elimination standards would be appropriate to be imposed in the specific context of block grant programs, taking into account existence or non-existence of applicable local requirements, likely availability of hazard detection equipment, impact on program participation, and other considerations mentioned in this Notice?

3. Public Housing

Should lead-based paint hazard elimintion be considered emergency modernization under any conditions? under all conditions? To what extent should the priority decisions between lead-based paint abatement and other modernization needs, such as, safe wiring, working furnaces, workable incinerators, leeking roofs or non-working sanitary facilities or elevators, be left with public housing agencies in designing modernization programs and applying for funds therefor?

C. Notification

Should HUD revise notifications presently used to reflect current knowledge? If revisions are warranted, what kinds are needed? If the regulations are revised to adopt a health approach, how would this affect the notification requirements?

Is there a need to clarify the notices by shortening and simplifying them? Should notices be distributed to occupants of post-1950 housing?

D. Monitoring and Enforcement

To what extent should HUD alter its present monitoring and enforcement approaches as applied to specific programs?

II. Statutory and Regulatory Framework

A. The Statutory Scheme

The LPPPA ws enacted on January 13, 1971. Titles I and II of the LPPPA authorized the Secretary of Health, Education and Welfare ("HEW") to administer financial grants to local governments for the detection, treatment and elimination of lead-based paint poisoning. Title III provided for a Federal demonstration and research program, to be conducted by the Secretary of HUD in consultation with

the Secretary of HEW, to study the extent of lead-based paint poisoning and the methods for lead-based paint removal. Title IV established a prohibition against the use of lead-based paint in future residential construction or rehabilitation by the Federal government or with Federal financial assistance in any form. Title V contained general provisions covering definitions, consultation with other agencies, and appropriations.

The grant programs authorized under Titles I and II were merged into the Maternal and Child Care Block Grant program effective October 1, 1979. Appropriations for the demonstration and research program authorized under Section 301 were discontinued after 1981. Responsibility for implementing the ban on use of lead-based paint in future construction was transferred from the Secretary of HEW to the Secretary of HUD in 1976; HUD regulations implementing this ban are located in 24 CFR Part 35, Subpart B.

Section 302 was added to the LPPPA in 1973. As enacted and still in effect, Section 302 reads:

Federal Housing Administration Requirements

The Secretary of Housing and Urban Development * * * shall establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Such procedures shall apply to all such housing constructed prior to 1950 and shall as a minimum provide for (1) appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed, and (2) assured notification to purchasers and tenants of such housing of the hazards of lead based paint, of the symptoms and treatment of lead based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. Such procedures may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint. The Secretary may establish such other procedures as may be appropriate to carry out the purposes of this section. Further, the Secretary shall establish and implement procedures to eliminate the hazards of lead based paint poisoning in all federally owned properties prior to the sale of such properties when their use is intended for residential habitation. (48 U.S.C. § 4822)

Other provisions of the 1973 amendments prohibited the use of the lead-based paint on toys, furniture and food utensils.

B. The Regulatory Scheme

HUD's first regulation concerning lead-based paint was issued on August 22, 1972 in response to HEW regulations prohibiting the use of lead-based paint in residential buildings constructed or rehabilitated by the Federal government or with any form of federal assistance. *See* 37 FR 16872 (Aug. 22, 1972).

Later that year, on October 21, 1972, HUD promulgated additional lead-based paint regulations in furtherance of its administrative "policy of treating and removing existing health hazards caused by existing lead-based paint in HUD-associated properties." 37 FR 22732 (Oct. 21, 1972). The new regulation added a new Subpart B, "Elimination of Lead-Based Paint Hazards in HUD-Associated Properties," to 24 CFR Part 35. Subpart B required treatment of health hazards in "HUD-associated properties," defined as "residential structures * * * when they are being constructed, purchased, leased, rehabilitated, modernized, or improved, with any form of Federal financial assistance whether grant, loan, advance, or proceeds of a HUD-guaranteed loan or a HUD-insured mortgage." "Health hazard" was defined to mean "cracking, scaling, peeling, and loose lead-based paint on applicable surfaces." "Applicable surfaces," in turn, were defined as "all interior surfaces and those exterior surfaces, such as stairs, decks, porches, railings, windows, and doors, which are readily accessible to children under 7 yeas of age."

The regulation provided that all defective paint conditions were to be assumed to involve lead-based paint and thus to constitute health hazards that must be corrected unless testing showed lead not present in the paint at a level above 1.0 percent. 24 CFR 35.16, 39 FR 22733 (October 21, 1972). (This reflected the then-current statutory definition of "lead-based paint" adopted in 1971. The current statutory definition, applicable to paint manufactured after June 22, 1977, is paint containing more than .06 percent lead by weight in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.) The current regulation at § 35.24(a), however, does not carry forward the exclusion from corrective action where tests show that lead is not present above a certain level in the paint. The operative provision of the initial regulation required that applicable surfaces identified as health hazards receive adequate treatment to prevent ingestion of the contaminated paint.

The initial HUD regulation regarding elimination of hazards in existing housing was adopted before the adoption of statutory hazard-elimination requirements. The 1973 amendment which added Section 302 was enacted November 9, 1973. To assist in its evaluation of its existing regulation in light of the statutory amendment, HUD held four days of public hearings in May 1974 for the purpose of obtaining information relating to the causes, treatment and elimination of lead poisoning. A proposed revision of the regulation was published June 25, 1975 (40 FR 26974), and a final rule was promulgated on July 13, 1976 (41 FR 28876). The regulations remain essentially the same today.

Subpart A of Part 35 sets out the regulatory definitions and notification procedures. Section 35.5(a) provides that purchasers and tenants of HUD-associated housing constructed prior to 1950 shall be notified prior to purchase or rental: (1) That the property was constructed prior to 1950, (2) that the property may contain lead-based paint, (3) of the potential and immediate hazards of lead-based paint, (4) of the symptoms and treatment of lead-based paint poisoning, and (5) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards). Separate notices for renters and owners are set out in Appendixes I and II to Part 35.

Of particular relevance to this Notice is Subpart C of Part 35, which establishes procedures for hazard elimination in HUD-associated housing. In almost all respects, Subpart C repeats the substantive requirements of the 1972 regulations. For reasons not apparent from the rulemaking record, the Department did not reduce the scope of its requirements from "HUD-associated housing," as previously defined, to the statutorily prescribed coverage of housing "coverd by an application for mortgage insurance or housing assistance payments," nor did it differentiate, as did the statute, between housing constructed during or after 1950 and housing constructed prior to that date, except in the notification requirements. However, the Department evidenced a recognition that its extension of the hazard elimination requirements in these two respects was an "administrative" choice. See 40 FR 26974, 26975 (June 25, 1975), 41 FR 28877 (July 13, 1976).

The principal issues considered by the Department in its rulemaking following enactment of the statute were: (1) Whether to adopt a "housing" or a "health" approach, and (2) whether to include intact paint surfaces as

"immediate" hazards requiring treatment. On the first of these questions, the Department explained the issues and its regulatory choice as follows:

> * * * a number of experts at the HUD hearings recommended that the focus of deleading activities should be on housing where children with elevated blood levels reside. This "health approach" would involve an initial screening of children to determine their blood lead level, the identification and treatment of children found to have an elevated blood lead level and the deleading of the homes in which such children reside. In contrast, a "housing approach" would involve an inspection of all housing for lead-based paint and the removal of such paint where found, regardless of the age and blood lead level of the inhabitants. While completely removing all lead-based paint from all housing could substantially eliminate one source of lead poisoning, the potential costs involved would be prohibitive. In addition, such costs could adversely affect the value of the housing involved and could also substantially reduce the supply of otherwise standard housing available to low and moderate income families.
>
> In addition to the hearings, HUD also conducted an informal survey of local codes, ordinances, and administrative procedures regarding lead-based paint hazard abatement. The Department found that a "health approach" was used almost universally. While localities vary in their specified abatement requirements, such requirements were found to be enforced primarily when a child with an elevated blood level (as locally defined) is found.
>
> In support of a "health approach," there are numerous local programs, aided by funds from the Department of Health, Education and Welfare's Childhood Lead Poisoning Control Program, that test children for elevated blood lead levels and treat those who have potentially hazardous levels of lead in their blood. In addition to the specific project grant funds, Medicaid may also be available to pay for the screening and the treatment of children of low-income families who are eligible for Medicaid assistance.
>
> * * * These regulations do not purport to incorporate a "health approach" of child screening followed by hazard elimination, since this Department has neither the capability nor the mandate to undertake a program of child screening for lead even though the "health approach" would be an effective method. Given the vast number of housing units containing lead, the high cost of presently available methods of abatement and the fact that excessive lead absorption only occurs in a small percentage of children, screening is one method whereby finite resources can be directed to children adversely affected rather than to generalized abatement. HUD is mandated, under the statute, however, to eliminate, as far as practicable, the immediate hazards of lead-based paint in all housing subject to the Act without regard to the risk factor, and has adopted the methods it believes most reasonable in carrying out this mandate. 41 FR 28876–28877.

In HUD's view, the question of whether to include intact paint as an "immediate hazard" requiring treatment turned on the statutory qualifying phrase "as far as practicable." It does not appear that it occurred to HUD that the statutory phrase "immediate hazard" could have required inclusion of intact paint as a matter of law. As noted, HUD already had issued regulations defining "health hazard" as "cracking, scaling, peeling, and loose lead-based paint on applicable surfaces," and Congress had not indicated clearly, so far as HUD perceived, a rejection of that definition.

In response to the new statutory term "immediate hazard," HUD proposed two definitions in its proposed rule published in 1975: "immediate hazard," meaning "paint or plaster (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose"; and "potential hazard," meaning "paint (which may contain lead) on applicable surfaces which is in a sound, tight condition, but which may become an immediate hazard * * * by reason of cracking, chipping, scaling, peeling or loosening." HUD proposed application of the hazard elimination requirements only to immediate hazards. 40 FR 26974 (June 25, 1975).

In its final rule promulgated in 1976, the Department adhered to these decisions, notwithstanding several public comments urging a different course with respect to intact paint. The Department noted:

> Several comments questioned the distinction made in the regulations between "immediate" and "potential" hazards, asserting that all intact paint should be required to be removed, based on accessibility and lead content. * * * HUD has determined that cracking, scaling, chipping, peeling, and loose paint presents the most immediate hazard and removal of such paint is the most practicable step at this time. 41 FR 28878.

While the comments referred to emphasized accessibility, the Department went in a different direction on that point. As noted above, the Department's 1972 regulation had defined "applicable surfaces" in terms of surfaces "which are readily accessible to children under 7 years of age." The same definition was proposed in 1975. Several comments recommended that all interior surfaces be subject to the requirements of the regulations whether or not they are accessible to children. The Department adopted this recommendation in its final rule, without explanation. *Id.* at 28877.

The basic operative provision of the regulation requires that "prior to the occupancy of HUD-associated housing, immediate hazards shall be eliminated by the most practicable means." While an element of the definition of "immediate hazard" is paint "which may contain lead," the operative provisions of the regulation assume that "all defective paint conditions [on applicable surfaces] shall be assumed to be immediate hazards." Section 35.24(a).

Each Assistant Secretary is directed to "implement or provide for the implementation of" the foregoing requirements in programs within his or her administrative jurisdiction. Implementation requires two phases: inspection and hazard elimination. Responsibility is assigned for inspections in various program contexts: HUD-owned housing to be sold either after rehabilitation or as-is, HUD-owned properties to be leased, existing housing proposed for mortgage insurance, HUD-associated college housing undergoing rehabilitation, public housing, housing "assisted with Community Development funds," and Section 8 housing. Section 35.24(b)(1)–(2).

Current treatment necessary to eliminate immediate hazards requires, as a minimum, the removal of all cracking, scaling, chipping, peeling and loose paint on applicable surfaces, by washing, sanding, scraping, wire brushing or other techniques followed by repainting with two coats of a suitable non-leaded paint. Section 35.24(b)(3)(i). Where the paint film integrity cannot be maintained, the paint must be completely removed or the surface recovered with a suitable material such as gypsum wallboard, plywood, or plaster before any repainting is undertaken. Section 35.24(b)(3)(ii).

Implementation of the abatement of lead-based paint hazards also requires inclusion of appropriate provisions in HUD contracts and subcontracts for the inspection and elimination of immediate hazards and provisions necessary for enforcement of the requirements. Section 35.24(b)(4).

Similar inspection and hazard elimination requirements for all federally-owned properties under HUD control intended for sale for residential purposes are set out separately in Subpart E of Part 35.

Implementation of responsibilities imposed by Part 35 on HUD Assistant Secretaries has been effected through various regulations and handbooks. The principal Handbook provisions are listed, by program area, in Appendix B to this Notice.

The LPPPA provides no independent funding authorization to carry out

Section 302 activities, thereby requiring the Department to use program sources of funds to accomplish leadbased paint abatement or to shift the costs of abatement to owners or tenants. For example, HUD pays for the treatment of HUD-owned properties out of the FHA insurance funds. The public housing agency pays for treating public housing from funds derived from rents or from operating or modernization funds furnished by HUD. Treatment of FHA-insured homes is a cost borne by the owner, as is the cost of compliance in rental housing for use in the Section 8 Existing Housing program.

III. The Ashton Decision

In *Ashton* v. *Pierce*, public housing tenants in the District of Columbia challenged the adequacy of the Department's lead-based paint regulations. The individual plaintiff lived with her three children in a public housing project from 1975 to 1981. In 1980, one of plaintiff's children was hospitalized for five days for treatment of elevated lead level which was alleged to have resulted from ingestion of lead-based paint from the interior of the dwelling unit.

The plaintiff alleged that HUD's lead-based paint regulation was deficient for failing to define "tight" lead-based paint surfaces as an "immediate hazard" requiring treatment. Plaintiff also alleged that HUD's regulations was deficient for failing to require notification of lead-based paint hazards to tenants of HUD-associated housing constructed during and after 1950, and that HUD had acted unlawfully in failing to monitor and enforce compliance by local housing authorities with the lead-based paint elimination requirements.

The plaintiff's actions was certified as a class action on behalf of "all tenants or residents of HUD-associated public housing in the District of Columbia who are, or who have, young children who have experienced or who may in the future experience lead poisoning as a result of the presence of lead-based paint in their dwelling units."

The District Court determined the issues on motions for summary judgment based on the statutory language and legislative history and the administrative record of the Department's rulemaking. The District Court found that (1) the regulations were deficient in not treating lead-based paint accessible to children as an immediate hazard: (2) the regulations failed to prescribe sufficient steps to eliminate accessible lead-based paint "as far as practicable"; and (3) HUD had unlawfully failed to monitor and enforce the local housing authority's compliance with the regulations. The District Court also rejected the plaintiffs' claim that the LPPPA required the Secretary to determine whether lead-based paint in post-1949 housing is a health hazard, and if so, to give notice of the hazard to tenants and purchasers. *Ashton* v. *Pierce*, 541 F. Supp. 635 (D.D.C. 1982).

The District Court ordered the Department to "undertake further rulemaking to establish appropriate procedures for the elimination of lead-based paint hazards in federally-associated public housing, including so-called tight paint." *Id.* at 642. Although it refused to order the Department to begin monitoring and enforcing compliance with the current regulations, it instructed the Department on remand to "identify the specific steps it will take to monitor and ensure compliance by local housing authorities with the revised lead-based paint elimination requirements." *Id.* at 645.

The Court of Appeals affirmed the District Court order. *Ashton* v. *Pierce*, 716 F.2d 56 (D.C. Cir. 1983). The Court of Appeals found, first, that Congress intended the phrase "immediate hazard" not to be limited to paint in a defective condition. The Court of Appeals also held that the Department had applied an erroneous standard in determining whether it was "practicable" to eliminate the immediate hazard of intact lead paint. In the Court of Appeals' view, HUD had construed "as far as practicable" to mean "most practicable." The Court expressly rejected what it considered to be a "cost-benefit analysis" approach employed by the Department.

> In plain language Congress commanded that if it is "practicable" to eliminate an immediate hazard, that hazard *must* be eliminated. The statute admits of no exceptions to the required elimination procedures on the basis of the *degree* of practicability. Neither Congress' concern about the cost of the elimination program nor congressional silence in the fact of the Department's interpretation of the statute can overcome the clear statutory directive. *Id.* at 64.

The Court of Appeals concluded, however, that the administrative record had not established that elimination of chewable intact paint "is in fact practicable." *Id.* Both the Court of Appeals and the District Court made specific reference to a HUD options paper considered by Secretary Carla A. Hills before promulgation of this final rule. The paper listed five alternatives:

Alternative I—require *scraping* of loose, peeling, flaking paint and repainting (1972 regulation).

Alternative II—require *removal* of all paint from loose, flaking, peeling surfaces.

Alternative III—require scraping of loose, peeling, flaking paint and *removal* of all paint from chewable surfaces.

Alternative IV—require *removal* of all paint from both flaking, peeling surfaces and chewable surfaces.

Alternative V—require *removal* of all paint from all accessible, intact surfaces.

HUD had considered the following factors when evaluating these alternatives: (1) total costs both to government and private owners, (2) benefits to children (qualitatively assessed), (3) impact on the effectiveness and availability of FHA program activities, and (4) possible redlining of neighborhoods and abandonment of housing. HUD had selected alternative I.

The District Court approved HUD's conclusion that alternatives IV and V were impracticable due to major costs consequences of adverse impacts of the major costs involved on continued FHA activity and "unreasonable burden" placed on the FHA fund. But the District Court concluded that the Department had inappropriately used costs to compare the first three alternatives on a cost-effectiveness basis and reject alternatives II and III because it found alternative I alone to be cost-effective.

The Court of Appeals, however, rejected the District Court's conclusion that HUD, by implication, had found options II and III to be practicable. Ambiguity in the administrative record to the 1976 rule, it held, does not support this inference. Moreover, the Court of Appeals did not question the District Court's acceptance of HUD's rejection of alternatives IV and V. The Court of Appeals stated:

> It is peculiarly within the expertise of the Department to determine the practicability of a given elimination procedure. We agree with the district court that the "as far as practicable" standard allows the Department "to consider cost and technical considerations in developing its regulations" and that the threshold of practicability is reached if there exist "reasonably available techniques" for eliminating the hazard . . . *Id.*

The Court of Appeals affirmed the requirement to reopen rulemaking to determine under what conditions intact paint containing lead constituted an immediate hazard. The Court affirmed the Department's broad discretion in making this determination.

> * * * Like the district court, we note that "in carrying out further rulemaking [the Department[retains substantial discretion to adopt regulations of a scope and effect it

deems appropriate" * * * We simply hold that the Department's "complete failure to address the hazards associated with 'tight' paint containing lead is contrary to the intent of Congress." *Id.*

The District Court and Court of Appeals both held that HUD has a duty to monitor and enforce public housing authorities's compliance with its hazard elimination regulations. The District Court held, on the basis of submissions describing HUD's procedures, that HUD had "failed effectively to monitor compliance with the regulations and to seek their enforcement." 541 F. Supp. at 644. (In a subsequent decision regarding compliance with the same regulations by the Wilmington, Delaware, Housing Authority, a separate District Court found that the procedures adopted by HUD to monitor and enforce the Authority's compliance were not "arbitrary, capricious, or an abuse of descretion"; i.e., that the procedures met the standard of review provided by the Administrative Procedure Act. The decision was reached after an evidentiary trial which considered HUD's regulations and other instructions plus actual performance with respect to the particular housing authority. *Jackson* v. *Pierce*, No. 80–453 (D. Del. June 28, 1983).) In the Court of Appeals, however, the Department argued only that, as a matter of law, neither the Annual Contributions Contract between the Department and the housing authority nor the LPPPA imposed on the Department an enforceable duty to monitor and enforce compliance with the regulations. The Court of Appeals held that such a duty was imposed by the LPPPA and that housing authority tenants, as third-party beneficiaries of the Annual Contributions Contract, have a right to compel the Department to enforce its duties under the contract. Accordingly, the Court of Appeals affirmed the District Court's order that in its further rulemaking, the Department must "identify the specific steps HUD will take to monitor and enforce compliance by local housing authorities with" such regulations as may result from the rulemaking.

§1952.314

IV. The Changing Nature of the Lead-Poisoning Problem

When HUD promulgated its current regulations in 1976, empirical data were limited. Subsequent surveys and studies have significantly expanded the base from which regulatory decisions can be made. This section describes major studies which address Part 35 issues. While materials cited here do not cover the full range of work conducted to date—HUD solicits additional sources of relevant data—they represent the information currently before the Department that would be used in considering revision of Part 35.

HUD is aware of the U.S. Environmental Protection Agency criteria document *Air Quality Criteria for Lead* which exhaustively evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The document is comprehensive by considering all sources of lead to include lead-based paint. At the time of this Notice, the criteria document, issued in October 1983, is still out for review with public comments due February 15, 1984. Therefore, conclusions based upon this document are premature. HUD, however, considers this document to be a significant source of information for this rulemaking because of its comprehensive treatment of studies dealing with lead-based paint.(*1*)

Before describing the major studies, some definitions are needed. HUD has used the Centers for Disease Control 1978 categorization of health status—lead poisoning, lead toxicity, undue lead absorption and elevated blood lead. These definitions are not mutually exclusive and are provided here because they are used in different studies:(*2*)

Lead poisoning is defined as existing whenever a child has any one or more of the following:

1. Two successive blood lead levels equal to or greater than 70 μg/dl with or without symptoms.

2. Erythrocyte Protoporphyrin (EP) level equal to or greater than 250 μg/dl whole blood and a confirmed elevated blood lead level equal to or greater than 49 Gg/dl with or without symptoms.

3. EP level greater than 109 μg/dl associated with a confirmed elevated blood lead level (greater than 29 Gg/dl) with compatible symptoms.

4. Confirmed blood lead level greater than 49 μg/dl with compatible symptoms and evidence of toxicity (e.g., abnormal EP, calcium disodium EDTA mobilization test, urinary aminolevulinic acid excretion or urinary coproporphyrin excretion).

Lead toxicity is defined as biochemical E.g. EP equal to or greater than 50 μg/dl or functional derangements caused by lead.

Undue lead absorption refers to excess lead in the blood with evidence of biochemical derangement in the absence of clinical symptoms. It is defined by confirmed blood lead levels of 30–69 μg/dl associated with EP levels of 50–249 μg/dl whole blood.

Elevated blood lead level is defined as a confirmed blood lead 30 μg/dl or greater.

A. Early Data Sources: Pre-1976

In the mid-1960's and early 1970's public health professionals, local officials and the public became increasingly aware of lead poisoning cases. Hospitals documented cases of child death and permanent injury which were principally belived to be associated with the ingestion of lead-based paint chips. Chicago in 1965 and New York in 1970 responded by establishing screening programs to identify children at risk and to remove lead-based paint from the dwelling units in which they lived.

The focus on lead-based paint was logical because of the clinical diagnoses that paint caused the poisoning problem seen by doctors. Lead was a well known additive to paint. Before the 1930's lead was the principal pigment used in commercially produced paint. Lead pigments were gradually replaced by zinc and other opacifiers in the 1930's and by titanium dioxide in the 1940's. House paints were regulated by industry in 1955 when a voluntary standard limiting lead to 1 percent by weight of the non-volatile solids was set for interior paints. By this time, however, lead paint was found in many residential buildings. A survey of homes in Pittsburgh showed that leaded paint was most prevalent in homes built before 1940. More than 20 percent of residences built between 1960 and 1975 had lead paint on at least one surface in excess of 1.5 milligrams per square centimeter (a concentration level considered hazardous if the paint is ingested).(*3*) There was no reason to believe that the Pittsburgh pattern was significantly different from the pattern for the country as a whole.

By 1971, most members of the medical community attributed known cases of lead poisoning to the presence of lead-based paint. Dr. Jane S. Lin-Fu, a pediatric consultant to the Office of Maternal and Child Health, HEW, stated:

> Lead poisoning in children, resulting mostly from ingestion of chips of lead-containing paint from walls and woodwork in old, dilapidated housing, remains a unique public health problem. Its etiology, pathogenesis, pathophysiology, and epidemology are known. Practical methods are available for screening, diagnosis, prevention, and treatment. Yet each year lead poisoning

continues to cause the deaths of many children and mental retardation or other neurological handicaps in many other children.(4)

Lead poisoning was associated with concentrations equal to or exceeding 80 (μg/dl) and was known to cause death, mental retardation, neurological sequela and other handicaps. Lower levels of blood lead concentrations nonetheless were considered harmful. Lower levels of body lead also indicated possible body lead accumulations that might lead to lead poisoning.(5) A national standard was established in 1971 when the Surgeon General defined as harmful blood lead levels in excess of 40 μg/dl of whole blood.(6) Measured against this standard the screening results from Chicago and New York were alarming for they showed that many more children than previously thought had excessive blood lead levels.

Testimony before Congress in the early 1970's focused on children with blood lead levels in excess of 40 μg/dl level and highlighted such tragic health consequences as death and retardation.(7) Lead poisoning in children was attributed to pica (a condition of habitually eating non-food substances) and ingestion of lead-based paint chips. Testimony focused on deteriorated paint conditions (peeling and cracking paints) and emphasized the prevalence of such paint conditions in inner city neighborhoods of large metropolitan areas. There was limited discussion during Congressional testimony of lead ingestion or inhalation from other sources—air, water, food, etc. Equally limited was any discussion of intact paint surfaces as sources of ingestable lead.

This Congressional focus was expressed in a 1970 Senate Report:

> The problem of childhood lead poisoning caused by the ingestion of lead-based paints has reached epidemic proportions in most of our large cities. The high incidence of lead poisoning is of particular concern to young children living in the "lead-belts" of our city slums. It has also been reported in children from economically and socially advantaged homes. The accessibility to flaking or peeling lead-based paint and to broken plaster, along with the lack of knowledge among parents that ingestion of such substances is dangerous and even lethal, is responsible for lead poisoning. The situation is aggravated by a high incidence of pica which is an appetite for nonfood items such as dirt, paper, paint, and plaster in young children * * *. Estimates of the number of children across the Nation who may be lead sick run as high as 400,000 per year. About 200 children die from lead each year, with 2-year olds accounting for more than 50 percent of those deaths. While annually 12,000 to 16,000 children are actually treated for lead poisoning and survive, half of these children are left mentally retarded. This kind of brain damage cannot be reversed by treatment. Medical experts have stated that even with early diagnosis by the physician and routine laboratory tests it is exceedingly difficult, if not impossible, to arrest the damage that can be caused by lead poisoning. The only means available to the medical community today is the prompt elimination of this manmade environmental hazard * * *. While the lifetime caretaking costs for a victim of lead poisoning may be as much as $250,000, the cost to remove lead painted surfaces from exposure to young children and to treat those children who are not yet suffering from acute lead poisoning is economically much cheaper and socially more beneficial. Estimates range from between $250 and $300 to completely remove lead paint from an average rowhouse to an estimate of $600 to $1,200 to replace window and door units and baseboards in such a house.(8)

B. New Information for Current Rule Revisions

Two types of changes in the nature of the lead problem are relevant here. The first is the aggregate shift in the levels of blood lead levels in the population. The second is the trend in the incidence of children with elevated blood lead and lead poisoning levels.

1. *Changes in mean blood lead levels 1976–1980*

Research documents dramatic declines in blood lead levels. The primary source of information is the second National Center for Health Statistics National Health and Nutrition Examination Survey ("NHANES II"). NHANES II reports that mean blood lead levels for all population groups, including children, and associated distributional patterns have significantly declined over the 1976–1980 time period.

NHANES II was a stratified, multistate, probability cluster sample of households, selected to represent the entire U.S. civilian non-institutionalized population covering the 1976–80 period. A total of 16,563 people, ages 6 months to 74 years, participated over the 1976–1980 period.(9)

NHANES II mid-study statistics, summarized in Table 1, showed a geometric mean blood lead in 1978 of 13.9 μg/dl level for the population as a whole.(10) For children between the ages of 6 months and 5 years of age, the group of greatest concern in the lead-based paint program, the 1978 mean was 16.0 μg/dl.(11) The pattern of risk to these children varies with size of urban area, race and family income level. Mean blood lead levels were higher in large urban centers compared to rural areas, 18.0 μg/dl compared to 13.9μg/dl. Within these large areas (over one million population), greatest risk existed in the central cities. An inverse relationship existed between risk and family income; the higher the income, the lower the risk. Blacks, in all categories, consistently showed higher mean blood lead levels than whites.

TABLE 1.—SELECTED STATISTICS FROM NHANES II SURVEY 1976–80

Population group	1978 Mean μg/dl	Proportion at risk (above 30 μg/dl)
1. Population as a whole [1]	13.9	1.9
2. Children, 0.5–5 years [1]	16.0	3.9
A. Rural areas [2]	13.9	2.1
B. Urban areas (under 1 million population) [2]	16.5	3.5
C. Large urban areas (over 1 million population) [2]	18.0	7.2
(1) In central cities	20.0	11.6
(2) In noncentral parts of large urban areas	16.5	3.7
D. Family income [2]		
(1) Under $6,000	20.0	10.9
(2) $6,000 to $14,999	16.2	4.2
(3) Under $15,000 plus	14.1	1.2
E. Black	21.0	10.9
White	14.7	1.8

Sources:
[1] "Blood Lead Levels for Persons 6 Months–74 Years of Age: United States, 1976–80." *Advancedata*, Number 79, May 12, 1982.
[2] Statistics for children, unless otherwise noted, from Kathryn Mahaffey, Joseph L. Annest, Jean Roberts and Robert S. Murphy, "National Estimates of Blood Lead Levels: United States, 1976–80" *New England Journal of Medicine*, Vol. 307, No. 10, September 2, 1982 pp. 573–597.

The NHANES II data also show significant health improvements over the February 1976 and February 1980 period (see Table 2) as measured by percent change in the geometric means. Significant improvements were recorded for population groups classified by race, age, degree of urbanization and family income. The percentage decline for children was 40.8 percent.

TABLE 2.—REDUCTIONS IN BLOOD LEAD LEVELS 1976–80 BASED UPON ANALYSIS OF NHANES II DATA

Population group	Percent change in mean μg/dl: 1976–80
1. Population as a whole	36.7
2. Race:	
Black	30.8
White	36.5
3. Age (all population:[1]	
0.5 to 5	40.8
6 to 17	42.5
18 to 74	36.7
4. Urbanization (all population:	
Rural	33.0
Urban less than 1 million	40.1
Large urban more than 1 million	19.1
5. Family income (all populaiton)	
Less than $6,000	45.7
$6,000 to $15,000	35.5
More than $15,000	38.2

[1] Reported for white children only.
Source: Annest, Joseph L. "Trends in Blood Lead Levels in U.S. Populations, 6 months—74 Years of Age." Speech to be published to the Royal Institute of British Architects, May 10, 1982. To be published.

NHANES II confirmed earlier HUD research by Dr. I. Billick. His analysis of

sensitive populations in New York, Chicago and Louisville, for the 1970's showed similar declines in blood lead levels of urban children. (*12*) This finding was confirmed by ICF, a Washington, D.C., consulting firm under contract to the Environmental Protection Agency, who reanalyzed the Billick data showing the results to be consistent with the NHANES II data. (*13*)

2. Changes in distributional patterns 1976–1980

While the mean is a useful statistic to describe the blood lead situation for a given population group, a more meaningful statistic is the proportion of the group with elevated blood lead levels—over 30 μg/dl. Table l provides such data for 1978. Young children at greatest risk were more likely to be black (10.9%); lived in central cities (11.6%); or came from lower income families (10.9%). The joint distribution for all three characteristics was not available for 1978. One can infer from the reported data on mean blood lead levels that the proportion was high. The mean value for this group, 23.1 μg/dl, exceeds the mean values for the other subclassifications for children. (*14*) Therefore, the proportion of black children of low income families living in central cities with blood leads above 30 μg/dl probably exceeds the proportions reported for the other groups of children.

These statistics should not suggest that elevated blood lead levels were a problem only of center city children from low-income families. As shown in Table 1, some 3.7 percent of suburban children, 3.5 percent of children in smaller urban areas, and 4.2 percent of children from families of moderate income had blood leads in excess of 30 μg/dl. The incidence of lead problems for these children, however, was a more limited event.

Changes in the proportion of children above 30 μg/dl between 1976–1980 were also pronounced. Frequency distribution data for children, .5–5 years of age, were available from the Environmental Protection Agency. This data, reported in Table 3, cover the 2/76 to 9/78 and 10/78 to 2/80 time periods. In the first period, 3.9 percent of all children had blood leads in excess of 30 μg/dl. By the 1978–1980 period, this percentage decreased to 2.1 percent. The effect is more striking when 20 μg/dl is used. In the 1976–78 time period, 24.2 percent of the children surveyed exceeded the 20 μg/dl level; by 1978–1980, the percentage dropped to 9.0 percent. The shift downward is more pronounced for black children with percentage of black children over 30 μg/dl declining from 14.2 to 7 percent. The shift for white children was from 2.3 to 1.0 percent.

TABLE 3.—PERCENTAGE FREQUENCY DISTRIBUTION OF CHILDREN 0.5–5 YEARS OLD, BLOOD LEAD LEVELS FOR 1976–78 AND 1978–80, WITH ESTIMATES FOR 1983

[Based on NHANES II Data]

	Time period		
	1976–78	1978–80	1983
I. By Race: Percent equal to or in excess of:			
30 μg/dl:			
White	2.3	1.0	NA
Black	14.2	7.0	1.1
All	3.9	2.1	NA
20 μg/dl:			
White	NA	NA	NA
Black	NA	NA	3.7
Mean			
White	15.9	12.2	7.7
Black	22.1	17.4	10.2
II. By blood lead level:			
All children (μg/dl):			
Above 15	53.8	25.1	.....
Above 20	24.2	9.0	.....
Above 25	8.9	3.7	.....
Above 30	3.0	2.1	.....
Above 40	0.5	0.1	.....

NA = Not available.

Sources: "Blood Lead Levels . . . " *Advancedata* op. cit.; James L. Pinkle, M.D., Centers for Disease Control, H.H.S., Ph.D. "Percentage Distributions of NHANES II Blood Lead Data by Age" Memorandum of May 12, 1982. Found in EPA lead Phase Down Docket, A 8136, #IV D 297.; 1983 estimates from ICF Inc. *"The Relationship Between Gasoline Lead Usage and Blood Lead Levels in Americans: A Statistical Anaylsis of the NHANES II Data"* prepared for the Environmental Protection Agency, Office of Policy and Resource Management, Office of Policy Anaylsis. Contact No. 68-01-5845. December 1982.

The serious health consequences of lead poisoning—death, mental retardation and blindness—observed in the late 60's and early 70's occur infrequently. Up to 1977 an estimated 200 childhood deaths per year were attributed to childhood lead poisoning. (HEW extrapolations of 1960's data of poisoning cases from selected numbers of U.S. cities.) In 1977, the National Bureau of Standards, under HUD contract, surveyed 42 community screening programs. NBS found a total of five suspected lead poisoning deaths for the three-year period (1974–1976).(*15*) Very few deaths are attributable to lead poisoning today.

The decline in lead poisoning, as defined by CDC, is reflected in the NHANES II data. No statistics are reported for blood lead levels above 60 μg/dl because the incidence of people screened with such high levels was so negligible as not to be reported. The proportion of children with blood lead levels above 40 μg/dl, the level discussed in Congressional testimony, is lower than would have been concluded from city screening results in the late 60's-early 70's. In 1976–1978, 0.5 percent had blood leads in excess of 40 μg/dl; by 1978–1980 this had been reduced to 0.1 percent.

3. Projected trends in the 1980's

Downward trends are projected for the 1980's. CDC extrapolations to the 1982–1983 period predict declines in the proportion of the U.S. population exceeding 30 μg/dl from 2 percent in 1978 to 0.05 percent in 1982–1983, a 97 percent reduction. For black preschool children, CDC estimates show a reduction from 12 percent to 0.9 percent, over a 90 percent reduction in occurrences.(*16*)

The ICF analysis of the NHANES II and Billick data predicts similar declines. (*17*) ICF projected the NHANES II data to 1983 using the gasoline lead standard recently adopted by EPA. The percentage of black children over 30 μg/dl was estimated at 1.1 percent and over 20 μg/dl at 3.7 percent. ICF did not report comparable numbers for white childern, but the fact that the mean value for white children (7.7 μg/dl) was less than that for black children (10.2 μg/dl) means that the proportions for whites was less than that for blacks.

C. Sources of Environmental Lead

When the LPPPA was enacted and rules promulgated lead-based paint was seen as the principal source of body lead found in children. This view is no longer widely held.

Recent studies point to sources other than lead paint—namely, food, gasoline, household dust and garden soil, and dust and fumes produced as a result of renovation or demolition of other buildings. (*18*) While in specific instances lead-based paint may pose significant health problems, particularly for children with pica, the ubiquitous contribution ascribed to lead-based paint in the early mid-1970's appears to have been overestimated.

The ICF, Billick and NHANES II analyses conclude that the principal determinant for declining mean blood lead levels is the reduction in lead content of gasoline. A high correlation was observed between changes in the lead content of gasoline and the changes in the mean blood lead levels. The ICF analysis concluded that 46 percent of the blood lead of the average American could be statistically attributable to the emission of lead used in gasoline. (*19*) The remaining 54 percent resulted from other sources, but the relative contributions of each source could not be separated. The report discounted any significant role of lead-based paint in explaining the reductions in blood lead levels over the 1976–80 period.(*20*)

Billick's analyses of New York, Chicago and Louisville data likewise

conclude that the observed declines in blood lead levels are highly correlated to reductions in the lead content of gasoline. At the same time there were no large scale lead-based paint abatement programs in these metropolitan areas and therefore no significant paint related action that could explain the average decline in blood lead levels. (*21*)

While this conclusion does not mean that lead-based paint under some conditions is not hazardous—ingestion of paint containing lead would contribute to high blood lead levels—the conclusion clearly shifts the understanding of what causes excessive blood lead levels away from the conclusion that lead-based paint was the principal cause.

D. Relationship Between Lead-Based Paint and Elevated Blood Lead Levels

National estimates of the number of dwellings with lead-based paint are very large. HUD's estimate of the stock of housing, pre-1975, containing paint on walls exceeding 2.0 mg lead/cm^2 was over 27 million units out of a total stock of 72.5 million units. Approximately 40 percent of single family and 33 percent of multifamily units had lead-based paint. (*22*) Given the high incidence of possible lead exposure in residential dwellings, some estimates of the associateion between lead-based paint and child health take on importance.

A few studies have sought to measure the relationship between lead-based paint and elevated blood lead levels. Evidence supports an association between defective lead-based paint and elevated blood leads; to the Department's knowledge there are no studies that directly relate intact lead-based paint and elevated blood leads. (EPA's draft *Air Quality criteria for Lead* document points to defective paint containing lead as the source of concern; no reference is made to situations involving intact lead-based paint.) These studies are summarized below.

An association between lead-based paint and children with elevated blood lead levels has been reported by CDC. CDC had collected data as recently as 1981 from approximately 60 lead poisoning prevention programs that operated in the larger urban areas. These programs were established under the LPPPA grant program and were specifically designed to operate in high risk areas—principally the older, central cities. Screening programs were created to identify children with elevated blood leads, and to provided follow-up pediatric management services, home inspections and abatement of lead-based paint conditions where appropriate.

Table 4 summarizes for 1976 and 1980 the number of children screened who were at moderate risk (class II) and at very high risk (classes III and IV). Class II includes children with blood lead levels between 30–49 μg/dl and erythrocyte protoporphyrin (EP) levels between 50–109 μg/dl. Class III in turn includes children (i) with blood lead levels between 30–49 μg/dl with EP levels above 110 or (ii) with blood lead levels between 50–69 μg/dl and EP between 50–250. Class IV contains the lead poisoning cases: (i) blood lead levels between 50–69 with EP above 249 or (ii) blood lead levels above 70 μg/dl.

TABLE 4.—SUMMARY OF LEAD POISONING PREVENTION PROGRAM STATISTICS: 1976 AND 1980

	1976	1980
A. Total children screened	395,820	502,925
B. Children at risk in CDC class:		
i. II (moderate risk)	23,452	17,441
Percent of A	5.9	3.5
ii. III/IV (high risk)	9,935	9,078
Percent of A	2.5	1.8
C. Number of residential units inspected	40,529	16,408
D. Residential units found with lead:		
i. Number	22,647	11,991
ii. Percent of C	55.9	73.1
E. Residential units with abatement actions taken:		
i. Number	18,199	9,765
ii. Percent of D	80.3	81.4

Sources: "Mortality and Morbidity Weekly Report," Center for Disease Control, Vol. 25, No. 40, October 15, 1976 (p. 323); Vol. 30, No. 5, 1981 p. 63.

The data show that blood lead problems affect a small but significant number of children in high risk areas. In 1980, 5.3 percent screened were either at a moderate or high risk. Children are at higher risk in these areas than are children in general—2.1 percent of children ages .5–5 were over 30 μg/dl in 1978–1980 (see Table 3). It would seem that this result is expected given the greater exposure of urban children to multiple sources of lead—paint, fumes from cars, etc.

The trends for high risk area children, however, are encouraging in that the proportion in both groups (II and III/IV) declined over the 1976–1980 period. The trend between 1976 and 1980 shows that the proportion of children screened falling into either classes II or III/IV declined from a combined 8.4 percent in 1976 to 5.3 percent in 1980. This decline is probably due in part to the expansion of the screening programs into areas less likely to have lead-based paint problems. The decline is also probably due in part to the national trend of declining blood lead levels as recorded by the NHANES II survey.

The 5.3 percent level for 1980 appears consistent with the NHANES II data. If the 7.2 percent reported for children in large urban areas with blood leads in excess of 30 μg/dl (Table 1) was adjusted downward to reflect the reported 19.1 percent decline in the geometric mean for all population groups in large urban areas (Table 3), the expected NHANES II figure would be in the range of 5.8 percent).

The lead poisoning prevention programs also reported the numbers of housing units investigated, the number of units with lead-based paint, and the number of such units on which abatement was taken. Dwellings investigated were the homes of children with confirmed elevated blood lead levels. In 1976 approximately 56 percent of the units inspected contained lead-based paint, by 1980 the percentage increased to 73 percent. Whether this reflects a more selective inspection of dwellings—more units were inspected in 1980 than in 1976—is not known. In both time periods abatement actions were taken by local authorities on approximately 80 percent of units with lead-based paint.

Statistical extrapolation of these results to large population groups in geographic areas not covered by these programs is limited. Each city reported data tailored to its particular circumstances (e.g., the standard used to define violations of the locality's lead poisoning ordinance varied from city to city). The data to show that a problem, though declining, still exists in the older, larger cities.

Several studies attempted to measure the strength of association between blood lead levels and the presence of lead-based paint. A study of Pittsburgh housing equated the extent of surface area covered with lead-based paint and child blood lead levels. Lead-based paint was found in many homes at measurable levels above 2 mg/cm^2. The correlation between the proportion of surfaces with lead and the child's blood lead level was very low. A stronger correlation was obtained when equating blood lead levels and presence of defective paint. (*23*)

A study of children with elevated blood lead levels in Rochester, New York, produced similar results. Researchers, in seeking to explain observed blood lead levels by use of regression techniques, concluded that the lead content of interior paint (in excess of 1 percent) did not prove to be a strong independent factor in accounting for blood lead levels. (*24*)

Contrary conclusions were reached in a 1979 study of children in Springfield, Massachusetts. (*25*) Thirty children with confirmed blood lead levels in excess of 50 μg/dl were matched, in terms of age, sex and neighborhood, with children

with blood lead levels less than 30 μg/dl. By pairing the children from the same area, the researchers attempted to control for socioeconomic status and exposure to external environmental factors such as automobile exhaust and ambient lead pollution. The children's homes were inspected to obtain data on (i) the presence of lead-based paint, (ii) the condition of the painted surface (defective or intact), (iii) lead content in the drinking water, and (iv) the lead content of the soil around the house.

All children with high lead levels lived in homes with lead-based paint. Each home had some defective paint. Only 50 percent of the control children lived in homes with defective lead-based paint. Another 10 percent of the controls lived in homes with intact lead-based paint, but no defective paint conditions.

The existence of defective lead-based paint was the most significant factor distinguishing between the two groups of children. The presence of lead in water and in soil were not significant factors distinguishing between the two groups. The researchers suggest that intact paint is associated with high lead levels, but not to the same degree as defective, lead-based paint. They could not isolate the effects of intact paint because all children with confirmed blood lead levels lived in houses with defective paint. The study concludes that intact lead-based paint is a hazard if chewed, but the authors present no data on the frequency of this situation.

A study of Detroit, covering 1972–1978, sought to isolate the effects of lead-based paint. (*26*) Researchers used city screening records of children with lead levels above 30 μg/dl; the sample, therefore, was biased towards children with known elevated blood lead levels. City housing inspection data were available as to the paint condition of the dwelling units occupied by these children and whether abatement actions on units were undertaken. At the time of the study, Detroit's program required the correction of defective paint but not intact conditions.

Records were divided into two categories: children whose units did not have defective paint conditions (Group I) and children in units with defective paint conditions (Group II). The geometric mean for blood lead levels (the statistical measure used in the study) for children in Group I was 39.4 μg/dl. The geometric mean for children in Group II was 45.0 μg/dl. This suggests that the existence of defective paint contributes to elevated blood lead levels. (*27*)

V. Hazard Elimination Costs

A variety of questions can be examined regarding the costs of lead-based paint hazard abatement. The more obvious factors affecting costs, all of which are interrelated to each other, are (1) coverage of the hazard abatement requirement, if intact-paint surfaces are included, in terms of (i) what level of lead content defines a hazardous condition, and (ii) whether all surfaces are to be treated, or only accessible surfaces, or only accessible chewable surfaces, (2) the condition of the painted surface, (3) age of structure and (4) the abatement techniques utilized.

A less obvious aspect of the cost question is who pays it. Recent attention to the lead-based paint problem, as exemplified by the *Ashton* litigation, has focused on public housing. In that context, the cost of lead-based paint hazard abatement is a public cost, borne directly by the public housing authority, funded through tenant contributions toward rent (which are fixed in amount without regard to operating costs of the housing) or operating subsidy or modernization funding extended by HUD pursuant to Congressional authorization and appropriation. Questions may be considered regarding the prioritization of competing demands upon these finite resources (e.g., is it more important to remove intact lead-based paint or fix a leaking roof), but the cost in the end is publicly borne. In this context, it is natural, and perhaps appropriate, to focus upon aggregate rather than per-unit costs.

In other program contexts, however, the cost of hazard abatement is privately borne. For example, when hazard abatement compliance is required as a condition of obtaining FHA mortgage insurance in connection with the sale of a single-family home, it is the seller or buyer (directly or through purchase price) who must bear the cost without public contribution. Similarly, if hazard abatement compliance is a condition of participation by a rental housing owner in the Section 8 Existing Housing program, the cost is borne by the private owner. Moreover, if the rent charged for the subsidized unit is comparable to the rent charged for unsubsidized units, as program regulations require, then the compliance cost is not compensated through the subsidy. In both these cases, therefore, the compliance cost is simply a private cost of participation in the program.

Harsh as this may sound, it appears clear that in enacting Section 302 of the LPPPA in 1973, Congress did not expect otherwise. In fact, such discussion of costs imposed by Section 302 as appeared in the legislative debates dealt exclusively with private costs. This was entirely consistent with the apparent focus of the statute itself, evident in the catch-line of Section 302 ("Federal Housing Administration Requirements"), on the mortgage insurance programs. When introducing his amendment which became Section 302, Senator Schweiker described it as follows:

> The amendment would do two things. It would, first of all, provide an inspection procedure for each house that comes up in the Federal housing and FHA program during any particular year, whereby part of the inspection before FHA approval would be for chipping and peeling paint, and if such a condition is found FHA under the amendment would have the authority to go to the builder or the remodeler and have him remedy the situation before the house is accepted by FHA. (*28*)

(The foregoing statement was made before the later further amendment, found crucial by the *Ashton* courts, striking reference to "cracking, scaling, peeling, or loose paint" from Section 302.)

In contexts where the compliance costs are borne privately, consideration of unit costs may be more appropriate than aggregate costs. Moreover, a further consideration arises in this context which is not present in those involving publicly borne costs: the effect of costs upon program participation and, consequently, the achievement of program objectives.

An example of this consideration is seen in the *Ashton* decisions. As discussed in Section III above, the District Court and Court of Appeals both considered a HUD internal options paper describing several alternative compliance requirements. The alternatives all dealt with compliance requirements for single-family homes proposed for FHA mortgage insurance. HUD concluded that the two costliest proposals were impracticable due to adverse impact on continued FHA activity and the consequent withdrawal of the benefits of the program. Neither Court rejected either this approach or the conclusions reached.

Weighing the considerations outlined above could lead, theoretically, to a conclusion that a higher compliance level can, or should, be imposed in a program context where the costs are publicly borne than in one where they are privately borne. The Department is not aware of any indication in the legislative record that Congress contemplated such an outcome.

An example of the consideration of a number of the interrelated factors

affecting compliance costs appears in the administrative record to HUD's current regulations. In April 1976, HUD's Assistant Secretary for Policy Development and Research prepared a detailed estimate of the costs of removal of lead-based paint from "HUD-associated housing." This estimate projected the cost of compliance with the Department's final rule (i.e., scraping of loose, peeling paint, followed by repainting), and the cost of "possible compliance with more stringent local codes and regulations." As the criteria for the latter, the estimate posited total removal of lead-based paint on all surfaces (walls, windows and doors) to a height of 5 feet, and scraping of loose paint and repainting above 5 feet, as the "upper limit to the cost which might be expected for local compliance."

For the assumed population of housing units covered by the requirements, the Assistant Secretary made and estimate of the number of units in each program constructed prior to 1950 and included all such units and no others. This methodology conformed to the statute but apparently also was thought to represent a fair estimate of the numbers of units likely to contain paint having a lead content in excess of 2.0 mg/cm ^{2}. Per-unit inspection costs were assumed to be $80, based on HEW demonstration program experience. Per-unit costs also were estimated on the basis of HEW demonstration program experience. This Assistant Secretary's estimate of costs is shown in Table 5.

Although labeled "Yearly Cost," Table 5 actually contains estimates of both annual costs and one-time costs. As indicated, the amounts shown for public housing and for "loan management" units were described as one-time costs. The amounts shown as consumer costs under the mortgage insurance programs, however, were posited as recurring costs, to be repeated as new units came under the program.

TABLE 5.—ESTIMATED FISCAL YEAR 1976 COST OF LEAD PAINT HAZARD ABATEMENT FOR HUD-ASSISTED HOUSING

	No. dwelling units	Cost of inspection	Cost of total deleading	Cost HUD regulations
Direct assistance (Government cost):				
1.1 Property disposition single family	23,100	$1.8	$25.7	$3.2
1.2 Property disposition multifamily	2,250	0.2	1.1	0.2
1.3 Public housing	575,000	46.0	299.2	44.7
1.4 Loan management ACC authority	1,300	0.1	1.4	0.2
1.5 Loan management section 8	10,000	0.8	10.5	1.4
Subtotal	611,650	48.9	337.9	49.7
2. Insurance programs (consumer cost):				
2.1 Insured mortgages single family	135,000	10.8	139.7	19.2
2.2 Title I—Home loan	75,000	6.0	78.3	10.8
2.3 Rental assistance section 8	41,250	3.3	42.6	5.5
Subtotal	251,250	20.1	260.6	35.5
Total	862,900	69.0	598.5	85.2

Source: Memorandum for Charles J. Ordebeke, Assistant Secretary for Policy Development and Research, HUD, "Estimated Cost for Removal of Lead-Based Paint from HUD Associated Housing," April 7, 1976. Table I.

The "Total Deleading" program whose cost is estimated in Table 5 was "Alternative V" in the HUD internal options paper referred to by the District Court and the Court of Appeals in *Ashton*. The "impact of housing supply" of this alternative, as it affected insurance programs, was discussed in HUD's Environmental Impact Statement prepared in connection with the final rulemaking as follows:

The elimination cost would have to be borne by the purchaser of an FHA insured property or would be passed on to the tenants in single or multifamily properties. The alternative could be expected to have a significant negative impact on the inner city housing supply, where HUD mortgage insurance or assistance is often the primary (or sole) source of financing for sales. An added cost of $1,500 to $2,300 to the average price ($5–$12,000) on an inner city dwelling unit constitutes a 20% to 45% cost increase.

In most instances, homeowners would not have adequate savings to meet such an expense and if they did, would not wish to spend their savings to invest in home improvements that may not add to the value of the property. Furthermore, many homeowners would be unwilling to borrow for such purposes when they could not be assured of reclaiming their investment. In such cases, homeowners may abandon their property. The housing supply for low and moderate income families would be reduced by the same number of such abandonments.

The same reasoning would be applicable to the Section 8 rental assistance provision and the Title I home improvement loans which HUD insures. The viability of these programs which assist 165,000 families locate adequate housing and assists in the improvement of 300,000 homes annually could be eliminated altogether. Homeowners seeking HUD assistance for rehabilitation may not wish to undertake the costs of deleading in addition to home maintenance or structural improvements. One impact of this policy could be the further deterioration of inner cities as property transfers and home rehabilitation are retarded or stopped altogether and abandonment occurs.

As mentioned above, this alternative would adversely affect the Section 8 rental assistance program which is the primary method of assisting low income families to locate adequate housing.(*29*)

As indicated above, the District Court and Court of Appeals did not question the Department's use of cost to measure impact of this alternative on program effectiveness and utilization.

A different estimate was made by HUD staff in 1980. This estimate utilized a more sophisticated starting point for estimating the number of dwelling units that would be covered by the abatement requirements assuming different hazard definition thresholds. A HUD-sponsored survey of approximately 3,300 dwelling units in Pittsburgh in 1974–1975 determined the incidence of lead-based paint in the housing stock by age and building type. X-ray fluorescent lead detectors were used to measure the presence and concentrations of lead on different surfaces. The results of the Pittsburgh sampling were corroborated by later data from Washington, D.C. HUD projected the results of the Pittsburgh survey on the numbers of units covered in the public housing, Section 8 Existing Housing, and FHA single-family insurance programs. For instance, the Pittsburgh data indicated that 32 percent of public housing units built before 1940 had lead readings of 2.0 mg/cm^2 or greater. The projected stocks of pre-1940 public housing units in 1980 was 80,000 units. Therefore, a 2.0 μg/cm^2 threshold hazard definition would affect 25,600 units.

Abatement costs for walls and linear foot costs for trim used in the 1980 estimates were based on a National Bureau of Standards report published in 1979, adjusted by an inflation factor Inspection costs are not included.

The 1980 estimate is now in Table 6. If

the costs were further adjusted to reflect inflation to 1983, HUD estimates that the cost of abatement, all surfaces, for public housing built before 1971, at a 2.0 mg/cm² threshold, would be $244.7 million (increased from $206.2 million).

TABLE 6.—MAXIMUM LEAD LEVELS (MG/CM²) 1980 ESTIMATES

Cutoff date	0.5			2.0			5.0		
	Units	All surfaces	Trim only	Units	All surfaces	Trim only	Units	All surfaces	Trim only
Public Housing:[1]									
Pre-40	78,800	171.9	$52.8	25,900	$45.5	$14.5		$23.6	$9.5
Pre-50	207,800	429.4	120.4	66,500	102.1	29.6		48.7	18.4
Pre-60	395,400	803.8	218.7	125,600	184.4	51.5		85.2	31.3
Pre-71	666,200	1,273.2	343.8	146,200	206.2	60.5		91.3	33.6
Section 8—Existing:[2]									
Pre-40	153,800	345.9	105.7	95,800	139.1	52.1		79.6	30.0
Pre-50	191,300	409.9	123.9	104,600	148.9	55.2		84.4	31.5
Pre-60	221,300	461.1	138.5	111,600	156.7	57.6		88.3	32.8
Pre-71	332,800	605.2	182.9	121,600	167.7	60.4		88.3	32.8
FHA insured single family:[3]									
Pre-40	33,700	87.8	28.0	21,400	32.4	13.1		17.9	7.1
Pre-50	71,700	172.6	54.1	35,900	49.6	19.9		26.2	9.9
Pre-60	130,100	302.9	94.2	58,300	76.2	30.4		39.2	14.3
Pre-71	193,000	436.7	134.9	73,300	91.4	37.5		42.2	15.8
Total of three programs shown:[4]									
Pre-40	266,300	605.6	186.5	143,100	217.0	79.7		121.1	46.6
Pre-50	470,800	1,011.9	298.4	207,000	300.6	104.7		159.3	59.8
Pre-60	746,800	1,567.8	451.4	295,500	417.3	139.5		212.7	78.4
Pre-71	1,192,100	2,315.1	661.8	341,100	465.3	158.4		221.8	82.8

[1] One time cost for entire stock.
[2] Some costs recurring as stock changes year to year.
[3] Recurring costs as different units are insured each year.
[4] Estimated cost of abatement for fiscal year 1980.

Sources: Cost estimates based on Memorandum from David Crowe, Economist, to David Garrison, Deputy Assistant Secretary, PD&R, HUD, "Cost of Lead Paint Regulations" June 18, 1980. Unit number found in Memorandum from David Crowe, Economist, to Jane R. Karadbil, PD&R, HUD "Updating Lead-Based Paint Abatement Costs" September 1, 1983.

The Pittsburgh survey results shown in Table 6 suggest that program coverage, and therefore program costs, are significantly affected by the lead concentration standard and paint condition. If a program covered rooms with defective paint conditions having a lead content less than 2.0 μg/cm² on the walls, 19.6 percent of rooms in dwelling built before 1940 would be included. If the standard were more stringent—set at 0.5 μg/cm²—the percentage of units jumps to 68.2 percent. If intact paint conditions (rooms without defective paint in Table 7) are included, the number of additional dwellings covered by the program would significantly increase. For example 12 percent of units built before 1940 would be added at the 2.0 μg/cm² standard with the number jumping to 62.9 percent at the 0.5 standard. In each comparison if measurements were made of window areas, the coverage of the program significantly increases in most lead concentration and age combinations.

A significant aspect of the Pittsburgh survey is its indication of the relevance of the date of construction. As noted above, Section 302 mandates only that hazard abatement requirements be applicable to units constructed prior to 1950, leaving applications to units constructed during or after 1950 to the discretion of the Secretary. In its current regulation requiring abatement only upon the presence of defected paint conditions, HUD makes no differentiation between pre-1950 and later units. In the 1975 Environmental Impact Statement, HUD had dismissed a 1950 cut-off date on the rationale that it did not provide "the maximum practicable protection to children affected by the programs within the Department's jurisdiction."(*30*) An important question to be considered in new rulemaking is whether current information would justify a cut-off based on construction date, whether 1950 or a later date.

The Pittsburgh data also show that the older the unit the more likely that lead will be found at either the 0.5, 2.0 or 5.0 concentration levels. This is particularly the case for concentration levels in the 2.0 and 5.0 concentration levels, a reflection of the paint industry's use of a voluntary standard in 1955 that limited the concentration of lead in paint used in residential interiors. However, at very low lead concentration levels, 0.5 μg/cm², age of structure appears to have little effect as shown by the high percentages of rooms in buildings constructed after 1960 with wall or window readings exceeding 0.5.

TABLE 7.—PERCENTAGE OF ROOMS [1] WITH HIGHEST READING OF WALL AND WINDOW SURFACES EXCEEDING FIXED LEAD LEVELS

Date of construction	Lead Concentration mg/cm²		
	0.5	2.0	5.0
Rooms with Defective Paint Conditions			
Pre-1940:			
Walls	68.2	19.6	12.0
Windows	83.9	55.7	36.6

TABLE 7.—PERCENTAGE OF ROOMS [1] WITH HIGHEST READING OF WALL AND WINDOW SURFACES EXCEEDING FIXED LEAD LEVELS—Continued

Date of construction	Lead Concentration mg/cm²		
	0.5	2.0	5.0
1940–59:			
Walls	46.9	15.6	9.4
Windows	66.2	22.1	11.8
1960–75:			
Walls	57.1	0.0	0.0
Windows	36.4	18.2	0.0
Rooms Without Defective Paint Conditions			
Pre-1940:			
Walls	62.9	12.0	6.7
Windows	68.8	36.0	21.6
1940–59:			
Walls	56.6	4.8	2.0
Windows	43.6	9.0	3.7
1960–75:			
Walls	48.8	2.0	0.3
Windows	37.3	4.4	1.6

[1] All rooms other than kitchens and bathrooms.

Source: "Analysis of Housing Data Collected in Lead-Based Paint Survey in Pittsburgh, Pa., Part I, D. R. Shier and W. G. Hall, NBSIR 77–1250, National Bureau of Standards, Washington, D.C. (1977), Table 5.

HUD's cost estimates place major reliance upon the Pittsburgh study. The Department would welcome information about, and copies of, other studies on the extent of lead-based paint in residential dwelling units.

A final cost variable concerns abatement techniques. HUD conducted extensive research on hazard abatement

technology during the 1970's. Research followed two lines—the evaluation of currently available methods for hazard abatement, and the development of new technologies. Results of HUD research were compiled and published in *Lead-Based Paint Poisoning Research: Review and Evaluation 1971–1977* (July 1978). As an indication of the range of possible abatement technologies and their costs (as of 1976), selected data from the HUD research are published here.

To obtain evaluations of hazard abatement techniques under actual field conditions and to facilitate data collection on direct costs under standard conditions, HUD sponsored its Experimental Hazard Elimination Program (EHEP). Phase I was the evaluation of hazard abatement systems in 30 dwelling units in Washington, D.C. and 80 in Atlanta, Georgia. Publications have been issued on both the physical evaluation (*31*), and the cost analysis (*32*).

The EHEP Phase I cost study developed a series of cost models for estimating of the direct costs of lead-based paint abatement. Direct costs, at the dwelling unit level, were analyzed by building component for various abatement techniques. Tables 8–a through 8–e present these average direct costs and the rank order by cost for walls, trim, doors, door frames, and windows. Costs were compared on the basis of the direct cost per item, per square foot, or per linear foot. If significant differences in per unit direct cost existed, the abatement techniques were grouped into cost categories ranked from least expensive to most expensive. The data for each building component are grouped so that those techniques falling in the same cost category are not statistically different; and a statistically significant difference exists between categories.

Generally it appears that for hazard abatement on walls the use of a coating is by far the least expensive, but problems with its long term adherence to substrates in poor condition seriously limit its use. Semi-rigid and rigid barriers appear to overcome this problem but at a four-fold increase in cost. For other surfaces, removal techniques appear to be the most inexpensive, but they are limited by other factors such as toxicity with the use of solvents or creation of excessive lead dust when sanding and scraping.

TABLE 8–a—RANKING OF HAZARD ABATEMENT TECHNIQUES FOR WALLS BY AVERAGE DIRECT COST

Group	Abatement techniques grouped by similarity of means	Average direct cost per square foot
1	Cementitious coating	$0.20
	Filled paint	0.21
2	Veneer plaster	0.74
	Gypsum fiberglass	0.77
	Gypsum jute	0.79
	Gypsum wallboard	0.92
3	Plaster with lath	1.31
4	Melamine paneling	1.65

TABLE 8–b.—RANKING OF HAZARD ABATEMENT TECHNIQUES FOR TRIM BY AVERAGE DIRECT COST

Group	Abatement techniques grouped by similarity of means	Average direct cost per linear foot
1	Solvent strip	$1.77
	Scrape and sand	1.90
	Propane torch	2.34
	Heat gun	2.84
	Infrared	3.24

TABLE 8–c.—RANKING OF HAZARD ABATEMENT TECHNIQUES FOR DOORS BY AVERAGE DIRECT COST

Group	Abatement techniques grouped by similarity of means	Average direct cost per dollar
1	Scrape and sand	$13.02
	Heat gun	18.91
	Solvent strip	25.38
	Dip tank	56.47
2	Replace interiors	94.57
	Replace screen	123.15
	Replace exteriors	130.96

TABLE 8–d.—RANKING OF HAZARD ABATEMENT TECHNIQUES FOR DOOR FRAMES BY AVERAGE DIRECT COST

Group	Abatement techniques grouped by similarity of means	Average direct cost per door frame
	Scrape and sand	$12.08
	Heat gun	18.30
	Infrared device	22.30
	Solvent strip	22.66
2	Replacement (exterior)	98.45

TABLE 8–e.—RANKING OF HAZARD ABATEMENT TECHNIQUES FOR WINDOWS AND FRAMES BY AVERAGE DIRECT COST

Group	Abatement techniques grouped by similarity of means	Average direct cost per window and frame
1	Scrape and sand	$22.87
	Infra-red	28.06
	Heat gun	29.50
	Solvent strip	38.67
2	Replacement	128.82

Source: I.H. Billick and V. E. Gran "Lead Based Paint Poisoning Research" (Washington, D.C. U.S. Government Printing Office, 1978), pp 40–44.

VI. Regulatory Issues

A. Hazards Determination

Section 302 of LPPPA requires the Secretary of HUD to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to certain existing housing and directs that such procedures "as a minimum" shall provide for apporpriate measures to "eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed." In HUD's current regulations, "immediate hazard" is defined as paint on any accessible or inaccessible interior surface, and on exterior surfaces readily accessible to children under 7 years of age, which is cracking, scaling, chipping, peeling or loose. In the *Ashton* decision, the Court of Appeals held that HUD's "complete failure to address the hazards associated with 'tight' paint containing lead" violated the requirements of the statute.

The *Ashton* decision, therefore, requires a greatly refined definition of "immediate hazard" which may, in some circumstances, include intact paint surfaces. Factors to be considered in fashioning a definition of "immediate hazard" include such intrinsic physical factors as the level of lead content in intact paint, the surface on which the paint exists (e.g., walls or window sills), and the location of the surface (i.e., accessible or non-accessible).

The factors to be considered may also include such extrinsic factors as the presence of children or, at a further level of refinement, children with elevated blood levels.

The experience of Philadelphia is illustrative and possibly instructive. Philadelphia ran one of the most aggressive lead abatement programs in the early 1970's. The city ordinance required the elimination of intact paint where the Department of Public Health determined that such paint contained lead in prohibited amounts. Elimination meant either the complete removal of the paint from the accessible surface or the covering of such surface, up to a height of 5 feet, with an approved, durable material. Presence of a child with elevated blood lead levels was not a precondition for abatement.

The Philadelphia ordinance acquired a role in the legislative history of Section 302 after HUD was sued in the early 1970's for failure to comply with the local requirements as to intact paint

in the sale of HUD-acquired FHA-insured single-family homes. The Federal District Court held that the stringent local requirements applied to HUD-owned housing located within the city. *City-Wide Coalition Against Childhood Lead Poisoning* v. *HUD*, 356 F. Supp. 123 (E.D. Pa. 1973). Floor references in Congress to the *City-Wide* decision were cited by the District Court and Court of Appeals in *Ashton* as evidence that Congress intended not to exclude intact paint from the scope of "immediate hazard."

Philadelphia changed its ordinance and regulations in 1977. The ordinance now requires the elimination of lead-based paint if the surface is readily accessible to children under the age of 6 years and if the Department of Public Health determines that the presence of such paint constitutes a hazard. (*33*) Philadelphia revised its regulations by classifying abatement actions into three categories: (*34*)

(1) Abatement of all surfaces to a height of 5 feet when the dwelling unit is occupied by a child "at-risk" (defined as a confirmed blood lead level of 70 μg/dl or higher and an "EP" level of 110 mg/dl or higher).

(2) Abatement of all surfaces to a height of 5 feet where there is evidence of pica and where the unit is occupied by a child with confirmed undue lead absorption.

(3) Abatement of peeling, chipping or defective surfaces where a unit is occupied by a child with confirmed undue lead absorption level.

Philadelphia no longer requires abatement of lead-based paint in any condition—intact or defective—if (1) no children occupy the unit or (2) if a child is present but does not have a confirmed undue lead absorption blood lead level. As to intact paint, abatement is only required when a child with lead poisoning or a child with undue lead absorption plus pica resides in the unit. In the latter case, the potential of rapidly escalating blood levels for a child with pica apparently justifies treatment of intact paint.

The current Philadelphia approach incorporates elements of a "health approach." As indicated in Section II B above, HUD rejected a "health approach" in favor of a "housing approach" in adopting its current regulations, at least in part because of a lack of capacity for screening and the large number of dwelling units covered by the regulations. However, a "health approach" may be feasible if sufficient screening examinations are available through other Federal/State programs, particularly to the lower income population which, according to the NHANES II survey (See Table 1 to this Notice), is the most at risk.

A health approach may also be feasible if the number of occasions requiring screening is limited. Screening, for example, may be an effective step, similar to its use in Philadelphia, for determining whether abatement of intact lead-based paint should be done. This approach would require a confirmed elevated blood lead situation before abatement of intact paint was required. It presumes that a child would not likely ingest paint which is intact; that abatement is only warranted such special circumstances where the child is at high risk and/or shows signs of pica.

The major source of child screening is the Early and Periodic Screening Diagnosis and Treatment Program under the Medicaid program. Screening tests are available for children of medicaid-eligible families. 42 CFR 441.50. HHS guidelines require periodic screening of children. While States must have a general screening program, the test for lead is optional. Most States require screening for lead in their programs. Most States also provide for periodic screening visits for children up to the age of 21 and may allow for up to 12 visits. The younger the child, the greater the allowable frequency of visits. Thus the opportunity for screening available to children in Medicaid-eligible households is greatest for the youngest children, who are most susceptible to lead problems.

Screening programs are also provided to a limited extent under the Women, Infants and Childrens (WIC) and Head-Start program. WIC is administered by the Department of Agriculture. Head-Start is administered by HHS and has an urban focus. In addition, funds from the Maternity Child Health Services Block Grant program, into which the LPPPA grant program was merged, are used for screening and treatment programs.

An additional consideration in evaluating feasibility of a "health approach" in HUD enforcement is the program context. Almost all local ordinances follow a health approach under which a corrective response is triggered by the identification, through screening, of a child with an elevated blood level. The next step—not taken unless the first occurs—is the inspection of the dwelling unit for presence of lead-based paint.

A question to be considered is whether this process can be fit into HUD program procedures effectively. In the insurance programs, for example, the need for inspections and compliance arises at the point of application for insurance. This is one-time requirement, occurring at a time when any children in the purchaser's family may not yet have undergone screening. Moreover, in the context of the sale of HUD-owned housing, the compliance requirement exists when a home is made ready for sale, a point at which the purchaser may be unknown.

On the other hand, public housing presents a context in which HUD's contact with the housing (through periodic subsidy payments and continuing supervision) is continual. In this context, a health approach may be as feasible as it is under local ordinances.

A decision to use a health approach necessarily requires a judgment as to what level of blood lead constitutes a hazard requiring remedial action. It may be appropriate to rely on the undue lead absorption or elevated blood lead standards set by the Centers for Disease Control. The Department is aware of recent medical literature that points to low level lead effects of altered neurophsychological functions and intelligence deficits.(*35*) There is considerable debate as to whether the results of these studies justify lowering the CDC level from 30 μg/dl, and no agreement as to an appropriate lower level.(*36*) Moreover, there would remain a question of whether Congress intended HUD to regulate these lower blood lead situations as immediate hazards. Section 302, by its terms, refers to lead poisoning which in 1973, when Section 302 was passed, was considered to be blood lead concentrations in excess of 80 μg/dl. See Section IV A above.

HUD does not have the scientific or medical expertise to define its own standard while other agencies such as the Environmental Protection Agency and the Centers for Disease Control do. Therefore, the Department is predisposed to adopt a standard used by these other agencies. Public comment is invited on the selection of such a standard.

Abatement techniques, if not properly used, may be the source of lead particles that could be ingested by children. Where lead particles are left on the floor after treatment or become airborne as a result of treatment, they may constitute a significant hazard to children. Liquid paint removers, in turn, can be absorbed through the skin, and the fumes from their use can be easily inhaled. Liquid solvents are highly caustic and can burn the skin. The burning of lead-based paint produces toxic fumes and if caution is not exercised, this technique may cause fire. In the case of intact paint, the potential increases for these

types of secondary hazards when treatment of intact surfaces requires removal instead of covering.

Accordingly, the Department invites comment and data on the issues surrounding the question of the definition of "immediate hazards" to which HUD's hazard elimination requirements should be directed. Questions on which information, analysis, and recommendations are invited include:

—Should HUD adopt elements of a "health approach"? Is such an approach more feasible in some HUD program contexts than others?

— Should hazard elimination requirements pertain to all accessible surfaces? accessible chewable surfaces only? exterior surfaces?

— Should HUD prescribe particular detection or abatement technologies?

—What level of lead content in intact paint should be considered an "immediate hazard"? Should there be an interrelation between lead content of paint and blood lead level of children?

—Is there a reasonably satisfactory cut-off date of construction so that units constructed before such date need not be considered for any purpose? as to intact paint only?

—Are screening programs sufficiently broad in coverage to justify reliance by HUD on their availability? Should the HUD abatement requirements be activated by a referral from a screening program or should the party responsible for abatement be under an additional duty to seek screening data from health agencies?

—How should the HUD regulations deal with States where lead screening is not available?

—Are there issues of confidentiality or administrative feasibility in securing screening data on particular individuals for use by HUD or parties required to undertake inspection and abatement action?

—To what extent, or in what manner, should HUD requirements take State or local requirements and procedures into account? Can HUD accept evidence of local inspection and compliance in localities having standards substantially equivalent to HUD standards?

—What refinements have occurred in State and local standard-setting and enforcement procedures which should be instructive to HUD?

—Is there a need for notice of the hazards arising from abatement techniques? Is cautionary notice generally provided by manufactures to workers conducting abatement adequate? Should notice of hazards due to abatement actions be given to residents of the unit or to occupants of the building if the abatement takes place in common areas?

B. Program Coverage

The requirements of Section 302 of the LPPPA apply to "existing housing * * * which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." However, prior to enactment of the statute HUD had adopted a policy of providing for elimination of hazards arising from defective paint conditions in all "HUD-associated properties," a significantly broader term. In implementing the statute, HUD adhered to its prior policy of applying its requirements to a broader range of properties than those necessarily covered by the statute.

Expansion of the scope of the hazard elimination procedures required by the statute raises the question whether such requirements should be applied equally to programs arguably not within the ambit of the statute. Questions regarding the exact application of requirements, whether considered statutorily mandated or administratively elected, within different program contexts also are raised by considerations such as the source of funding available (i.e., public or private) and the consequent impact on program participation (e.g., public housing compared to Section 8 Existing Housing) and the administrative structure of the program (e.g., FHA mortgage insurance programs compared to Community Development Block Grants). A discussion relating to some of these programs follows.

1. *Section 8 Existing Housing Program*

A particular program context in which these questions arise is the Section 8 Existing Housing Program (24 CFR Part 882). Under this program, eligible low-income families apply to public housing agencies for Certificates of Family Participation. Upon receipt of a Certificate, the family seeks accommodations in the private rental market and, upon finding a unit, submits to the PHA a request for lease approval signed by the family and the unit owner. 24 CFR 882.210. Before approving a lease, the PHA conducts an inspection of the unit for compliance with HUD's housing quality standards which, among other things, require compliance with the hazard elimination requirements of 24 CFR Part 35, Subpart B (24 CFR 882.109(i)). If lease approval is granted, inspections are repeated annually so long as an assisted family resides in the unit.

Under the Section 8 Existing Housing Program, if lease approval is granted and the eligible family commences occupancy, HUD will pay to the owner (through the PHA) the difference between the family's contribution toward rent (fixed on the basis of the family's income) and the "contract rent" for the unit. The contract rent for the unit is limited by Fair Market Rents established by HUD and, in addition, cannot exceed "rents currently being charged by the Owner for comparable unassisted units." Accordingly, there is no element of reimbursement to the owner for any work undertaken in order to comply with housing quality standards, including lead-based paint hazard elimination. The cost of such compliance, therefore, is a cost imposed on the private owner for participation in the program.

Under current regulations, the foregoing requirements are applicable whether or not the family seeking to rent the unit includes children, and regardless of the date of construction of the unit. Program experience has indicated that a substantial number of affordable dwelling units are subject to being declared ineligible for the Section 8 program because of defective paint conditions where the unit was constructed relatively recently in ares on high humidity, notwithstanding that the family seeking to lease the unit includes no children. This problem would take on increased importance in all geographic areas for the elderly who live in units with lead-content intact paint if abatement of all lead-based intact paint becomes a requirement. This would cause disruption to these elderly without measurable benefit.

Unlike some other program contexts,the moment for determination of hazard elimination compliance occurs in the Section 8 Existing Housing Program at a point when the potential or continuing residents of the unit are identified.

Accordingly, the Department specifically solicits comment as to whether the hazard elimination requirements, as they may be applicable to the Section 8 Existing Housing Program, be limited (i) to units constructed prior to a certain date and, if so, what date, and (ii) to units for which application is being made by a family which includes children under 7 years of age? (This question is not intended to exclude other possibilities, such as adopting a fuller "health approach" based on determined blood lead levels of children.)

2. *Community Development Block Grants*

Different questions are raised by the administrative structure of the Community Development Grant program. This program was not in existence at the time of enactment of Section 302 of the LPPPA. Grants are extended to localities to be utilized by localities for activities selected by them, limited only by broadly defined activity eligibility requirements. A subsantial portion of CDBG funds are expended on residential rehabilitation. However, no application is made to the Department which specifies such an intended utilization.

Residential units rehabilitated with block grant funds are clearly within the scope of "HUD-associated housing" as defined by HUD. Accordingly, HUD's regulations for the block grant program have required compliance with the hazard elimination requirements in the rehabilitation of existing housing with block grant assistance. The hazard elimination regulations themselves assign responsibility for inspection of units rehabilitated with block grant funds to the unit of local government or agency thereof. 24 CFR 35.24(b)(1)(vii).

Because the benefits of the CDBG program are not restricted to one income group and the enforcement of lead-based paint requirements, as they apply to CDBG rehabilitation activities, is considered a one-time rather than a continual action, the health approach may not be a workable alternative to the present housing approach. The vast majority of CDBG assisted rehabilitation takes place in residential structures built prior to 1950, and it is these structures that probably have interior and/or exterior lead-based paint surfaces. Under the CDBG program, the use of program funds for residential rehabilitation is not limited solely to units occupied by low and moderate income persons. CDBG funds may also be used for residential rehabilitation if it qualifies under the objectives of elimination of slums and blight and community development needs having a particular urgency.

Most screening programs are directed at lower income households. As a consequence a health approach might reach only a portion of the population served by programs funded with CDGB funds. The application of a health approach may also carry limitations to the extent that CDBG funds are used in localities without screening programs.

Section 302 of the LPPA appears to contemplate application to programs directly administered by HUD, in which application for insurance or assistance are submitted to, and approved by, HUD. The block grant programs have an entirely different administrative structure. In connection with its publication of revised regulations governing the CDBG Entitlement Program, the Department noted the view of the General Counsel that block grants may not be considered "housing assistance payment" within the meaning of Section 302, and specifically solicited comment as to the continuing appropriateness of application of the hazard elimination requirements to their program. The Department further specified:

> Comments on this subject should take account of the fact that elimination or modification of the regulatory requirement would not diminish or otherwise affect the obligation of recipients or owners of residential structures being rehabilitated or modernized with block grant assistance to comply with State or local laws, ordinances, codes, or regulations requiring lead-based paint hazard abatement. 47 FR 43900, 43911 (Oct. 4, 1982).

Out of more than 100 public comments on the revised block grant regulations, only two responded to this issue. One recommended elimination of the requirements, and the other recommended their retention on the ground that the commenter's locality relied on the HUD regulation for its hazard elimination standard. In view of the lack of substantial response to the solicitation for comment, the Department did not change its historic requirement. See 24 CFR 570.608(b), 48 FR 43538, 43571 (September 23, 1983).

Section 302 of the LPPA appears to contemplate application to programs directly administered by HUD, in which application for insurance or assistance are submitted to, and approved by, HUD. The block grant programs have an entirely different administrative structure. Comment is solicited on means by which mechanisms for assuring compliance with any requirements imposed by HUD hazard elimination regulations can be integrated into the inspection processes likely to be utilized by grantees under the block grant program with respect to residential rehabilitation funded under the program. Comment also is solicited on the hazard elimination standards which are appropriate to be imposed in the specific context of block grant programs, taking into account existence or non-existence of applicable local requirements, likely availability of hazard detection equipment, impact on program participation, and other considerations mentioned in this Notice.

3. *Public Housing*

Issues relating to public housing have been raised throughout this Notice. The principal question raised here pertains to priorities for expenditure of funds to correct health and safety problems. In programs where the source of funds for hazard elimination is a public source, issues may arise as to the relative priority of hazard elimination vis-a-vis competing applications for the same finite resources and consequent possible targeting requirements. In public housing, for example, the Department expects that the source of funds for lead-based paint hazard elimination will be funds provided under the Comprehensive Improvement Assistance Program under Section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437), which is funded by annual appropriation. The total modernization needs of public housing exceed the amounts appropriated therefore in any year. Emergency requirements affecting the life, health and safety of tenants have priority over other needs, including work required to meet prescribed standards for decent, safe and sanitary living conditions.

(Pursuant to Congressional directive, HUD recently awarded a research contract to provide an estimate of the incidence and condition of lead-based paint in public housing units and common areas and an estimate of the cost of abatement under different possible regulatory program approaches. This research undertaking is part of a larger contract to obtain estimates of modernization requirements which include the costs of abating other health and safety hazards in the public housing stock.)

Comment is solicited on such issues as whether lead-based paint hazard elimination should be considered emergency modernization under any conditions? under all conditions? To what extent should the priority decisions between lead-based paint abatement and other modernization needs such as safe wiring, working furnaces, workable incinerators, leaking roofs or non-working sanitary facilities or elevators, be left with public housing agencies in designing modernization programs and applying for funds therefor?

4. *Other Programs*

Reference in this section to particular HUD program contexts is intended only to be illustrative of the types of questions which may be considered in different program contexts based on program characteristics. It is not

intended to be an exclusive listing of programs in which such varying considerations may arise. The department solicits comment on such factors as they may appear in any specific contexts under HUD programs. Particular attention may be directed to newly authorized programs, such as the rental rehabilitation program authorized under Section 17 of the U.S. Housing Act of 1937, as added by Section 301 of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, or the housing voucher demonstration authorized by Section 207 of the same legislation.

C. Notification

Section 302 of the LPPPA requires notification to purchasers and tenants of housing covered by the Act of "the hazards of lead based paint, of the symptoms and treatment of lead-based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards." The LPPPA requires notification to residents of dwellings built prior to 1950 and provides that notification of residents of housing constructed during and after 1950 "if the Secretary determines, in his discretion, that such housing presents hazards of lead-base paint."

HUD regulations require notification to tenants and purchasers of all pre-1950 "HUD-associated housing" and direct each program Assistant Secretary within HUD to implement this requirement with respect to the HUD programs within his/her administrative jurisdiction. 24 CFR 35.5. The Secretary's determination that notification not be extended to purchasers and tenants of post-1950 housing was upheld by the District Court and Court of Appeals in *Ashton*.

The specific notice required to be given is listed in Appendixes I and II to the regulations (see Appendix A). The notices were written in the mid-1970's and therefore may not necessarily reflect current understanding of lead toxicity. HUD issued a supplementary, simplified Notification (included in Appendix A), which together with the appendix notice, is to be given to all tenants of HUD-associated housing constructed prior to 1950.

Revision of the notices may be appropriate to include mention of non-paint sources of lead around the house which may have significant health effects. Some studies indicate that dust and soil are important media for lead exposure (see footnote 18). Children, while playing, pick up dust or soil particles. If these particles contain lead—and studies show this to be the case if the house is located near a heavily used road or other sources of lead emissions—and the child licks his or her hands, considerable quantities of lead may be ingested. In this case, information about proper house care (cleaning to keep as much dust as possible away from children) and or hygiene (personal care and cleaning of clothing) may be highly relevant for families with children.

Should HUD revise notifications presently used to reflect current knowledge? If revisions are warranted, what kinds are needed? If the regulations are revised to adopt a health approach, how would this affect the notification requirements? A related concern is the clarity of the language of the current notices. Should they be shortened and simplified? Finally, should notices be distributed to occupants of post-1950 housing?

D. Monitoring and Enforcement

Current HUD regulations direct each program Assistant Secretary to take the actions necessary for carrying out the requirements of the regulations. 24 CFR 35.5, 35.14, 35.24 and 35.56. Implementing instructions have been issued by regulation, various handbooks and notices. Relevant documents for most programs are listed in Appendix B to this Notice.

Responsibility for conducting inspections and issuing notifications varies by program area. For example, in the FHA-insured single family program, implementation is built into the underwriting process. HUD requires the appraiser to inspect, among other items, the condition of paint. Defective paint must be corrected before a conditional commitment for insurance can be issued. As to notification requirements, purchasers of housing built prior to 1950 are told on the conditional commitment form that there may be lead-based paint in their units and that they should ask their lender for the HUD notification.

Local governmental units are assigned inspection responsibilities under the Section 312 rehabilitation loan program and the community development block grant programs. Responsibility for inspections, hazard abatement, and tenant notification in the public housing program is assigned to public housing agencies.

In response to the *Ashton* mandate, comment is solicited as to means by which HUD may monitor and enforce compliance by public housing agencies. Matters to be considered in this respect include (1) information regarding inspection and abatement actions required to be submitted to HUD by PHAs, (2) scope of HUD biennial inspections, and (3) sanctions which may be imposed on non-complying agencies or other actions which may be taken to achieve compliance.

Similar comment is solicited as to monitoring and enforcement procedures and sanctions which may be feasible and appropriate under other programs, including those directly administered by HUD and those in which immediate administration is conducted by other public or private agencies.

List of Subjects in 24 CFR Part 35

Lead poisoning, Reporting and recordkeeping regulations.

(42 U.S.C. 4801 *et seq.*; Pub. L. 93–151, Sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: April 25, 1984.

John J. Knapp,

General Counsel.

Footnotes

(1) *Air Quality Criteria for Lead*, Vol. I–IV, Environmental Criteria and Assessment Office Research Triangle Park, NC, U.S. EPA–600/8–83–028A (*External Review Draft*, August, October 1983).

(2) *Lead in the Human Evnironment*, A Report Prepared by the Committee on Lead in the Human Environment, Washington, D.C., National Academy of Sciences, 1980, p. 63. *See also*, Center for Disease Control, "Preventing Lead Poisoning in Young Children" *Journal of Pediatric* 1978, Vol. 93. pp. 709–20.

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(6) Surgeon General of the United States "Medical Aspects of Childhood Lead Poisoning" *Pediatrics* 1971; Vol. 48: 464–468.

(7) *To Provide Federal Assistance for Eliminating the Causes of Lead-Based Paint Poisoning: Hearings before the Subcommittee on Housing, Committee on Banking and Currency, U.S. House of Representatives*, 91st Cong., 2nd Sess. (June 22–23, 1970); *Lead-Based Paint Poisoning": Hearing before the Subcommittee on Health of the Committee on Labor and Public Welfare, U.S. Senate*. 91st Cong., 1st Sess. (November 23, 1970); *Lead-Based Paint Poisoning Prevention Act of 1975: Hearings before the Subcommittee on Health, Committee on Labor and Public Welfare, U.S. Senate*, 94th Cong., 1st Sess. (June 16, 1975).

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(9) "Blood Lead Levels for Persons 6 Months–74 Years of Age: United States, 1976–80" *Advancedata*, No. 79, May 12, 1982.

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(12) Irwin H. Billick, *Sources of Lead in the Environment*, U.S. Department of Housing and Urban Development, 1982, (to be published).

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(14) See *Advancedate*, No. 79, *supra* at 13.

(15) Irwin H. Billick and V. Eugene Gray, *Lead Based Paint Poisoning Research Review 1971–1977*, Washington, D.C., U.S. Department of Housing and Urban Development 1978 p. 78.

(16) Statement by Dr. Vernon N. Houk, Director, Center for Environmental Health Centers for Disease Control, before the Subcommittee on Environment, Energy and Natural Resources, Committee on Government Operations, U.S. House of Representatives (April 14, 1982).

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(18) Jane S. Lin-Fu, M.D., "Lead Poisoning in Children: A Parodox in Preventive Medicine." Speech given to the National Prevention Showcase and Forum, Atlanta, September 1982; Evan Charney "Lead Poisoning in Children: The Case Against Household Lead Dust" in *Lead Absorption in Children: Management Clinical, an Environmental Aspects* Ed. J. Julian Chisholm, Jr. and David M. O'Hara, (Baltimore-Munich, Uran and Schwarzenberg, 1982 pp. 79–88. *Air Quality Criteria for Lead, Supra.*, Vol. II, Chapter 17.

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(21) *Sources of Lead*, p. 16, See also *The Relationship Between Gasoline Lead*, pp. 12–13.

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(26) An Assessment of the Influence of Environmental Lead: An Investigation of the Influence of Change in Environmental Lead Levels on the Blood Lead Levels of Detroit Children 1972–78 Department of Industrial Environmental Health Sciences, Graduate School of Public Health, University of Pittsburgh, Draft Report prepared for HUD, June 1982.

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(28) 118 Cong. Rec. 20853 (1972).

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(30) *HUD Environmental Impact Statement, Lead Based Paint Regulation*, HUD–PDR–EIS075 D at IV–4.

(31) The Demonstration of Experimental Lead Paint Hazard Abatement Methods in Washington, D.C., T.H. Boone, H.W. Berger, A.P. Cramp, and H.A. Jackson, NBSIR 75–761, National Bureau of Standards, Washington, D.C., June 1975. *The Demonstration of Experimental Lead Paint Hazard Elimination Methods*, P.T. Chen and R.B. Schulman, NBS Report 10679, National Bureau of Standards, Washington, D.C., June 1975.

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(33) Section 6–403 of the Philadelphia Code, as amended.

(34) *Amended Lead Hazard Abatement Procedures.* Memorandum from Walter J. Sobolesky, Administrator, Accident Control Section, Department of Public Health, to Supervisory Staff. Subject: Childhood Lead Poisoning Prevention Program, June 18, 1980.

(35) Katheryn R. Mahaffe, Ph.D., Joseph L. Annest, Ph.D., Jean Roberts, M.S., and Robert S. Murphy, M.S.R.H. "National Estimates of Blood Lead Levels: United States, 1976–1980," *New England Journal of Medicine* Vol. 307, No. 10. (September 2, 1982), pp. 573–578. Also see Herbert L. Needleman, M.D., Ed. *Low Level Lead Exposure:* The *Clinical Implications of Current Research*, New York: Raven Press, 1980.

(36) See *Air Quality Criteria for Lead*, ftn 1, Chapter 12; Appendix 12–C (Independent Peer Review of Selected Studies Concerning Neurobehavioral Effects of Lead Exposures in Normally Asymptomatic Children; Official Report of Findings and Recommendations of an Interdesciplinary Expert Review Committee (November 14, 1983)

Appendix A—Text of 24 CFR Part 35

The current text of 24 CFR Part 35 is reprinted for the convenience of the reader.

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Appendix A - Text of 24 CFR Part 35

The current text of 24 CFR Part 35 is reprinted for the convenience of the reader.

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart A—Notification to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1950 of the Hazards of Lead-Based Paint Poisoning

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APPENDIX I—THE DANGER OF LEAD POISONING FOR HOMEOWNERS

APPENDIX II—THE DANGER OF LEAD POISONING FOR RENTERS

AUTHORITY: Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 (42 U.S.C. 4801 et seq.); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), unless otherwise noted.

SOURCE: 41 FR 28876, July 13, 1976, unless otherwise noted.

Subpart A—Notification to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1950 of the Hazards of Lead-Based Paint Poisoning

§ 35.1 Purpose and scope.

This Subpart A establishes procedures to assure that purchasers and tenants of all HUD-associated housing constructed prior to 1950 are notified of the hazards of lead-based paint which may exist in such housing, of the symptoms and treatment of lead-based paint poisoning and of the precautions to be taken to avoid lead-based paint poisoning.

§ 35.3 Definitions.

For the purposes of this subpart, the following definitions are applicable:

(a) "Act" means the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 and Pub. L. 94-317 (42 U.S.C. 4801).

(b) "Department" or "HUD" means the Department of Housing and Urban Development.

(c) "Secretary" means the Secretary of Housing and Urban Development or a HUD official delegated the Secretary's authority with respect to the Act.

(d) "Assistant Secretaries" means the Assistant Secretaries in the Department of Housing and Urban Development.

(e) "HUD-associated housing" means any residential structure as defined in paragraph (f) of this section, which is owned by the Department or Secretary or Housing and Urban Development or financially assisted under any programs administered by the Secretary, when such structures are being constructed, sold, purchased, leased, rehabilitated (including routine maintenance work), modernized or improved with any form of HUD financial assistance whether by grant, loan, advance, housing assistance payments, the proceeds of a HUD-guaranteed loan or a HUD-insured mortgage.

(f) "Residential structure" means any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

(g) "Applicable surfaces" means all interior surfaces, whether accessible or not, and those exterior surfaces such as stairs, decks, porches, railings, windows and doors which are readily accessible to children under 7 years of age.

(h) "Potential hazard" means paint (which may contain lead) on applicable surfaces which are in a sound, tight condition, but which may become an immediate hazard, as defined in paragraph (i) of this section, by reason of cracking, chipping, scaling, peeling or loosening.

(i) "Immediate hazard" means paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(j) "Defective paint condition" means any paint on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq.); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

[41 FR 28876, July 13, 1976, as amended at 42 FR 5043, Jan. 27, 1977]

§ 35.5 Requirements.

(a) Purchasers and tenants of HUD-associated housing constructed prior to 1950 shall be notified: (1) That the property was constructed prior to 1950, (2) that the property may contain lead-based paint, (3) of the potential and immediate hazards of lead-based paint, (4) of the symptoms and treatment of lead-based paint poisoning, and (5) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards). Prospective purchasers of renters shall receive the above notifications prior to purchase or rental. Appendix I, which is attached hereto and made a part hereof, consists of HUD brochures, copies of which shall be used to provide the required notification.

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include the establishment of procedures to: (1) Provide evidence that the information contained in the appropriate HUD brochures, Appendix I, has been received by purchasers and tenants of HUD-associated housing constructed prior to 1950, and to (2) require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure the receipt of the information contained in the appropriate HUD

brochures by purchasers and tenants of such housing.

Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing

§ 35.10 Purpose and scope.

This subpart implements the provisions of 42 CFR Part 90 issued by the Secretary of Health, Education, and Welfare pursuant to section 401 of the Act which are applicable to federal agencies and which prohibit the use of lead-based paint on applicable surfaces of residential structures constructed or rehabilitated by the Federal Government or with federal assistance and establishes procedures to prohibit the use of lead-based paint on applicable surfaces in all HUD-associated housing.

§ 35.12 Definition.

The definitions contained in § 35.3 of Subpart A of this part shall apply to this Subpart B and in addition the following definition is applicable to this Subpart B:

(a) "Lead-based paint" as defined in Section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801, et seq), the National Consumer Information and Health Promotion Act of 1976, means: (1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

(Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq.); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

[41 FR 28876, July 13, 1976, as amended at 42 FR 5043, Jan. 27, 1977]

§ 35.14 Requirements.

(a) No office of the Department shall use or permit the use of lead-based paint on applicable surfaces of HUD-associated housing.

(b) Each Assistant Secretary shall implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Implementation shall include the establishment of procedures to require the inclusion of appropriate provisions in contracts and subcontracts involving HUD-associated housing prohibiting the use of lead-based paint on applicable surfaces of such HUD-associated housing and shall include provisions necessary for enforcement of the prohibition.

Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing

§ 35.20 Purpose and scope.

This Subpart C implements the provisions of section 302 of the Act with respect to establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead on applicable surfaces of HUD-associated housing.

§ 35.22 Definitions.

The definitions contained in § 35.3 shall apply to this Subpart C.

§ 35.24 Requirements.

(a) Prior to the occupancy of HUD-associated housing, immediate hazards shall be eliminated by the most practicable means. For this purpose, all defective paint conditions shall be assumed to be immediate hazards.

(b) Each Assistant Secretary shall implement or provide for the implementation of the requirements of paragraph (a) of this section with respect to HUD programs within his/her administrative jurisdiction. Implementation shall include the following:

(1) HUD-associated housing shall be inspected to determine whether or not immediate hazards exist. Responsibility for such inspections shall be as follows:

(i) HUD-owned housing that is to be rehabilitated before sale shall be inspected by local HUD staff or, if appropriate, by the property manager as part of the program for management and disposition of HUD-owned property;

(ii) HUD-owned property that is to be sold in an as-is condition shall be inspected by the local HUD staff or by the property manager as part of the program for management and disposition of HUD-owned property prior to the sale of such property or subsequent to the sale but prior to occupancy thereof for residential use: *Provided, however,* That where properties are conveyed to a unit of state or local government, the state or local governmental body shall be responsible for inspection.

(iii) HUD-owned property that is rented or leased for residential use or will be offered for such rental shall be inspected by the local HUD staff or by the property manager as part of the program for management and disposition of HUD-owned properties.

(iv) Existing housing proposed for HUD-FHA mortgage insurance shall be inspected by the local HUD staff or by fee appraisers where otherwise permitted under existing procedures;

(v) Low-income public housing (including occupied units) shall be inspected by the local housing authority, local public agency or other agency responsible for the maintenance, management, repair and operation of such housing;

(vi) In the rehabilitation of HUD-associated college housing, the architect shall be responsible for inspection of the premises;

(vii) In housing assisted with Community Development funds, the appropriate local public agency, local public body, city demonstration agency or unit of local government or agency thereof shall be responsible for inspection of the premises;

(2) Notwithstanding the requirements of paragraph (b)(1) of this section, in the Section 8 Housing Assistance Payments Program, (sec. 8 of the United States Housing Act of 1937, as amended by Title II, Housing and Community Development Act of 1974), the owner of the assisted housing shall be responsible for providing a certification to the local HUD staff, the local public housing agency or the state housing agency, if any, that the property has been inspected and treated in accordance with the applicable provisions of this part.

(3) Treatment necessary to eliminate immediate hazards shall, as a minimum, consist of the following:

(i) All surface conditions identified as immediate hazards shall be thoroughly cleaned (washed, sanded, scraped, wire brushed or otherwise cleaned) so as to remove all cracking, scaling, peeling, chipping and loose paint on applicable surfaces. Such surfaces that have been so treated shall then be repainted with two coats of a suitable non-leaded paint in accordance with the requirements of § 35.14; or

(ii) Where the paint film integrity of the applicable surface cannot be maintained, the paint shall be completely removed or the surface recovered with a suitable material such as gypsum wallboard, plywood, or plaster before any repainting is undertaken; and

(4) Appropriate provisions for the inspection and elimination of immediate hazards and provisions necessary for enforcement of the requirements shall be included in contracts and subcontracts involving HUD-associated housing.

§ 35.25 Clearinghouse.

In order to facilitate the exchange of information and suggestions with respect to elimination of lead-based paint hazards, the Lead-Based Paint Research Program, Room 8136, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, will serve as a Clearinghouse for suggestions, inquiries and requests for information. The transcript of the hearings held by HUD are available for examination at this office and reports of the research projects undertaken will likewise be made available to interested persons.

Subpart D—Local Codes and Regulations

§ 35.40 Compliance with local laws.

(a) HUD, as owner of federally-owned housing, will comply with State or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement.

(b) Nothing in this Part 35 is intended to relieve an owner or tenant of HUD-associated housing of any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement.

(c) HUD does not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such State or local requirements, except that the Federal standard for lead content in paint supersedes any State or local requirement, prohibition, or standard, as provided in section 506 of the Act.

§ 35.42 Requirements.

Each Assistant Secretary shall take necessary actions to implement the intent of § 35.40.

Subpart E—Elimination of Lead-Based Paint Hazards in Federally-Owned Properties Prior to Sale for Residential Habitation

§ 35.50 Purpose and scope.

This Subpart E implements the provisions of section 302 of the Act which directs the Secretary to establish and implement procedures to eliminate the hazards of lead-based paint poisoning in all federally-owned properties prior to the sale of such properties when their use is intended for residential habitation.

§ 35.52 Applicability.

The requirements established by this Subpart E are applicable to all federally-owned properties prior to their sale by a federal agency when their use is intended for residential habitation.

§ 35.54 Definitions.

The following are applicable to this Subpart E:

(a) "Federal agency" means the United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

(b) "Federally-owned properties" means any properties owned by a federal agency as defined in paragraph (a) of this section.

(c) "Act" means the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 (42 U.S.C. 4801 et seq.).

(d) "Residential structure" means any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

(e) "Applicable surfaces" means all interior surfaces, whether accessible or not, and those exterior surfaces such as stairs, decks, porches, railings, windows and doors which are readily accessible to children under 7 years of age.

(f) "Immediate hazard" means paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(g) "Defective paint condition" means any paint on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(h) "Use for residential habitation" means the use of a property as a residential structure as defined in paragraph (d) of this section.

§ 35.56 Requirements.

(a) Prior to occupancy of a federally-owned property where its use subsequent to sale is intended for residential habitation, the federal agency selling the property shall assure that the following steps are taken:

(1) The property is inspected to determine whether or not immediate hazards exist; for this purpose all defective paint conditions shall be assumed to be immediate hazards; and

(2) All surface conditions identified as immediate hazards are thoroughly cleaned (washed, sanded, scraped, wire brushed, or otherwise cleaned) so as to remove all cracking, scaling, peeling, chipping and loose paint on applicable surfaces and then repainted with two coats of a suitable non-leaded paint in accordance with the requirements of § 35.14;

(3) Where the paint film integrity of the applicable surface cannot be maintained, the paint shall be completely removed or the surface recovered with a suitable material such as gypsum wallboard, plywood, or plaster before any repainting is undertaken.

(4) Prospective purchasers are provided all notifications described in § 35.5 (a) of this regulation.

(b) The provisions of this Subpart E shall be binding upon all federal agencies as provided by section 302 of the Act; however, nothing contained in this Part 35 shall preclude any federal agency from promulgating such other procedures or additional requirements as may be necessary to implement the provisions of the Act.

Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures

SOURCE: 42 FR 5043, Jan. 27, 1977. Correctly designated at 42 FR 13112, Mar. 9, 1977, unless otherwise noted.

§ 35.60 Scope.

The regulations of this subpart are promulgated to implement section 401 of the Lead-Based Paint Poisoning Prevention Act, as amended, which directs the Secretary of Housing and Urban Development to take such steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance in any form. The regulations are applicable to all Federal agencies.

§ 35.61 Definitions.

The definitions contained in § 35.3 shall apply to this Subpart F and in addition the following definitions are applicable to this Subpart F:

(a) "Federal Agency" means the United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

(b) "Agency Head" means the principal official of a Federal Agency and includes those persons duly authorized to act in his behalf.

(c) "Lead-based paint" as defined in Section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq), the National Consumer Information and Health Promotion Act of 1976, means: (1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

§ 35.62 Federal construction; prohibition against use of lead-based paint.

No Federal agency shall, in any residential structure constructed or rehabilitated by such agency, use or permit the use of lead-based paint on applicable surfaces.

§ 35.63 Federally assisted construction; prohibition against use of lead-based paint.

(a) Each Agency Head shall issue regulations and take such other steps

as in his or her judgment are necessary to prohibit the use of lead-based paint on applicable surfaces of any residential structures constructed or rehabilitated by such agency under any federally assisted program.

(b) Such regulations shall require the inclusion of appropriate provisions in contracts and subcontracts pursuant to which such federally assisted construction or rehabilitation is performed, prohibiting such use of lead-based paint, and shall include provisions for enforcement of that prohibition.

§ 35.64 Reports to the Secretary.

(a) To assist the Secretary in fulfilling her responsibilities under the Act, each Federal agency shall furnish to the Secretary, not later than 3 months after the effective date of these regulations, a report of the steps it has taken to comply with this Subpart F, Part 35.

(b) Each Federal agency shall submit such additional reports on its activities in the implementation of this part as may be deemed necessary by the Secretary.

§ 35.65 Authority for Subpart B of these regulations.

On or after the effective date of these amended regulations, Subpart F will serve as the authority for Subpart B of these regulations.

Appendix I—The Danger of Lead Poisoning for Homeowners

This housing or apartment was built before 1950. There is a possibility that it may contain lead paints. Lead paint is poisonous if eaten. Many children do eat paint flakes and frequently become very sick. You as a parent are in the best position to safeguard your child's health by preventing him or her from eating paint or paint chips. This pamphlet will answer some of your questions about how to know if your child has been eating lead paint and what to do about it.

Lead poisoning is a serious problem in this country. Each year thousands of children under 7 years of age are poisoned when they eat bits of paint containing lead. Children who eat lead can become mentally retarded, blind, paralyzed, or even die. You can safeguard your child's health by preventing him from eating paint chips which may contain lead. The Department of Housing and Urban Development has prepared this pamphlet to make you aware of the problem of lead paint poisoning in the home.

As a parent, you need to know how to prevent the sickness lead paint can cause. You need to know what to do if your child has lead poisoning.

Your child can get lead poisoning by eating paint, dirt, dust, newspaper, or other non-food items containing lead. The most common cause of lead poisoning is lead-based paint. Children can get dangerous amounts of lead from eating even very small amounts of such paint. Unfortunately, usually there are no obvious signs of lead poisoning. Often lead poisoning can seem like a number of other childhood diseases, but if your child has stomach aches and vomiting, has headaches, a loss of appetite, is cranky, or frequently is too tired to play, he may have lead poisoning. Any or all of these symptoms can be signs of lead poisoning. Often, there are no symptoms at all. If anyone tells you that your child has eaten paint chips or plaster, or if you see any of these signs in your child, he should be tested for lead in his blood as soon as possible. Do not wait too long! Your doctor, local clinic, hospital, or public health department can test your child for lead poisoning. Blood samples can be taken and tested to tell if your child has eaten enough lead to be harmful. In many communities there are blood screening programs operated by local health departments, but screening is usually conducted in older areas of cities where lead-based paint and poisoning is most common. Testing for lead takes only a matter of minutes.

Blood screening programs are usually free and will test children for lead even if they show no symptoms of poisoning and have not been seen eating paint. A number of blood screening programs are supported by the Department of Health, Education, and Welfare, and local health departments. If you are unaware of a screening program in your area, call your public health nurse or social worker at the local health department. If there are no screening programs in your city and you cannot afford testing, the Medicaid program may pay for screening of children both below six years of age and above the age of six, if a doctor says that testing is necessary.

If tests show that your child has a high level of lead in his blood he will need medical supervision and possibly treatment. If treatment is necessary, your doctor, a local clinic, or hospital will be able to remove the lead in his blood. Such treatments may be paid for by Medicaid or your local health department. If testing shows that your child has a lot of lead in his blood, the local

health department may send someone to measure the lead paint in your home. Standards for treatment of lead hazards in housing vary from city to city. Follow the directions and guidance of your local health department.

Lead paint is not the only cause of lead poisoning. Your child can be poisoned by eating paint, dirt, or other non-food substances containing lead. Young children put many things besides food in their mouths, but if those objects contain lead, poisoning is possible. Your child can get lead poisoning from eating or chewing on non-food items which contain lead, including dirt, newspaper, and even some pottery, and furniture. Even common household dust sometimes contains high levels of lead. Lead paint which has weathered and fallen to the ground can collect in dust and soil. Exhaust from automobiles which use leaded gasoline also contains lead which can collect in dust and soil. Children should be discouraged from playing in dust and dirt near busy streets where the lead content in soil is likely to be heaviest.

You should stop your child from eating or chewing paint and other objects that may contain lead. Warn your child of the dangers of eating anything other than food if he is old enough to understand. Make sure that the rest of your family and anyone who babysits for you is aware of the lead paint problem and will prevent your child from eating paint. Often children will eat things if they are bored or hungry. Children are safer if they have activities or toys to keep them busy. If your child is not eating properly, you may want to take him to a doctor.

The best way to prevent lead paint poisoning is to keep your home in good shape. The primary source of the lead paint hazard is peeling and flaking paint. Water leaks from faulty plumbing or defective roofs often cause paint to peel or flake from walls and ceilings. Quick repair of such leaks can prevent this.

To prevent peeling paint, most housing units should be repainted every three to five years. Any loose or flaking paint should be removed by scraping or brushing. Cracked walls should be replastered before new paint is applied. If your walls are cracking or peeling now, you may have a lead paint hazard. If you have small children, there are some things you should do immediately to protect them: (1) Get a broom or stiff brush and remove all loose pieces of paint from walls, woodwork, and ceilings; (2) sweep up all the pieces of paint and plaster; (3) put the sweepings in a paper bag or wrap them in newspaper and put these packages in a trash can; (4) be careful not to leave paint chips on the floor. Always keep the floor clear of loose bits of paint and plaster. Sweeping the floors clean of paint chips is simple, but it is most important. Children can pick loose paint off walls, so be extra careful about keeping loose paint from the lower part of walls where your child can reach. As an emergency measure to protect your child, you can cover up the lower part of walls with adhesive backed paper and you can cover the woodwork which your child might chew with adhesive tape or paper. As an emergency measure, you might also move heavy furniture against walls with peeling paint.

Remember that you play a major role as a homeowner and as a parent in the prevention of lead poisoning. Your actions and awareness about the lead problem can make a big difference.

Appendix II—The Danger of Lead Poisoning for Renters

This housing or apartment was built before 1950. There is a possibility that it may contain lead paint. Lead paint is poisonous if eaten. Many children do eat paint flakes and frequently become very sick. You as a parent are in the best position to safeguard your child's health by preventing him or her from eating paint or paint chips. This pamphlet will answer some of your questions about how to know if your child has been eating lead paint and what to do about it.

Lead poisoning is a serious health problem in this country. Each year thousands of children under 7 years of age are poisoned when they eat bits of paint containing lead. Children who eat lead can become mentally retarded, blind, paralyzed, or even die. You can safeguard your child's health by preventing him from eating paint chips which may contain lead. The Department of Housing and Urban Development has prepared this pamphlet to make you aware of the problem of lead paint poisoning in the home.

As a parent, you need to know what to do to prevent the sickness lead paint can cause. You need to know what to do if your child has lead poisoning.

Your child can get lead poisoning by eating paint, dirt, dust, newspaper, or other nonfood items containing lead. The most common cause of lead poisoning is lead-based paint. Children can get dangerous amounts of lead from eating even very small amounts of such paint. Unfortunately, usually there are no obvious signs of lead poisoning. Often lead poisoning can seem like a number of other childhood diseases, but if your child has stomach aches and vomiting, has headaches, a loss of appetite, is cranky, or frequently is too tired to play, he may have lead poisoning. Any or all of these symptoms can be signs of lead poisoning.

Often, there are no symptoms at all. If anyone tells you that your child has eaten paint chips or plaster, or if you see any of these signs in your child, he should be tested for lead in his blood as soon as possible. Do not wait too long! Your doctor, local clinic, hospital, or public health department can test your child for lead poisoning. Blood samples can be taken and tested to tell if your child has eaten enough lead to be harmful. In many communities there are blood screening programs operated by local health departments, but screening is usually conducted in older areas of cities where lead-based paint and poisoning is most common. Testing for lead takes only a matter of minutes.

Blood screening programs are usually free and will test children for lead even if they show no symptoms of poisoning and have not been seen eating paint. A number of blood screening programs are supported by the Department of Health, Education and Welfare, and local health departments. If you are unaware of a screening program in your area, call your public health nurse or social worker at the local health department. If there are no screening programs in your city and you cannot afford testing, the Medicaid program may pay for screening of children both below six years of age and above the age of six if a doctor says that testing is necessary.

If tests show that your child has a high level of lead in his blood he will need medical supervision and possibly treatment. If treatment is necessary, your doctor, a local clinic, or hospital will be able to remove the lead in your child's blood. Such treatments may be paid for by Medicaid or your local health department. If testing shows that your child has a lot of lead in his blood, your local health department may send someone to measure the lead paint in your home, and may require treatment by the owner of the unit of the lead paint hazards on walls and woodwork. Such work is often messy and inconvenient, but it is necessary to prevent the possibility of further sickness from lead. Cooperate with any workmen who are sent to correct the lead condition in your home.

Lead paint is not the only cause of lead poisoning. Your child can be poisoned by eating paint, dirt, or other non-food substances containing lead. Young children put many things besides food in their mouths, but if those objects contain lead, poisoning is possible. A child can get lead poisoning from eating or chewing on non-food items which contain lead, including dirt, newspaper, and even some pottery, and furniture. Even common household dust sometimes contains high levels of lead. Lead paint which has weathered and fallen to the ground can collect in dust and soil. Exhaust from automobiles which used leaded gasoline also contains lead which can collect in dust and soil. Children should be discouraged from playing in dust and dirt near busy streets where the lead content in soil is likely to be heaviest.

You should stop your child from eating or chewing paint and other objects that may contain lead. Warn your child of the dangers of eating anything other than food if he is old enough to understand. Make sure that the rest of your family and anyone who babysits for you is aware of the lead paint problem and will prevent your child from eating paint. Often children will eat things if they are bored or hungry. Children are safer if they have activities or toys to keep them busy. If your child is not eating properly, you may want to take him to a doctor.

The best way to prevent lead paint poisoning is to keep your home in good shape. The primary source of lead paint hazards is peeling and flaking paint. Water leaks from faulty plumbing or defective roofs often cause paint to peel or flake from walls and ceilings. Repair of such leaks can prevent future peeling or flaking. If you have such leaks, or if you have peeling, flaking paint in your apartment, notify the management or landlord.

To prevent peeling paint, most apartments should be repainted every three to five years. It is important to cooperate with the management office when repainting time comes. If your apartment has not been repainted within this period of time, inform the management office, resident manager, or landlord.

You may have a lead paint hazard now if your walls are cracking or peeling. If you have small children, there are some things you should do immediately to protect them. (1) Notify the management office or resident manager or landlord immediately; (2) get a broom or stiff brush and remove all loose pieces of paint from walls, woodwork, and ceilings; (3) sweep up all the pieces of paint and plaster; (4) put the sweepings in a paper bag or wrap them in newspaper and put these in a trash can; (5) be careful not to leave paint chips on the floor, and keep children away from the dust. Always keep the floor clear of loose bits of paint and plaster. Sweeping the floors clean of paint chips is simple, but it is most important. Children can pick loose paint off walls, so be extra careful about keeping the loose paint from the lower part of walls where your child can reach. As an emergency measure, you might also move heavy furniture against walls with peeling paint.

Remember that you play a major role as a parent in the prevention of lead poisoning. Your actions and awareness about the lead problem can make a big difference.

BILLING CODE 4210-32-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Watch Out for Lead-Based Paint Poisoning; Notification

To: Purchasers and Tenants of Housing Constructed Before 1950.

This building was constructed before 1950. There is a possibility that it may contain lead-based paint.

PLEASE READ THE FOLLOWING INFORMATION CONCERNING LEAD PAINT POISONING

The interiors of older homes and apartments often have layers of lead-based paint on the walls, ceilings, window sills and door frames. Lead-based paint and primers may also have been used on outside porches, railings, garages, fire escapes and lamp posts. When the paint chips, flakes or peels off, there may be a real danger for babies and young children.

Children may eat paint chips or chew on painted railings, window sills or other items when parents are not around. Children can also ingest lead even if they do not specifically eat paint chips. For example, when children play in an area where there are loose paint or dust particles containing lead, they may get these particles on their hands, put their hands into their mouths, and ingest a dangerous amount of lead.

Has your child been especially cranky or irritable? Is he or she eating normally? Does your child have stomachaches and vomiting? Does he or she complain about headaches? Is your child unwilling to play? These may be signs of lead poisoning, although many times there are no symptoms at all. Lead poisoning can eventually cause mental retardation, blindness and even death.

If you suspect that your child has eaten chips of paint or someone told you this, you should take your child to the doctor or clinic for testing. If the test shows that your child has an elevated blood lead level, treatment is available. Contact your doctor or local health department for help or more information. Lead screening and treatment are available through the Medicaid Program for those who are eligible.

Inform other family members and babysitters of the dangers of lead-poisoning. You can safeguard your child from lead poisoning by preventing him or her from eating paint that may contain lead.

Look at your walls, ceilings, door frames, window sills. Are there places where the paint is peeling, flaking or chipping? If so, there are some things you can do immediately to protect your child:

(1) Cover all furniture and appliances;

(2) Get a broom or stiff brush and remove *all* loose pieces of paint from walls, woodwork and ceilings;

(3) Sweep up *all* pieces of paint and plaster and put them in a paper bag or wrap them in newspaper. Put these packages in the trash can. Do not burn them;

(4) Do not leave paint chips on the floor. Damp mop floors in and around the work area to remove all dust and paint particles. Keeping the floor clear of paint chips, dust and dirt is easy and very important; and

(5) Do not allow loose paint to remain within your children's reach since children may pick loose paint off the lower part of the walls.

As a Homeowner

You should keep your home in good shape. Water leaks from faulty plumbing, defective roofs or exterior holes and breaks may admit rain or dampness into the interior of your home, damaging walls or ceilings, causing paint to peel, crack or flake. These conditions should be corrected *immediately*. Before repainting, all surfaces that are peeling, chipping or loose should be thoroughly cleaned by washing, sanding, or brushing the loose paint from the surface; then repaint with two (2) coats of non-leaded paint; or cover the surface with other material such as wallpaper or paneling. SIMPLY PAINTING OVER DETERIORATED PAINTED SURFACES DOES NOT REMOVE THE HAZARD.

When lead-based paint is remove by scraping or sanding, a dust is created, which may be hazardous. The dust can enter the body either by breathing or swallowing it. The use of heat or paint removers could create a vapor or fume which may cause poisoning if inhaled over a long period of time. The removal of lead-based paint should not be undertaken by amateurs and every precaution should be taken to safeguard workers and occupants during the removal process. Whenever possible, the removal of lead based paint should take place when there are no children and pregnant women on the premises.

As a Renter

You should notify the Management Office or the Landlord *immediately* if the unit in which you live has flaking, chipping or peeling paint, water leaks from faulty plumbing, or defective roofs. You should cooperate with the management office's or landlord's efforts to repair any deficiencies and keep your unit in good shape. When lead-based paint is removed by scraping or sanding, a hazardous dust is created which can enter the body either by breathing or swallowing the dust. The use of heat or paint removers could create a vapor or fume which may cause poisoning if inhaled over a long period of time. Whenever possible, the removal of lead-based paint should take place when there are no children and pregnant women on the premise.

Remember that you as a parent play a major role in the prevention of lead poisoning. Your actions and awareness about the lead problem can make a big difference.

I have received a copy of the Notice entitled "Watch Out for Lead Paint Poisoning," and copy of "The Danger of Lead Poisoning to Homeowners" or "The Danger of Lead Poisoning to Renters."

Date _____

Signature _____

APPENDIX B

Program	24 CFR Citation	Handbook No.	Title
Section 8			
Existing	882.109(i)	7420.7, Ch. 4, ¶4-12(c),Ch. 5, ¶5-4(a)(9)	Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program.
Moderate rehabilitation	882.401(d), 882.404	7420.7, Ch. 4, ¶4-12(c),Ch. 5, ¶5-4(a)(9)	Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program.
Substantial rehabilitation	881.207(e)	7420.2, Rev-1, Ch. 1, 1-4(c); Appendix 25-1(50).	Substantial Rehabilitation Processing.
Elderly and handicapped	885.210(a)(24)	7420.4	Housing Finance and Development Agencies Processing.
		4460.1	Architectural Analysis and Inspection for Project Mortgage Insurance.
		4571.1	Section 202 Direct Loan Program for Housing for Elderly or Handicapped.
Loan management multifamily insured		4565.1 Ch. 3, ¶3-2(c)	Mortgage Insurance for the Purchase or Refinancing of Exisiting Multifamily Projects.

APPENDIX B—Continued

Program	24 CFR Citation	Handbook No.	Title
		4325.1, Ch. 4, ¶6, Ch. 8	Property Disposition Reconditioning Acquired Properties.
		4900.1, Ch. 5, ¶509-7.3	Minimum Property Standards.
New construction	880.207(a)	4900.1, Ch. 5, ¶509-7.3	Minimum Property Standards.
		4920.1, Ch. 5 ¶509-7.3	MPS for Multifamily.
		4920.1, Ch. 5, ¶509-7.3	MPS for Care Type Facilities.
FHA:			
Single-family existing (Mortgage insurance).		4150.1, Ch. 3, ¶3-23(g)	HUD Valuation Home Mortgage Insurance.
Property disposition single-family		4325.1, Ch. 4, ¶6 and Ch. 8	Property Disposition One-Four Family.
		4310.5, Ch. 7, ¶85.2	Property Disposition One-Four Family.
		4335.1	Property for Servicing Secretary-Held Home Mortgage.
		4315.1 Ch. 10, ¶249	Property Disposition Multi-Family Properties.
		4320.1	Property Disposition-Contracting.
		4325.1, Ch. 4, ¶6 and Ch. 8	Property Disposition Reconditioning Acquired Properties.
		4335.1	Procedures for Servicing Secretary-Held Home Mortgages.
		4350.1, Ch. 3, ¶3-23(g)	Insured Project Servicing.
Multi-family mortgage insurance—New construction.		4445.1	Underwriting—Technical Direction for Project Mortgage Insurance.
		4420.1	Pre-application for Project Mortgage Insurance.
		4510.1	Rental and Cooperative Housing for Lower Income Families Section 236.
Multi-family mortgage insurance—Substantial rehab.		4940.4 Ch. 8, ¶8-2(c); 8-6(b); 8-8(b)	Minimum Design Standards for Rehabilitation for Residential Properties.
Public housing:			
Maintenance		7460.7 Appendices 2, 6	PHA-Field Monitoring.
		7465.2 pp. 2-5—2-6.1	Public Housing Occupancy Audit Handbook to include CHG-1.
		Notice (6/8/83)	Lead-Based Paint Notification.
Comprehensive improvement assistance program.	868.9(e)	7485.1, Rev-1 Ch. 6, ¶ 6-5	Public Housing Comprehensive Improvement Assistance.
		7485.2 Rev-2; Ch. 3 ¶ 35(d); Ch. 10, ¶10-7(a).	Public Housing Modernization Standards.
Indian housing		7440.1	Interim Indian Housing.
Community development:			
Community development block grants entitlement.	570.608 47 FR 43929 (Oct. 4, 1982)	6509.2, Rev-2; Exhibits 11-1, 11-2	Community Planning and Development Monitoring Handbook.
		6520.1, Appendix I	Condolidated Community Development Block Regulations.
State's program	570.496(f) 47 FR 15299 (April 8, 1982)	6520.1 Appendix I	Consolidated Community Development Block Regulations.
		6509.2, Rev-2; Exhibits 11-1, 11-2	Community Planning and Development Monitoring Handbook.
Small cities program	570.423(c)(2)(iii), 47 FR 35680 (Aug. 16, 1982).	6509.2, Rev-2; Exhibits 11-1, 11-2	Community Planning and Development Monitoring Handbook.
		6400.1, Ch. 6; ¶6-6	Urban Homesteading Handbook.
Urban homesteading		6509.2, Rev-2	Community Planning and Development Monitoring Handbook.

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Friday
May 4, 1984

Part V

Environmental Protection Agency

40 CFR Part 434

Coal Mining Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 434

[WH-FRL 2535-8]

Coal Mining Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 13, 1982, EPA promulgated final effluent limitations guidelines and standards under the Clean Water Act to limit the discharge of pollutants to waters of the U.S. from the coal mining industry (47 FR 45382). The purpose of this regulation was to amend the previously promulgated effluent limitations guidelines based on "best practicable technology" (BPT) and "new source performance standards" (NSPS) and to establish effluent limitations guidelines based on the "best available technology economically achievable" (BAT).

Following the October 1982 promulgation, the National Coal Association (NCA), the Commonwealth of Pennsylvania and the West Virginia Mountain Streams Monitors, Inc. (MSM) filed petitions for judicial review of the regulation in the United States Court of Appeals for the Fourth Circuit. EPA is today proposing revisions to these regulations consistent with the Settlement Agreement entered in that case.

DATE: Comments on the proposed changes to these regulations must be submitted by June 4, 1984.

ADDRESSES: Send comments on the proposed regulation to: Mr. William A. Telliard, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460, Attention: EGD Docket Clerk, Coal Mining. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Unit, Room 2922 (EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Telliard or Ms. Allison Phillips, (202) 382-7131.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

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II. Solicitation of Comments
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IV. Proposed Amendments
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(2) Section 434.11(p)—Coal Refuse Disposal Piles
(3) Section 434.11(q)—Controlled Surface Mine Drainage
B. Coal Preparation Plant New Source Performance Standards: § 434.25 (a) and (b)
C. Alternate Precipitation Limitations
(1) Underground Mines—Not Commingled
(2) Underground Mines—Commingled
(3) Controlled Surface Mine Drainage
(4) Non-Controlled Surface Mine Drainage
(5) Coal Refuse Disposal Piles
(6) Steep Slope/Mountaintop Removal Mining Operations
(7) Preparation Plants and Associated Areas
(8) Discharges from Reclamation Areas
D. Alternate Precipitation Limitations—Settleable Solids
E. Post-Mining Discharges
F. Modification of Permits for New Sources
V. Impacts
A. Alternate Precipitation Limitations
B. New Source Coal Preparation Plants
C. Executive Order 12291
D. Regulatory Flexibility Analysis
VI. Enforcement

I. Legal Authority

The amendments to the regulations described in this notice are proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"). These changes are also proposed in response to the Settlement Agreement in *National Coal Association, et al.*, v. *Environmental Protection Agency*, Nos. 82-1929, *et al.* (4th Cir.).

II. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking.

For the purpose of clarity, the coal mining regulation, including those portions that were promulgated October 13, 1982 that would not be effected by the proposed amendments, is being published as part of today's notice. EPA, however, is only soliciting comments on those portions of the regulation for which amendments are being proposed today.

III. Background

On October 13, 1982, EPA published final effluent limitations guidelines and standards for the coal mining industry. 47 FR 45382. The National Coal Association ("NCA"), the Commonwealth of Pennsylvania, and the West Virginia Mountain Stream Monitors, Inc. ("MSM") filed petitions to review the regulation in the United States Court of Appeals for the Fourth Circuit. The petitioners raised issues concerning acid mine drainage, new source performance standards for preparation plants, the definition of new source coal mines, and post-bond release regulations. After extensive discussions, the Petitioners and EPA entered a settlement Agreement, under which EPA agreed to propose specified revisions to the regulations. Those revisions are discussed in Section IV of this preamble.

Section IV also discusses two proposed changes, not a result of the Settlement Agreement, involving (1) modification of NPDES permits to reflect new NSPS, and (2) the type of limitation to be imposed on settleable solids during reclamation and precipitation. EPA is also soliciting comments on these issues.

As part of the Settlement Agreement, the parties agreed to seek a judicial stay of the major regulatory provisions which are to be revised. The court entered the stay on August 23, 1983. The following are the portions of the regulation that are stayed pending this rulemaking:

1. Section 434.11(j)(1)(ii) (E) and (F).

2. Section 434.22(a), but only insofar as it applies to acid or ferruginous discharges from coal refuse disposal piles.*

3. Section 434.23(a), but only insofar as it applies to acid or ferruginous discharges from coal refuse disposal piles.*

4. Section 434.25 (a) and (b).

5. Section 434.25(c), but only insofar as it applies to acid or ferruginous discharges from coal refuse disposal piles and insofar as it imposes limitations on manganese to discharges from point sources that normally exhibit a pH equal to or greater than 6.0 prior to treatment.

6. The alternate precipitation limitations applicable to Subpart C for discharges caused by precipitation, as provided by §§ 434.32, 434.33, 434.35, and 434.36.

For additional information on the legal background, technology descriptions, and the history of the regulation development, the reader is referred to the preamble of the October 13, 1982 rule (47 FR 45382).

*For purposes of the stay order, "coal refuse disposal pile" is defined as any coal refuse deposited on the earth and intended as permanent disposal or long-term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

IV. Proposed Amendments

A. General Definitions

(1) Section 434.11(j)(1)(ii)—New Source Definition

Section 434.11(j)(1)(ii) or the existing regulation contains the definition of a new source coal mine. The first part of this definition defines a new source as any source which commenced construction after May 29, 1981. The second part of this definition (§ 434.11(j)(1)(ii)) provides that "major alterations" occurring at an existing mine may also result in a new source. Seven events are listed in the second part of the definition, which should be considered to determine whether a major alteration, and thus a new source, exists.

During settlement discussions, NCA expressed the concern the § 434.11(j)(1)(ii) could be interpreted as authorizing a Regional Administrator to determine that a major alteration had taken place at a mine, and thus to declare it to be a new source, on the basis of events that occur routinely at existing mines. This is not EPA's intent. Instead, the occurrence of one or more of the events listed in § 434.11(j)(1)(ii) should trigger review by the Regional Administrator to determine whether, in light of all the available information, a major alteration has taken place. In making this determination, the Regional Administrator should consider whether extraction of a new coal seam, discharge into a new drainage area, extensive new surface disruption, construction of a new shaft, slope or drift, or some other activity at the mine has resulted in significant new environmental impacts, such as, for example, extraction of a new coal seam which is acid forming where the prior operations involved alkaline seams, or creation of discharges which could significantly affect streams or downstream users. Thus, in some cases the occurrence of one or more of the events listed in § 434.11(j)(1)(ii) that there has been a major alteration at the mine while in others it may not.

In addition, NCA pointed out that two of the events listed in 434.11(j)(1)(ii) (the acquisition of additional land or mineral rights and significant capital investment in additional equipment or facilities) are not indicative of major alterations at mining operations. The Agency agrees and is proposing to revise that section of its regulation accordingly.

The proposed revision also makes it clear that remining of an abandoned mine (defined at § 434.11(r)) triggers requirements applicable to new sources.

This definition of "new source coal mine" would govern the determination of when a coal mine is a "new source" under the NPDES program. Therefore, the generic criteria for the "new source" determination at 40 CFR 122.29(b) and any subsequent revision to those criteria would not apply to coal mines.

Today's proposed revision of the new source definition would be applicable only to coal mines that commence construction after the date of this proposal, or where the Regional Administrator finds, in light of the events listed in revised § 434.11(j)(1)(ii) and other available information, that a major alteration has taken place after the date of this proposal. As provided in the proposed revision of § 434.11(j)(1)(2), the revised definition would not affect the status of or standards applicable to coal mines which are classified as new sources under the October 13, 1983 regulation or previous regulations.

(2) Section 434.11(p)—Coal Refuse Disposal Piles

EPA is today proposing to define a new term: coal refuse disposal pile.

As a result of comments received during settlement discussions with the parties to *NCA* v. *EPA*, the Agency is proposing that acid mine drainage from coal refuse piles should not be eligible for alternate rainfall limitations unless a sizeable rainfall event (the 1-year, 24-hour event) occurs. The term coal refuse disposal pile is defined as "any coal refuse deposited on the earth and intended as permanent disposal or long-term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area."

(3) Section 434.11(q)—Controlled Surface Mine Drainage

EPA is also proposing to define the term "controlled surface mine drainage."

As a result of comments received during the settlement discussions, the Agency believes that acid or ferruginous discharges that are pumped or siphoned from surface mining areas to treatment ponds can be controlled by the mine operator even during periods of heavy precipitation, and thus should not be eligible for the alternate rainfall limitations unless a precipitation event greater than the 10-year, 24-hour event occurs. Controlled surface mine drainage is any surface mine drainage that is pumped or siphoned from the active mining area. A siphon is a tube or conduit bent into legs of unequal length, for use in transferring liquid from an upper level to a lower one by means of suction created by the weight of the liquid in the longer leg.

B. Coal Preparation Plant New Source Performance Standards; §434.25 (a) and (b)

As part of the Settlement Agreement, EPA has agreed to propose revising NSPS for coal preparation plants. The proposed standards would allow a discharge of pollutants with limitations on iron, manganese, suspended solids and pH. NCA contended that coal slurry ponds, which are part of the preparation plant water circuit, are not always able to achieve zero discharge. In addition, coal waste impoundments, including some slurry ponds, must meet OSM requirements to drain water from the pond during design precipitation events. We are also correcting the NSPS limitations for preparation plant associated areas so that, as in the rest of the regulation, limitations on manganese would apply only to acid or ferruginous mine drainage. The alternate rainfall limitations on settleable solids and pH will continue to apply to discharges from coal preparation plants and associated areas (except for acid discharges from refuse piles, see Section C.4 below).

C. Alternate Precipitation Limitations

The October 13, 1982 regulation provides alternate rainfall limitations for most discharges or increases in discharges caused by precipitation. If the precipitation event is less than or equal to a 10-year 24-hour event (or snowmelt of equal volume), only limitations on settleable solids and pH apply. If the precipitation event is greater than a 10-year, 24-hour event, only pH limitations apply. The alternate limitations do not apply to drainage from underground workings of underground mines, unless such drainage is commingled with surface mine discharges.

Comments raised during settlement discussions indicated that the existing alternate rainfall limitations could, with respect to acid or ferruginous mine drainage, allow the discharge of large amounts of iron and manganese, and are not necessary in certain cases because the mine operator could control the rate of discharge even during heavy precipitation events. In response to this concern, EPA has reevaluated the alternate rainfall limitations and now proposes to amend them as follows. A summary of the proposed amendment is contained in Appendix A to the regulation.

(1) Underground Mines—Not Commingled

Under this proposal, as in the existing regulation, discharges from underground mines that are not commingled with surface drainage would not be eligible for alternate rainfall limitations.

(2) Underground Mines—Commingled

The existing regulation specified that where underground mine drainage is commingled with surface drainage, the alternate rainfall limitations would apply. During settlement discussions, the concern was raised that by commingling large amounts of acid underground mine drainage with small amounts of surface drainage, a facility would not have to meet limitations of TSS, iron and manganese during rainfall. The Agency believes that area runoff can be diverted from underground drainage by berms, diversion ditches, dikes and similar means so that sudden influxes of precipitation do not affect facilities treating underground mine drainage. In this context, state regulatory agencies and the Office of Surface Mining (OSM) under the Surface Mining Control and Reclamation Act (SMCRA) have already addressed design requirements for such diversion practices in aplicable regulations. Implementation of such practices in compliance with SMCRA requirements should assure that commingling is kept to a minimum.

However, if an extremely large rainfall event occurs, it may be impossible to segregate the waste streams. Accordingly, the Agency proposes that acid underground mine drainage that is diverted in accordance with OSM regulations be eligible for alternate limitations if comminlged with surface area drainage, but only if a precipitation event greater than the 10-year, 24-hour event occurs.

(3) Controlled Surface Mine Drainage

Much mine drainage is pumped or siphoned from surface areas to treatment facilities. We believe that during most precipitation events the mine operator can temporarily discontinue or otherwise limit pumped discharges from the pit and divert surface runoff and shallow ground water away from the pit and treatment pond by use of diversion dikes, ditches and similar means. Thus (except for steep slope and mountaintop removal situations, discussed below), there is no need to have alternate precipitation event limitations for acid or ferruginous discharges that are pumped or siphoned from the active area of a surface mine, except when a precipitation event greater than the 10-year, 24-hour precipitation event occurs. The Agency is proposing to revise its regulations to make this change.

(4) Non-Controlled Surface Mine Drainage

SMCRA permit-issuing authorities require, to the maximum extent feasible, the minimization of non-pumped discharges within an active mining area. However, the Agency recognizes that non-controlled discharges do occur even where steep slope or mountaintop removal operations are not involved. As a result of settlement discussions, EPA proposes to revise its regulations to provide that non-controlled acid surface mine drainage, which includes surface runoff and gravity flow drainage other than that described below in section (6), must meet alternate precipitation limitations on total iron, settleable solids and pH unless a precipitation event greater than the 2-year, 24-hour event occurs. If such an event occurs, then limitations only on settleable solids and pH would apply. If a precipitation event greater than the 10-year, 24-hour event occurs, only pH limitations would apply. Of course, for discharges not directly affected by precipitation, limitations on iron, manganese, pH, and TSS must be met.

(5) Coal Refuse Disposal Piles

Pennsylvania was concerned that acid or ferruginous drainage from coal refuse disposal piles is a serious problem and should not be controlled by the same rainfall limitations that generally apply to coal preparation plant associated areas. By using diversion and other techniques, the amount of runoff from coal refuse piles during most precipitation events can be controlled. EPA is now proposing to limit the alternate rainfall exemption for drainage from such piles to situations where a 1-year, 24-hour precipitation event occurs. Hence, TSS, pH, iron and manganese limitations would apply during all precipitation up to a 1-year, 24-hour event; pH and settleable solids limitations would apply during precipitation from a 1-year, 24-hour event to a 10-year, 24-hour event; and pH limitations only would apply during all precipitation greater than a 10-year, 24-hour event. "Coal refuse disposal pile" would be defined in § 434.11(p). The term applies only to long-term storage sites, where the refuse is stored for more than 180 days and does not include refuse piles located on an active mining area.

(6) Steep Slope/Mountaintop Removal Mining Operations

The Agency is not changing the alternate rainfall limitations applicable to surface coal mines in steep slope areas (as defined in section 515(d)(4) of SMCRA) or for discharges from operations involving mountaintop removal (pursuant to section 515(c) of SMCRA). In such operations, the operator may be unable during precipitation events to contain or control the drainage from the active mining area so as to meet the effluent limitations on TSS, iron and manganese.

(7) Discharges from Preparation Plants and Their Associated Areas (Excluding Coal Refuse Piles)

The Agency is not proposing to change the alternate rainfall limitations applicable to preparation plants and their associated areas.

(8) Discharges from Reclamation Areas

The Agency is not proposing to change the alternate rainfall limitations applicable to reclamation areas.

If mining operations combine drainage from one or more of these eight categories, the most stringent of the applicable alternate storm limitations will apply.

D. Alternate Precipitation Limitations—Settleable Solids

Settleable solids is a parameter limited for coal mining discharges both during precipitation events and during reclamation. EPA's original intent was to promulgate this limit as an "instantaneous maximum" not to be exceeded. However, the October 13, 1982 regulation presents the settleable solids limit, like the limitations on other pollutants, as a "maximum for any one day".

EPA's permit regulations (40 CFR 122.2) define the term "maximum daily discharge" as the highest allowable "daily discharge". This regulation further provides that, with respect to pollutants whose limitations are expressed in terms of concentration (as is the case for settleable solids), the "daily discharge" is to be calculated as "the average measurement of the pollutant over the day". Thus, the settleable solids limitation represents the highest allowable average for any measurement(s) taken on any one day.

EPA developed the 0.5 ml/l limitation based on data for single grab samples with the intent of developing an instantaneous maximum standard. Accordingly, we believe this limit is more appropriately presented as a value never to be exceeded rather than as an

average. This is particularly true because an instantaneous maximum is a much more practical standard to apply and enforce. Thus, EPA is proposing to amend the settleable solids limitation to be a maximum not to be exceeded at any time.

E. Post-Mining Discharges

EPA's coal mining effluent limitations apply until release of the reclamation bond required by SMCRA. Today's proposal will not change that. However, in response to a concern by one of the petitioners, the Agency wishes to re-emphasize that post-bond release discharges can be subject to regulation under the Clean Water Act. If a point source discharge occurs after bond release, then it must be regulated through an NPDES permit under sections 301(a) and 402 of the Clean Water Act. If the responsible party does not obtain a permit, then it is subject to enforcement action by EPA under section 309 of the Act and by citizens under section 505(a)(1) of the Act. Appropriate effluent limitations would be established in the NPDES permit for such a discharge.

F. Section 434.65—Modification of Permits for New Sources

The preamble to the October 13, 1982 regulation stated that coal mines with permits incorporating previous new source performance standards could apply to have those permits modified according to 40 CFR 122.62(a) (formerly § 122.15(a)). However, that section does not authorize the modification of permits to reflect subsequently promulgated new source performance standards. Nonetheless, while EPA generally believes that new sources should adhere to permit conditions based on the NSPS in existence when those permits were issued, coal mining operations that construct *new* treatment ponds should be allowed to construct those ponds in accordance with the new, performance-based new source performance standards (as modified by today's proposal), even if their permit contains design standards based on the previously promulgated new source performance standards. Coal mining is a transient operation, and NPDES permits often regulate discharges from the construction of additional treatment ponds which will be constructed after permit issuance as mining progresses along a coal seam.

Accordingly, we have added proposed § 434.65, to allow, at the discretion of the permit writer, the modification of coal mining NPDES permits to reflect the new NSPS. Where ponds have been constructed to meet the design criteria according to permit conditions incorporating previous NSPS, the discharge should continue to meet those requirements. However, a coal mine operator who intends to construct a new pond under the requirements of the same permit may apply for a permit modification to incorporate the new performance based rainfall limitations, rather than the design criteria. The reasons for the deletion of the design criteria are discussed fully in the preamble to the October 13, 1982 regulation.

Similarly, in light of NCA's concern (see Subsection B) that coal slurry ponds cannot always achieve zero discharge, proposed § 434.65 would also allow for permit modification for coal preparation plants subject to zero discharge requirements based on the NSPS promulgated in October 1982.

V. Impacts

A. Alternate Precipitation Limitations

In 1977, BPT for coal mine discharges was promulgated which included an exemption from meeting effluent limitations during precipitation events, provided a 10-year, 24-hour pond was constructed. This pond design requirement was costed and the economic analysis determined it to be achievable. Basically, the same precipitation exemption was proposed for BAT and NSPS in January 1981. The October 13, 1982 promulgated version of these regulations, however, deleted the pond design requirement in exchange for the requirement that discharges due to precipitation must meet limits on pH and settleable solids. Because the construction of a 10-year, 24-hour pond was no longer required, EPA determined that costs to meet the October 13, 1982 promulgated alternate storm limits were not significant. While today's amendments to the alternate storm limitations (for some discharge categories) are more stringent than the promulgated October 13, 1982 requirements, they are still less costly to achieve than the 10-year, 24-hour pond design requirement originally promulgated for BPT in 1977 and proposed for BAT in 1981.

Additional costs may be incurred for discharges from coal refuse disposal piles (from the preparation plant associated area only) because they may have to be segregated from other drainage sources. This may require dikes and diversion ditches around the pile. However, EPA does not consider the cost of diking alone to be significant when compared with the total capital and annual costs of treatment facilities for the preparation plant and associated area subcategory. Thus, EPA has determined that no significant economic impacts will result from these revisions.

These new alternate limits will have a beneficial impact on the environment because the total amount of pollutants allowed to be discharged will be reduced. The magnitude of this reduction will depend on the type of discharge and size of the precipitation event. The pollutants whose discharges will be reduced are TSS, iron and manganese.

B. New Source Coal Preparation Plants

For new source coal preparation plants, a cost savings will result by the elimination of the zero discharge requirement. Savings on incremental requirements and annual costs above BPT/BAT technology for a typical new source coal preparation facility are projected to be as high as $1.6 million and $379 thousand respectively (1982 dollars).

With regards to toxic pollutants, allowing a discharge from new source preparation plants will have a minimal adverse impact on the environment because the standards will result in removal of significant amounts of these pollutants from the raw wastewater. This discharge allowance will, however, result in an increase in mass loading of certain nonconventional and conventional pollutants discharged to the environment (primarily TSS, iron, manganese, and pH). If this increased pollutant loading results in localized water quality problems, then it can be handled on a case-by-case basis through the NPDES permitting process.

C. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses on "major rules". Major rules are those that impose an annual cost to the economy of $100 million or more, or meet other economic impact criteria. This proposed regulation is not a major rule because it would not result in such economic impacts. It therefore does not require a formal regulatory impact analysis. This proposed rulemaking satisfies the requirement of the Executive Order for a non-major rule.

This notice was submitted to the Office of Management and Budget for review as also required by Executive Order 12291.

D. Regulatory Flexibility Analysis

Public Law 96–354 requires EPA to prepare an Initial Regulatory Flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. The

analysis may be conducted in conjunction with or as part of other Agency analyses. EPA has determined that this regulation will not, for the reasons stated above, have a significant impact on a substantial number of small entities. Therefore, a formal Regulatory Flexibility analysis is not required.

VI. Enforcement

The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner that recongnizes and promotes good faith compliance efforts.

List of Subjects in 40 CFR Part 434

Mines, Water pollution control, Waste treatment and disposal.

Dated: April 19, 1984.

William D. Ruckelshaus,

Administrator.

EPA proposes to revise Part 434 of Title 40 to read as follows:

PART 434—COAL MINING POINT SOURCE CATEGORY BPT, BAT, BCT LIMITATIONS AND NEW SOURCE PERFORMANCE STANDARDS

Subpart A—General Provisions

Sec.
434.10 Applicability.
434.11 General Definitions.

Subpart B—Coal Preparation Plants and Coal Preparation Plant Associated Areas

434.20 Applicability.
434.21 [Reserved].
434.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available [BPT].
434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable [BAT].
434.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology [BCT] [Reserved].
434.25 New Source Performance Standard [NSPS].

Subpart C—Acid or Ferruginous Mine Drainage

434.30 Applicability.
434.31 [Reserved].
434.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available [BPT].
434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable [BAT].
434.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best conventional pollutant control technology (BCT). [Reserved].
434.35 New Source Performance Standard [NSPS].

Subpart D—Alkaline Mine Drainage

434.40 Applicability.
434.41 [Reserved].
434.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available [BPT].
44.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable [BAT].
434.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved].
434.45 New Source Performance Standard [NSPS].

Subpart E—Post-Mining Areas

434.50 Applicability.
434.51 [Reserved].
434.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available [BPT].
434.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable [BAT].
434.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved].
434.55 New Source Performance Standard [NSPS].

Subpart F—Miscellaneous Provisions

434.60 Applicability.
434.61 Commingling of Waste Streams.
434.62 Alternate Effluent Limitations for pH.
434.63 Effluent Limitations During Precipitation Events.
434.64 Procedure and Method Detection Limit for Measurement of Settleable Solids.
434.65 Modifications of NPDES Permits for New Sources.
Appendix A—Alternate Storm Limitations for Acid Mine Drainage

Authority: Sections 301 304(b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendment of 1972, as amended by the Clean Water Act of 1977), (the "Act"); 33 United States. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

Subpart A—General Provisions

§ 434.10 Applicability.

This part applies to discharges from any coal mine at which the extraction of coal is taking place or is planned to be undertaken and to coal preparation plants and associated areas.

§ 434.11 General definitions.

(a) The term "acid or ferruginous mine drainage" means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or greater that 10 mg/l.

(b) The term "active mining area" means the area, on and beneath land, used or distrubed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

(c) The term "alkaline mine drainage" means mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and a total iron concentration of less than 10 mg/l.

(d) The term "bond release" means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed.

(e) The term "coal preparation plant" means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities and then is loaded for transit to a consuming facility.

(f) The term "coal preparation plant associated areas" means the coal preparation plant yards, immediate access raods, coal refuse piles, and coal storage piles and facilities.

(g) The term "coal preparation plant water circuit" means all pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is used in coal preparation processes within a coal preparation plant.

(h) Ther term "mine drainage" means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.

(i) The abbreviation "ml/l" means milliliters per liter.

(j)(1) Notwithstanding any other provision of this Chapter, subject to paragraph (j)(2) of this section, the term "new source coal mine" means a coal mine (excluding coal preparation plants

and coal preparation plant associated areas) including an abandoned mine which is being re-mined:

(i) the construction of which is commenced after [*insert date of final rule publication*]; or

(ii) which is determined by the EPA Regional Administrator to constitute a "major alteration". In making this determination, the Regional Administrator shall take into account whether one or more of the following events resulting in a new, altered or increased discharge of pollutants has occured after [*insert date of final rule publication*] in connection with the mine for which the NPDES permit is being considerd.

(*A*) Extraction of a coal seam not previously extracted by that mine;

(*B*) Discharge into a drainage area not previously affected by wastewater discharge from the mine;

(*C*) Extensive new surface disruption at the mining operation;

(*D*) A construction of a new shaft, slope or drift; and

(*E*) Such other factors as the Regional Administrator deems relevant.

(2) No provision in this Part shall be deemed to affect the classification as a new source of a facility which was classified as a new source coal mine under previous EPA regulations, but would not be classified as a new source under this section, as modified. Nor shall any provision in this part be deemed to affect the standards applicable to such facilities, except as provided in § 434.65 of this Chapter.

(k) The term "post-mining area" means: (1) A reclamation area or (2) the underground workings of an underground coal mine after the extraction, removal or recovery of coal from its natural deposit has ceased and prior to bond release.

(l) The term "reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

(m) The term "setteable solids" is that matter measured by the volumetric method specified in § 434.64.

(n) The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval on once in ten years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

(o) The terms "treatment facility" and "treatment system" mean all structures which contain, convey, and as necessary, chemically or physically treat coal mine drainage, coal preparation plant process wastewater, or drainage from coal preparation plant associated areas, which remove pollutants regulated by this Part from such waters. This includes all pipes, channels, ponds, basins, tanks and all other equipment serving such structures.

(p) The term "coal refuse disposal pile" means any coal refuse deposited on the earth and intended as permanent disposal or long-term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

(q) The term "controlled surface mine drainage" means any surface mine drainage that is pumped or siphoned from the active mining area.

(r) The term "abandoned mine" means a mine where mining operations have occurred in the past and:

(1) The applicable reclamation bond or financial assurance has been released or forfeited; or

(2) If no reclamation bond or other financial assurance has been posted, no mining operations have occurred for five years or more.

Subpart B—Coal Preparation Plants and Coal Preparation Plant Associated Areas

§ 434.20 Applicability.

The provisions of this subpart are applicable to discharges from coal preparation plants and coal preparation plant associated areas, as indicated, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.21 [Reserved].

§ 434.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, 40 CFR 401.17, and §§ 434.61, 434.62 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

(b) Except as provided in 40 CFR 125.30–125.32, 40 CFR 401.17 and §§ 434.61 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
TSS	70	35
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

§ 434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(b) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5

§ 434.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology [BCT] [Reserved]

§ 434.25 New Source Performance Standards (NSPS)

The following new source performance standards (NSPS) shall be achieved by any new source coal preparation plant and coal preparation plant associated areas, as indicated:

(a) Except as provided in 40 CFR 401.17 and §§ 434.61, 434.62 and 434.63 of this Part, the following new source performance standards shall apply to discharges from new source coal preparation plants and new source coal preparation plant associated areas, if such discharges normally exhibit a pH of less than 6.0 prior to treatment:

NSPS EFFLUENT LIMITATIONS (MG/L)

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	6.0	3.0
Manganese, total	4.0	2.0
TSS	70	35
pH	(1)	(1)

1 6.0–9.0 at all times.

(b) Except as provided in 40 CFR 401.17 and §§434.61, 434.62 and 434.63 of this Part, the following new source performance standards shall apply to discharges from new source coal preparation plants and new source coal preparation plant associated areas, if such discharges normally exhibit a pH equal to or greater than 6.0 prior to treatment.

NSPS EFFLUENT LIMITATIONS (MG/L)

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	6.0	3.0
TSS	70	35
pH	(1)	(1)

1 6.0–9.0 at all times.

Subpart C—Acid or Ferruginous Mine Drainage

§ 434.30 Applicability.

The provisions of this subpart are applicable to acid or ferruginous mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.31 [Reserved]

§ 434.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30—125.32, 40 CFR 401.17, and §§ 434.61, 434.62 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any one day	Average of daily values for thirty consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

1 Within the range 6.0 to 9.0 at all times.

§ 434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, 40 CFR 401.17, and §§ 434.61, 434.62 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any one day	Average of daily values for thirty consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

§ 434.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]

§ 434.35 New Source Performance Standards (NSPS)

(a) Except as provided in 40 CFR 401.17, and §§ 434.61, 434.62 and 434.63 of this Part, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

NSPS EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any one day	Average of daily values for thirty consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
Manganes, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

1 Within the range 6.0 to 9.0 at all times.

Subpart D—Alkaline Mine Drainage

§ 434.40 Applicability.

The provisions of this subpart are applicable to alkaline mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.41 [Reserved].

§ 434.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30—125.32, 40 CFR 401.17, and §§ 434.61 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this

subpart after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any one day	Average of daily values for thirty consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all time.

§ 434.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any one day	Average of daily values for thirty consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5

§ 434.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 434.45 New Source Performance Standards (NSPS)

(a) Except as provided in 40 CFR 401.17 and §§ 434.61 and 434.63 of this Part, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

NSPS EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentrationin mg/l	
Iron, total	6.0	3.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

Subpart E—Post-Mining Areas

§ 434.50 Applicability

The provisions of this subpart are applicable to discharges from post-mining areas.

§ 434.51 [Reserved.]

§ 434.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) *Reclamation Areas.* The limitations in this subsection apply to discharges from reclamation areas until the performance bond issued to the facility by the appropriate SMCRA authority has been released.

(1) Except as provided in 40 CFR 125.30–125.32, 40 CFR 401.17 and §§ 434.61 and 434.63 (d)(2) of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property		
Settleable solids	0.5 ml/l	Maximum at all times.
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(b) *Underground Mine Drainage.* The limitations in this subsection apply to discharges from the underground workings of underground mines until SMCRA bond release.

(1) Except as provided in 40 CFR 125.30–125.32, 40 CFR 401.17 and §§ 343.61, 434.62 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(2) Except as provided in 40 CFR 125.30–125.32, 40 CFR 401.17, and §§ 434.61 and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 434.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) *Reclamation Areas.* The limitations of this subsection apply to discharges from reclamation areas until SMCRA bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 (d)(2) of this Part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property		
Settleable solids	0.5 ml/1	Maximum at all times.

(b) Underground Mine Drainage. The limitations in this subsection apply to discharges from the underground workings of underground mines until SMCRA bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62, and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable.

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/1	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(2) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, and 434.63 of this Part, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/1	
Iron, total	7.0	3.5

§ 434.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 434.55 New Source Performance Standards (NSPS)

The following new source performance standards shall apply to the post-mining areas of all new source coal mines:

(a) *Reclamation Areas.* The standards of this subsection apply to discharges from reclamation areas at new source coal mines until SMCRA bond release.

(1) Except as provided in 40 CFR 401.17 and §§ 434.61 and 434.63(d)(2) of this Part, the following new source performance standards shall be achieved for a discharge subject to the provisions of this subsection:

NSPS Effluent Limitations

Pollutant or pollutant Property		
Settleable solids	0.5 ml/1	Maximum at all times.
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(b) *Underground Mine Drainage.* The standards in this subsection apply to discharges from the underground workings of new source underground mines until bond release.

(1) Except as provided in 40 CFR 401.17 and §§ 434.61, 434.62, and 434.63 of this Part, the following new source performance standards shall be achieved for the discharge of any acid or ferruginous mine drainage subject to this subsection:

NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/1	
Iron, total	6.0	3.0
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(2) Except as provided in 40 CFR 401.17, §§ 434.61 and 434.63 of this Part, the following new source performance standards shall be achieved for the discharge of any alkaline mine drainage subject to this subsection:

NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

Subpart F—Miscellaneous Provisions

§ 434.60 Applicability.

The provisions of this Subpart F apply to this Part 434 as specified in Subparts B, C, D and E.

§ 434.61 Commingling of waste streams.

Where waste streams from any facility covered by this Part are combined for treatment or discharge with waste streams from another facility covered by this Part, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.

§ 434.62 Alternate effluent limitation for pH.

Where the application of neutralization and sedimentation treatment technology results in inability to comply with the otherwise applicable manganese limitations, the permit issuer may allow the pH level in the final effluent to exceed 9.0 to a small extent in order that the manganese limitations can be achieved.

§ 434.63 Effluent limitations for precipitation events.

(a)(1) The alternate limitations specified in paragraph (a)(2) of this section apply with respect to:

(i) All discharges of alkaline mine drainage except discharges from underground workings of underground mines that are not commingled with other discharges eligible for these alternate limitations;

(ii) All discharges from steep slope areas, (as defined in § 515(d)(4) of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA)), and from mountaintop removal operations (conducted pursuant to § 515(c) of SMCRA);

(iii) Discharges from coal preparation plants and preparation plant associated areas (excluding acid mine drainage from coal refuse disposal piles).

(2) Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

Effluent Limitations During Precipitation

Pollutant or pollutant property	Effluent limitations
Settleable solids	0.5 ml/l maximum not to be exceeded.
pH	6.0 to 9.0 at all times.

(b) The following alternate limitations apply with respect to acid or ferruginous discharges from coal refuse disposal piles:

Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period greater than the 1-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

Effluent Limitations During Precipitation

Pollutant or pollutant property	Effluent limitations
Settleable solids	0.5 ml/1 maximum not to be exceeded.
pH	6.0 to 9.0 at all times.

(c) The following alternate limitations apply with respect to acid or ferruginous mine drainage, except for discharges addressed above in paragraph (a) (mountaintop removal and steep slope areas), and discharges addressed below in paragraph (d) (controlled surface mine discharges) and paragraph (f) (discharges from undedrground workings of underground mines):

(1) Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the

following limitations instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations
Iron, total	7.0 mg/1 maximum for any 1 day.
Settleable solids	0.5 ml/1 maximum not to be exceeded.
pH	6.0 to 9.0 at all times.

(2) Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitation instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations
Settleable solids	0.5 ml/1 maximum not to be exceeded.
pH	6.0 to 9.0 at all times.

(d)(1) The alternate limitations specified in paragraph (d)(2) of this section apply with respect to all discharges described in paragraphs (a), (b) and (c) of this section *and* to:

(i) Discharges of acid mine drainage from underground workings of underground mines which are commingled with other discharges eligible for these alternate limitations; and

(ii) Controlled acid surface mine discharges; and

(iii) Discharges from reclamation areas.

(2) Any discharge of increase in the volume of a discharge caused by precipitation within any 24 hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitation instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations
pH	6.0 to 9.0 at all times.

(e) The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in paragraphs (a), (b), (c), and (d) of this Section.

(f) Discharges of mine drainage from underground workings of underground mines which are not commingled with discharges eligible for alternate limitations set forth in this section shall in no event be eligible for the alternate limitations set forth in this Section.

§ 434.64 Procedure and method detection limit for measurement of settleable solids.

For the purposes of this Part, the following procedure shall be used to determine settleable solids:

Fill an Imhoff cone to the one-liter mark with a thoroughtly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material in the reading.

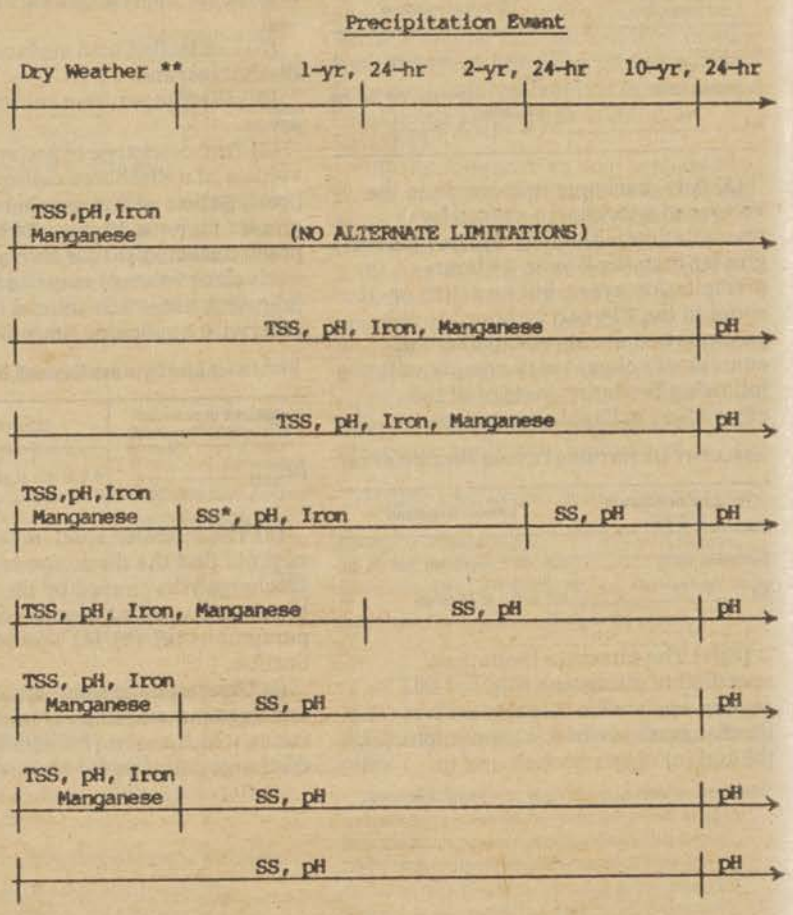
Notwithstanding any provision of 40 CFR Part 136, the method detection limit for measuring settleable solids under this Part shall be 0.4 ml/1.

§ 434.65 Modification of NPDES permits for new sources.

Any coal mine or coal preparation plant which was considered a new source under previous EPA regulations may, notwithstanding § 122.62 of this Chapter, apply to have its NPDES permit modified to incorporate the revised new source performance standards.

Appendix A

ALTERNATE STORM LIMITATIONS
FOR ACID MINE DRAINAGE



* SS = Settleable Solids
** Discharge caused by precipitation
\+ These categories do not differ from the Oct. 13, 1982 regulation.

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May 4, 1984

Part VI

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980
Guaranteed Loan Programs; Interim Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: This action amends Farmers Home Administration (FmHA) regulations to provide a new Approved Lender Program (ALP) for guaranteed operating (OL), farm ownership (FO), and economic emergency (EE) loans. This amendment is needed to provide the policies and procedures for establishing an ALP, which will enhance the availability of those programs for farmers and lenders. The intended effect of the action is to maximize the availability of credit for farmers.

DATES: Interim rule effective May 4, 1984. Comments must be received on or before June 4, 1984.

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

FOR FURTHER INFORMATION CONTACT: Russell Beckham, Deputy Director, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5313, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 447–4572.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, organizations, government agencies or geographic regions. There will be no 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, since it does not affect other FmHA eligibility or loan servicing requirements.

This regulation does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

The Catalog of Federal Domestic Assistance numbers are 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, and 10.428 Economic Emergency Loans.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 5 CFR 1320.17 and have been assigned OMB Control Nos. 0575–0024, 0575–0079, and 0575–0095. This approval expires on March 31, 1987.

Discussion of Interim Rule

The FmHA programs affected by this regulation change are Farm Ownership (FO) guaranteed, Operating (OL) guaranteed, and Economic Emergency (EE) guaranteed.

FmHA guaranteed loans are made and serviced by commercial sources such as Federal Land banks, Production Credit Associations, banks, insurance companies and savings and loan associations. FmHA may provide the lender with a guarantee not to exceed 90 percent of loss of principal and interest on a loan.

For each contract of guarantee (EE only) or loan note guarantee application (applicants may be individuals, partnership, corporation or cooperative entities) approved, a lender is presently required to execute a "Lender's Agreement" with FmHA. The ALP will eliminate the requirement for ALP lenders to execute the agreement for each FO, OL or EE guaranteed loan by effecting a pre-executed Lender's Agreement between FmHA and the lender. The agreement for guaranteed FO and OL loans will be effective for 2 years and may be revoked for cause. Lenders can apply for additional 2-year periods. The Lender's Agreement for the EE guaranteed program will be effective until expiration of the guaranteed EE loan program on September 30, 1984.

The ALP will minimize the time required by approved lenders in obtaining a response from FmHA to a request for a contract of guarantee or loan note guarantee. Contingent upon certain conditions, such as the adequacy of the information the approved lender submits with the application package, the availability of guaranteed funding authority, availability of an FmHA County Committee which determines eligibility, the regulation requires FmHA County Supervisor to respond to all ALP lender requests for a contract of guarantee or loan note guarantee within 2 weeks.

Lenders who desire to be considered for eligibility to participate in FmHA–ALP must submit a request for approval to the appropriate FmHA State Director. The State Director will notify the lender whether its request for eligibility is approved or denied. "Approved lenders" may participate in the guaranteed ALP. FmHA will continue to make the final determination on eligibility of applicants for credit assistance, loan purposes and repayment terms.

The purpose of an Approved Lender Program is to maximize the availability of credit to farmers. FmHA finances only 12 percent of agricultural credit in the Nation through its regular (insured) loan programs. The vast majority of farm loans (approximately 88 percent) come from nongovernment sources. Government should remain the lender of last resort. FmHA must participate more actively with nongovernment lenders in meeting farmers' credit needs. Farmers need to be able to counter the economic difficulties they are presently experiencing. Some family size farmers as well as other farm owners and operators are caught in a "credit availability gap" because they do not quite meet the eligibility requirements of either a nongovernment lender or FmHA, the government lender of last resort. The guaranteed FO, OL and EE funding authorities must be better utilized in an effort to close the gap. The farm ownership (FO) and operating (OL) loan programs of FmHA are restricted to serving not larger than family size farm owners and operators. This action is an effort to facilitate approved lenders' participation in the guaranteed FO, OL and EE programs.

FmHA is implementing the program immediately because of the financial stress presently being experienced by the nation's farmers and the need to maximize use of guaranteed funding authority for the remainder of fiscal year 1984. Most importantly, the demand for credit during planting season makes it imperative that implementation occur immediately. Lenders have emphasized the need for immediate implementation of ALP in order to facilitate their participation in the FmHA guaranteed farm programs during the current crop year.

Creation of the ALP does not impose new requirements upon applicant borrowers for assistance or change eligibility requirements. Benefits will accrue to approved lenders by reduction of paperwork and shortened response time for requests. Benefits will accrue to applicant borrowers in faster response to loan requests and ability to maintain relationship with normal sources of credit. Benefits will accrue to FmHA in reduction of material required for review on requests for a guarantee.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture.

Accordingly, Subparts B and F of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations are amended as follows:

PART 1980—GENERAL

Subpart B—Farmer Program Loans

1. In § 1980.101, paragraph (a) is revised to read as follows:

§ 1980.101 Introduction.

(a) *Policy.* This subpart supplemented by Subpart A of this part, contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), and Emergency (EM) loans. It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans and Guaranteed Farm Ownership (FO) loans.

* * * * *

2. Exhibit A is added to the end of Subpart B to read as follows:

Exhibit A

Approved Lender Program—Farm Ownership and Operating Loans

I. *General:* This Exhibit provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Operating Loans (OL) described in § 1980.175 and Farm Ownership (FO) Loans described in § 1980.180 of this Subpart. The objectives are to minimize time required by approved lenders in obtaining response to request for a loan guarantee, eliminate the requirement of having Form FmHA 449-35, "Lender's Agreement," executed for each loan guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreement will serve as the "Lender's Agreement" for all guarantees issued by FmHA under this Exhibit.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status. (2) Methods an ALP lender will use to process, service and conclude guaranteed OL and FO loans. (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed OL and FO loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed OL and FO programs, supplement present insured loan authority, and make credit available to not larger than family farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria relating to its function as a lender of last resort but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

II. *Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status.* Lenders who meet the required and other criteria may be granted ALP status for a period not to exceed 2 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Attachment 1 of this Exhibit. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. ALP status will expire at the end of any approved 2 year period unless the lender applies for a new agreement which can be approved by the appropriate State Director. ALP status may be revoked, by the State FmHA Director, as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State Supplements, of the name and address of all lending institutions, branches or suboffices who hold ALP status. The name of each ALP lender's designated person or agricultural loan officer(s) who will process and service guaranteed loans for the ALP lender will be included.

A. *Lender Approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of Part 1980 of this chapter. Lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria," and "other criteria" contained in paragraph A 1 and 2 and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District or State office may provide a lender who desires to apply for ALP status, a complete copy of Part 1980, Subparts A and B of this chapter, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 30 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance is as outlined in the application.

(1) *Required Criteria.* State FmHA Directors will not approve lenders for ALP status who do not meet the following requirements:

(a) Provide evidence of being an "Eligible Lender" as defined in subpart A, Part 1980 of this chapter.

(b) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide information to show that agricultural loan losses charged against reserves—net of recovery—do not exceed 1½ percent on most recent 3 year moving average. Total maximum of 4.5 percent for most recent 3 year history.

(d) Have the capacity to process and service FmHA guaranteed FO and OL loans.

(e) Designate a person(s) who will process and service FmHA guaranteed OL and FO loans and agree for the person(s) to attend training sessions provided by FmHA.

(f) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, record keeping method, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See § 1980.109 and § 1980.113 of this Subpart for required forms.

(g) Agree to abide by all applicable conditions of § 1980.60 of Part 1980, Subpart A for all loan note guarantees.

(2) *Other Criteria.* Decision made by the FmHA State Director based on this criteria may be negotiated but a denial by the State Director is not appealable.

(a) Have experience and familiarity with FmHA insured and guaranteed loan programs. State length of time and types of loans.

(b) Provide a resume of designated person who will process and service guaranteed FmHA loans. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and at least two (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(c) Provide a copy of the most recent Statement of Condition and description of current level of agricultural and other lending activities.

(d) Demonstrate a potential capacity for guaranteed OL loan and guaranteed FO loan activity in trade area. Must have ability to process and service at least 10 guaranteed OL and/or FO loans, subject to availability of funds, per fiscal year (October 1–September 30).

(e) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood or Mudslide, Clean Air, etc. (See §§ 1980.40 through 1980.46 of Subpart A of Part 1980 of this chapter.)

(f) Agree to submit requests for guaranteed OL and/or FO loans to county official(s) in service areas after application is complete to coincide with scheduled meetings of the local FmHA County Committee.

(g) Provide any other supplemental information the lender desires to submit.

B. *Subsequent Approval period(s).* A new 2 year period of ALP status is not automatic. Lenders who desire to continue ALP status are required to submit a request for subsequent approved periods at least 60 days prior to expiration of any existing approved period. At least 30 days prior to the expiration of any approved ALP period, the State Director will complete a review of the ALP criteria, the lender's past performance, consult appropriate FmHA county and district personnel, and, if requested by the lender, determine if a new 2 year period of ALP status can be approved. The lender's request will be in writing to the State Director and contain, as a minimum, the following:

(1) Brief summary of activity as an ALP lender including number and dollar amount of guaranteed OL and/or FO loans extant, number and dollar amount processed during tenure as ALP, number and dollar amount now under consideration, potential guaranteed OL and/or FO loan activity and recap of any loss settlements.

(2) A current update of data required in Paragraph II, A of this Exhibit and any proposed changes in agricultural loan officer(s), forms used, or operating methods used in guaranteed OL and/or FO loan processing and servicing.

(3) Request for a new 2 year period of ALP status.

The State Director will promptly review the request, make any inquiry needed to arrive at a decision; and notify the ALP lender of approved ALP status for two years, or required conditions for approval, or denial with reasons.

C. *Revocation of ALP Status.* ALP status will lapse upon expiration of any 2 year approved period unless the lender obtains a new agreement under Paragraph II B above.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet "other criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan, or to protect adequately the interests of the lender and the Government.

State Directors will provide all County offices named in paragraph XVII of approved ALP agreement, a copy of the agreement and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP agreement and Subparts A and B of Part 1980 of this Chapter pertaining to guaranteed OL and FO loans. County Supervisors will use their copy of the ALP agreement to duplicate and place in the County office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the agreement, the lender will be contacted and notified of any discrepancies. A maximum of 30 days will be provided to correct any deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this Subpart for consideration.

III. *ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL Loans and Guaranteed FO Loans.*

A. *Processing.* Before accepting an application for a guaranteed loan, the ALP lender will review Part 1980, Subparts A and B. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicants file maintained by the lender addressing each of the loan eligibility requirements in §§ 1975.175(b) or 1980.180(c) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL and FO loans in §§ 1980.175 and 1980.180. All requests for guaranteed loans will be processed under Subparts A and B of Part 1980 except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan, obtain a Form FmHA 449–6, "Application for Guaranteed Loan (Farmer Programs)," signed by the applicant. The applicant must complete and sign all parts of the Form FmHA 449–6 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed OL or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113(d) of this Subpart except Form FmHA 449–12 "Request for Loan Note Guarantee." Attachment 2 to this Exhibit will be used by ALP lenders to request a loan note guarantee from FmHA. An ALP lender will not be required to submit any form or documents, other than Form FmHA 449–6 with information on crops, livestock and financial condition on farms previously approved for use under paragraph II, A of this Exhibit, an Attachment 2 of this Exhibit, with any supportive information attached, to FmHA for making application for a loan note guarantee. A guaranteed OL or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 449–14, "Conditional Commitment for Guarantee," and determining that all conditions, including the certification required by § 1980.60 of Subpart A of Part 1980 of this chapter, can be met. The ALP lender will be responsible for fully securing the loan under § 1980.175(g) or § 1980.180(g) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans guaranteed.

C. *Liquidation of Loans.* Any liquidation of a guaranteed OL or FO loan will be completed by the lender. Loss claims will be submitted in accordance with the ALP agreement on Form FmHA 449–30, "Loan Note Guarantee Report of Loss." The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan.

IV. *FmHA Actions.* FmHA will complete the evaluation described in § 1980.114 of this Subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for loan note guarantee. The FmHA County Supervisor will review each Form FmHA 449–6 and request for a loan note guarantee, compare material with the County office copy of ALP agreement, approved forms, methods and immediately contact the ALP lender if the information is not in accord with approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, review the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449–23, "Guaranteed Loan Evaluation," if needed, to determine whether the applicant is eligible, the loan is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL or FO loan, and the purposes and terms of loans.

A. FmHA will provide a response to all ALP lender requests for a Loan Note Guarantee within 2 weeks. This 2 week period will be contingent upon:

(1) Requests for a Loan Note Guarantee being received by the appropriate FmHA county office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment ceilings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee.

B. FmHA will monitor each ALP lender's guaranteed loan files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor

will make a complete review of the first loan developed by an ALP lender. FmHA will examine the lender file on each guaranteed OL at least quarterly and each guaranteed FO at least annually. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guaranteed loan program complies with Subparts A and B of Part 1980 of this chapter.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated ————." The date will be the same date entered in Paragraph XIX of the Approved Lender's Agreement.

The Lenders Agreement will be duplicated and a copy will be placed in the FmHA County office file maintained for each Loan Note Guarantee issued.

Exhibit A, Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO)

(Lender) of ————————————

is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This agreement does not apply to any loans involving subsidy payments to the Lender nor does it apply to loan types other than those specifically named herein. The agreement applies to the following offices of the Lender:

The United States of America, acting through Farmers Home Administration (FmHA) hereby agrees to enter into Loan Note Guarantees with the Lender as may be issued pursuant to the regulations for operating and/or farm ownership loans and to participate in a percentage of any loss on any such operating and/or farm ownership loan not to exceed the amount established in the particular loan note guarantee as to percentage of the amount of the principal advance and any interest thereon. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any operating and/or farm ownership loan guaranteed.

II. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more Holders by using Form FmHA 449–36, "Assignment Guaranteed Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder.

2. *Multi Note System.* No loan will be evidenced by multiple notes.

3. *Participations.*

a. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

b. The Lender may obtain participation of only the unguaranteed portion in its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in Title 7 CFR Part 1980, Subparts A and B, and to future FmHA program regulations not inconsistent with the express provisions hereof.

III. The Lender agrees loan funds will be used for the purposes authorized in 7 CFR Part 1980, Subparts A and B as set forth in Form FmHA 449–14, "Conditional Commitment for Guarantee," for the particular loan.

IV. The Lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interest of the Lender is owned by citizens of the United States. Further, such Lender certifies that any guarantees received shall be only on loans made by it, operating for itself and not on behalf of foreign citizens or organizations.

V. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender will certify to FmHA, prior to the issuance of a loan note guarantee for each loan, that the lender has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested the loan note guarantee.

VII. Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VIII. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) taxes, assessment or ground rents against or affecting collateral are paid:

(b) the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

(e) the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 90 days old. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart B, § 1980.106(b)(4)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least semiannually and each real estate loan secured Borrower at least annually.

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office upon request.

IX. *Default by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes in fixed interest rates with FmHA's, Lender's, and the Holder'(s) written approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the Lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

The FmHA will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

X. *Liquidation.* If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any

of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation.* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payment received from the Borrower and/or pro rata share of liquidation or other proceeds, when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determination.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt (See G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days, thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Nothwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XIII below). In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income form collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, travel and overhead.

J. *Payment.* Loss settlements will be paid by FmHA within 60 days after the Lender has submitted, and FmHA has agreed to, the final Report of Loss form.

XI. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premium affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XII. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIV. *Transfer and Assumption Cases.* Refer to 7 CFR Part 1980, Subpart B.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt FmHA's written consent will be obtained before the transferor-debtor (including personal guarantees) is released from personal liability. The Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, wil be entered on Form FmHA 449–30, line 13 and 14.

XV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XVI. *Execution of Agreements.* This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subpart A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVII. *Notices.*

All requests for Loan Note Guarantee and any notices or actions will be initiated through the following FmHA County offices

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XVIII. *Termination of Agreement.* This agreement will terminate as to the Lenders submission of requests for Loan Note Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B two (2) years form the date set forth in XIX below unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Loan Note Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at time of expiration or revocation until those loan note guarantees still extant are concluded.

XIX. This Agreement is dated———
Lender: (Name) ———
(IRS I.D. Tax No.) ———
By ———
Title ———
Attest: ———(Seal)

UNITED STATES OF AMERICA

Farmers Home Administration
By ———
Title ———

To: County Supervisor, FmHA

———

Subject: Request for Loan Note Guarantee under Approved Lender Agreement.
Lender agreement dated ———
Lender IRS I.D. No. ———

Request is hereby made for issuance of a Loan Note Guarantee in the following case.
Applicant's Name ———
Address ———
Social Security or IRS Tax No. ———
County ———
State ———

Type of Loan———Principal Amount $———Percent Guarantee Requested———%.

Interest rate to borrower——% If variable, state method determined and frequency of adjustment

———

Specific amounts and purpose of loan are as follow: ———
Proposed repayment terms: ———
Proposed closing date if request is approved:
Special or unique conditions or problems:

———

Applicant's Financial Condition: Net Worth
$ ———

	Assets value	Debt	Amount due in 12 months
Current [1]	$		
Intermediate [2]			
Long Term [3]			
Totals			

[1] Current: Cash, savings, marketable bonds, receivables, 60 day sales of goods available within 60 days.
[2] Intermediate: Machinery, livestock, retirement accounts, cash value life insurance, securities household goods, receivables 60 days to 1 year.
[3] Long term: Real estate, contracts and notes receivable amount beyond current year.

Ratio Calculation from Financial Information and Operating Plans:

Total Assets of $—— divided by Total Liabilities —— = Net Capital Ratio —— Annual Cash Operating Expenses $—— divided by Gross Income $—— = Operating Ratio —— Net Income $—— divided by Total Assets $—— = Profit to Assets —— Debt Repayment $—— divided by Gross Income $—— = Debt Repayment ——.

Security proposed:

Item	Value	Prior liens (if any)	Equity value
Totals			

Briefly list any special conditions and narrate security accounting, reporting limitations and supervision etc., contained in proposed loan agreement. See 7 CFR Part 1980, Subpart B, § 1980.113(d)(7)

———

The applicant's total farming operation is as follows: (Include total acres owned and/or leased broken down to use and indicate irrigated, double crop, etc., if any. Include totals of all livestock owned and/or tended and describe operation purchasing, marketing, breeding details. Use attachments if necessary.)

———

The undersigned certifies that:

1. The information contained in this request is correct and that a complete application containing all required items described in § 1980.113(d) of Part 1980, Subpart B are on file and may be examined by FmHA at any time during regular business hours prior to or after FmHA responds to this request for a loan note guarantee.

2. Before a loan note guarantee is issued by FmHA, the lender will certify to conditions in §1980.60 of 7 CFR Part 1980, Subpart A.

3. The lender will provide a Guarantee Loan Closing Report on Form FmHA 1980–19 and a check for the amount of the guarantee fee at the time the Loan Note Guarantee is issued.

4. This proposed loan is considered sound, will be fully secured and is within the borrower's repayment ability.

5. All applicable requirements have been or will be met.

6. The loan cannot be made without an FmHA guarantee.

(Name of Lender)———
By ———
Title ———
(Lender's IRS I.D. Tax No.) ———
Date ———

Subpart F—Economic Emergency Loans

3. In § 1980.501, paragraph (a) is revised to read as follows:

§ 1980.501 Introduction.

(a) Policy. This subpart contains regulations for making and servicing Economic Emergency (EE) loans made after August 11, 1978, and applies to lenders, holders, borrowers, Farmers Home Administration (FmHA) personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Subpart A of this part applies to EE loans except §§ 1980.21, 1980.61 (b)(2) and (f). It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract. Appendix G provides polices and procedures for an Approved Lender Program (ALP) for Guaranteed Economic Emergency (EE) loans.

* * * * *

4. Appendix G is added to read as follows:

Appendix G—Approved Lender Program—Economic Emergency Loans

I. *General:* This Appendix provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Economic Emergency (EE) Loans described in § 1980.502 of this subpart. The objectives are to minimize time required by approved lenders in obtaining response to request for a loan guarantee, eliminate the requirement of having Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Emergency Livestock or Economic Emergency Loan Contract of Guarantee)," executed for each loan guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreements, Attachments 1 and 3, will serve as the "Lender's Agreement" for guarantees issued by FmHA under this Appendix. Attachment 1 is that Lender's Agreement that is to be executed in relation to regular term loans. Attachment 3 is the Lender's Agreement that is to be executed in relation to line of credit loans. The Lender, in its application, should indicate the type(s) of loans intended to be made.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status. (2) Methods an ALP lender will use to process, service and conclude guaranteed EE loans. (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed EE loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed EE program, supplement present insured loan authority, and make credit available to farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria relating to its function as a lender of last resort but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

II. *Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status.* Lenders who meet the required and other cirteria may be granted ALP status until September 30, 1984, by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement(s) signed by the State Director and the lending institution. The agreement(s) will be Attachments 1 and 3 of this Appendix. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. ALP status will expire at the end of the approved period. ALP status may be revoked, by the State FmHA Director, as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State Supplements, of the name and address of all lending institutions, branches or suboffices who holds ALP status. The name of each ALP lender's designated person or agricultural loan officer(s) who will process and service guaranteed loans for the ALP lender will be included.

A. *Lender Approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of Part 1980 of this chapter. Lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria," and "other criteria" contained in paragraph A 1 and 2 and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District or State office may provide a lender who desires to apply for ALP status, a complete copy of Part 1980, Subparts A and F of this Chapter, including a copy of this Appendix, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 30 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance is as outlined in the application.

(1) *Required Criteria.* State FmHA Directors will not approve lenders for ALP status who do not meet the following requirements:

(a) Provide evidence of being an "Eligible Lender" as defined in Subpart A, Part 1980 of this chapter.

(b) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide information to show that agricultural loan losses charged against reserves—net of recovery—do not exceed 1½ percent on most recent 3 year moving average. Total maximum of 4.5 percent for most recent 3 year history.

(d) Have the capacity to process and service FmHA guaranteed EE Loans.

(e) Designate a person(s) who will process and service FmHA guaranteed EE loans and agree for the person(s) to attend training sessions provided by FmHA.

(f) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, record keeping method, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See § 1980.511 and § 1980.593 of this subpart for required forms.

(g) Agree to abide by all applicable conditions of § 1980.60 of Subpart A, Part 1980 of this chapter, as modified by § 1980.548 of this subpart for all EE loan guarantees.

(2) *Other Criteria.* Decision made by the State FmHA Director based on this criteria may be negotiated but a denial by the State Director is not appealable.

(a) Have experience and familiarity with FmHA insured and guaranteed loan programs. State length of time and types of loans.

(b) Provide a resume of designated person who will process and service such guaranteed FmHA loans. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and at least two (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(c) Provide a copy of most recent Statement of Condition and description of current level of agricultural and other lending activities.

(d) Demonstrate a potential capacity for guaranteed EE loan activity in trade area. Must have ability to service at least 10 guaranteed EE loans per fiscal year (October 1—September 30).

(e) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood or Mudslide, Clean Air, etc. (See §§ 1980.40 through 1980.46 of Subpart A of Part 1980 of this chapter.)

(f) Agree to submit requests for guaranteed EE loans to county official(s) in service areas after application is complete to coincide with scheduled meetings of the local FmHA County Committee.

(g) Provide any other supplemental information the lender desires to submit.

B. *Subsequent Approval Period(s).* ALP status is not renewable because authority for making guaranteed EE loans expires on September 30, 1984.

C. *Revocation of ALP Status.* ALP status will lapse on September 30, 1984.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet "other criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan, or to protect adequately the interests of the lender and the Government.

State Directors will provide all County offices named in paragraph XVII of approved ALP agreements, a copy of the agreement(s) and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP agreement(s) and Subparts A and F of Part 1980 of this Chapter pertaining to guaranteed EE loans. County Supervisors will use their copy of the ALP agreement(s) to duplicate and place in the County Office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the

agreement(s), the lender will be contacted and notified of any discrepancies. A maximum of 30 days will be provided to correct any deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this Subpart for consideration.

III. *ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed EE Loans.*

A. *Processing.* Before accepting an application for a guaranteed loan, the ALP lender will review Part 1980, Subparts A and F. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in § 1980.512 of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for EE loans in §§ 1980.516, 1980.517, and 1980.518. All requests for guaranteed loans will be processed under Subparts A and F of Part 1980 except as modified by this Appendix. The ALP lender will, for each application for a guaranteed loan, obtain a Form FmHA 449–6, "Application for Guaranteed Loan (Farmer Programs)," signed by the applicant. The applicant must complete and sign all parts of the Form FmHA 449–6 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed EE loans as a "complete application" by obtaining and completing all required items described in § 1980.511(c) of this subpart except Form FmHA 1980–25, "Request for Guarantee (Emergency Livestock Loan or Economic Emergency Loans)." Attachment 2 to this appendix will be used by ALP lenders to request a guarantee from FmHA. An ALP lender will not be required to submit any form or documents, other than Form FmHA 449–6 with information on crops, livestock and financial condition on forms previously approved for use under paragraph II A of this Appendix, and Attachment 2 of this Appendix, with any supportive information, to FmHA when making application for a guarantee. A guaranteed EE loan will not be closed by an ALP lender prior to receipt of Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee," and determining that all conditions, including the certification required by § 1980.548 of this subpart, can be met. The ALP Lender will be responsible for fully securing the loan under § 1980.520 and § 1980.525 of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans guaranteed.

C. *Liquidation of Loans.* Any liquidation of a guaranteed EE loan will be completed by the lender. Loss claims will be submitted in accordance with the ALP agreement on Form FmHA 449–30, "Loan Note Guarantee Report of Loss." The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan.

IV. *FmHA Actions.* FmHA will complete the evaluation described in § 1980.511(d) of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for loan guarantee. Upon receipt, the FmHA County Supervisor will review each Form FmHA 449–6 and request for a loan guarantee, compare material with the County office copy of ALP agreement, approved forms, methods and immediately contact the ALP lender if the information is not in accord with approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, review the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449–23, "Guaranteed Loan Evaluation," if needed, to determine whether the applicant is eligible, the loan is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed EE loan, and the purposes and terms of such loans.

A. FmHA will provide a response to all ALP lender requests for a guarantee within 2 weeks. This 2 week period will be contingent upon:

(1) Requests for the guarantee being received by the appropriate FmHA county office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment ceilings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee.

B. FmHA will monitor each ALP lender's guaranteed loan files to assure that the lender is complying with requirements of § 1980.578 of this subpart. The FmHA County Supervisor will make a complete review of the first loan developed by an ALP lender. FmHA will examine the lender file on each loan secured by chattel at least quarterly and each loan secured by real estate at least annually. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guaranteed loan program complies with Subparts A and F of Part 1980 of this Chapter.

Each Loan Note Guarantee issued will contain the statement "This loan note guarantee is issued under the Lender's Agreement for Guaranteed Economic Emergency (EE) Loans dated ———." The date will be the same date entered in paragraph XIX of the Approved Lender's Agreement, Attachment I.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Economic Emergency Line of Credit Guarantee dated ———." The date will be the same date entered in paragraph XIX of the Approved Lender's Agreement, Attachment 3.

The Lender's Agreements will be duplicated and a copy will be placed in the FmHA County office file maintained for each Loan Note Guarantee and Contract of Guarantee issued.

Appendix G, Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement for Guaranteed Economic Emergency (EE) Loans (Loan Note Guarantee Cases)

(Lender) of ———
is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Appendix G to 7 CFR Part 1980, Subpart F. This agreement does not apply to any loans involving subsidy payments to the Lender nor does it apply to loan types other than those specifically named herein. The Agreement applies to the following offices of the Lender:

The United States of America, acting through Farmers Home Administration (FmHA) hereby agrees to enter into Loan Note Guarantees with the Lender for economic emergency loans and to participate in a percentage of any loss on any such economic emergency loan not to exceed the amount established in the particular loan note guarantee as to percentage of the amount of the principal advance and any interest thereon. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any EE loan guaranteed.

II. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more Holders by using Form FmHA 449–36.

"Assignment Guaranteed Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder.

2. *Multi Note System.* No loan will be evidenced by multiple notes.

3. *Participations.*

a. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

b. The Lender may obtain participation of only the unguaranteed portion in its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in Title 7 CFR Part 1980, Subparts A and F, and to future FmHA program regulations not inconsistent with the express provisions hereof.

III. The Lender agrees loan funds will be used for the purposes authorized in 7 CFR Part 1980, Subparts A and F as set forth in Form FmHA 449–14, "Conditional Commitment for Guarantee," for the particular loan.

IV. The Lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interest of the Lender is owned by citizens of the United States. Further, such Lender certifies that any guarantees received shall be only on loans made by it, operating for itself and not on behalf of foreign citizens or organizations.

V. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender will certify to FmHA, prior to the issuance of a loan note guarantee for each loan, that the lender has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested the loan note guarantee.

VII. The lender will *not* be charged a guarantee fee by FmHA.

VIII. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying both FmHA and the Borrower in writing of any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) Taxes, assessment or ground rents against or affecting collateral are paid;

(b) The loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

(e) The Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart A, § 1980.6(2)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least semiannually and each real estate loan secured Borrower at least annually.

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office upon request.

IX. *Default by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes in fixed interest rates with FmHA's, Lender's, and the Holder'(s) written approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the Lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

The FmHA will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA will review the demand and submit it to the State Derector for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lener, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

X. *Liquidation.* If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation.* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral., resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payment received from the Borrower and/or pro rata share of liquidation or other proceeds, when FmHA is the holder of a portion of the guaranteed loan using form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determination.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portions of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt (See G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days, thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XIII below.) In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* An net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses, include, but are not limited to, employees' salaries, travel and overhead.

J. *Payment.* Loss settlements will be paid by FmHA within 60 days after the Lender has submitted, and FmHA has agreed to, the final Report of Loss form.

XI. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XII. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIV. *Transfer and Assumption Cases.* Refer to 7 CFR Part 1980, § 1980.577 of Subpart F.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt FmHA's written consent will be obtained before the transferor-debtor (including personal guarantees) is released from personal liability. The Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and F, and any future amendments of these regulations not inconsistent with this agreement.

XVI. *Execution of Agreements.* This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subparts A and F and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under Appendix G of 7 CFR Part 1980, Subpart F will be considered by FmHA on a case-by-case basis.

XVII. *Notices.*

All requests for Loan Note Guarantee and any notices or actions will be initiated through the following FmHA County offices

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XVIII. *Termination of Agreement.* This agreement will terminate as to the Lender's submission of requests for Loan Note Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart F, on September 30, 1984, unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Loan Note Guarantee(s) issued pursuant to Appendix G, 7 CFR Part 1980, Subpart F and remaining extant at the time of expiration or revocation until those loan note guarantees still extant are concluded.

XIX. This Agreement is dated——.

Lender: (Name) _____

(IRS I.D. Tax No.) _____

By _____

Title _____

ATTEST:_____(Seal)

UNITED STATES OF AMERICA

Farmers Home Administration

By _____

Title _____

To: County Supervisor, FmHA

Subject: Request for Economic Emergency Loan Note Guarantee under Approved Lender Agreement Applicable to Loan Note Guarantee Cases (Attachment 1). Principal Amount of Loan $——.

and/or

Request for Economic Emergency Line of Credit Guarantee under Approved Lender Agreement Applicable to Contract of Guarantee Cases (Attachment 3). Line of Credit Ceiling $———. Principal Amount of Initial Loan $———.

Lender Agreement Dated ————. Lender IRS I.D. No. ————.

Request is hereby made for issuance of a guarantee(s) in the following case.

Applicant's Name ————————

Address ————————

Social Security or IRS Tax No. ————————

County ————————

State ————————

Percent Guarantee Requested % ————

Interest rate to borrower ——% If variable, state method determined and frequency of adjustment

————————

Specific amounts and purposes of loans are as follow: ————————

Proposed repayment terms: ————————

Proposed closing date if request is approved:

————————

Special or unique conditions or problems:——

Applicant's Financial Condition: ————————

Net Worth $ ————————

	Assets value	Debt	Amount due in 12 months
Current [1]	$		
Intermediate [2]			
Long Term [3]			
Totals			

[1] Current: Cash, savings, marketable bonds, receivables, 60 day sales of goods available within 60 days.

[2] Intermediate: Machinery, livestock, retirement accounts, cash value life insurance, securities, household goods, receivables 60 days to 1 year.

[3] Long term: Real estate, contracts and notes receivable amount beyond current year.

Ratio Calculation from Financial Information and Operating Plans:

Total Assets of $—— divided by Total Liabilities ——=Net Capital Ratio —— Annual Cash Operating Expenses $—— divided by Gross Income $——=Operating Ratio —— Net Income $—— divided by Total Assets $——=Profit to Assets —— Debt Repayment $—— divided by Gross Income $——=Debt Repayment ——.

Security proposed:

Item	Value	Prior liens (if any)	Equity value
Totals			

Briefly list any special conditions and narrate security accounting, reporting limitations and supervision etc., contained in proposed loan agreement. See 7 CFR Part 1980, Subpart F, § 1980.511(c)(5)

————————

————————

The applicant's total farming operation is as follows: (Include total acres owned and/or leased broken down to use and indicate irrigated, double crop, etc., if any. Include totals of all livestock owned and/or tended and describe operation purchasing, marketing, breeding details. Use attachments if necessary.)

————————

————————

The undersigned certifies that:

1. The information contained in this request is correct and that a complete application containing all required items described in § 1980.511(c) of Part 1980, Subpart F are on file and may be examined by FmHA at any time during regular business hours prior to or after FmHA responds to this request for a loan note guarantee.

2. Before a loan note guaranteed is issued by FmHA, the lender will certify to conditions in § 1980.60 of 7 CFR Part 1980, Subpart A as modified by § 1980.548 of 7 CFR Part 1980, Subpart F.

3. The lender will provide a Guarantee Loan Closing Report on Form FmHA 1980–19 at the time the Loan Note Guarantee is issued.

4. This proposed loan is considered sound, and is within the borrower's repayment ability.

5. All applicable requirements have been or will be met.

6. The loan cannot be made without an FmHA guarantee.

(Name of Lender)————————

By ————————

Title ————————

(Lender's IRS I.D. Tax No.) ————

Date ————————

Appendix G, Attachment 3—Farmers Home Administration Approved Lender Program (ALP)

LENDER'S AGREEMENT FOR ECONOMIC EMERGENCY LINE OF CREDIT GUARANTEE (CONTRACT OF GUARANTEE CASES)

————————

(Lender) of ————————

is designated as an Approved Lender for the purpose of processing and requesting Contract(s) of Guarantee authorized by Appendix G to 7 CFR Part 1980, Subpart F. This agreement does not apply to any loans involving subsidy payments to the Lender nor does it apply to loan types other than those specifically named herein. The agreement applies to the following offices of the Lender:

————————

The United States of America, acting through Farmers Home Administration (FmHA), hereby agrees to enter into Contract of Guarantees with the Lender for economic emergency loans and to participate in a percentage of any loss on any such economic emergency loan advance(s) not to exceed the amount established in the particular contract of guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Contract of Guarantee or controlling. As a condition for obtaining a guarantee of the loan advance(s) the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. Lender's Sale of Guaranteed Loan by Participation.

A. The Lender may obtain participation in its loan under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its loan in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a lender or a holder.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the loan(s) as provided in this section only through participation. However, the Lender cannot participate any amount of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. The Lender will retain the responsibility for loan servicing and liquidation.

III. The Lender agrees loan funds will be used for the purposes authorized in Subpart F of Title 7 CFR Part 1980 as set forth in Form FmHA 1980–15, "Conditional Commitment for Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee," for the particular loan.

IV. The Lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interests of the Lender is owned by citizens of the United States. Further, such Lender certifies that any guarantees received shall be only on loans made by it, operating for itself and not on behalf of foreign citizens or organizations.

V. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender will certify to FmHA, prior to the issuance of a contract of guarantee for each line of credit agreement, that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested the contract of guarantee.

VII. The Lender will *not* be charged a guarantee fee by FmHA.

VIII. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of a loan. The unguaranteed portion

of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender shall perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, line of credit agreement, security instruments, and any supplemental agreements and notifying both FmHA and the Borrower in writing of any violations.

2. Receiving all payments on principal and interest on the loan advances as they fall due.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) taxes, assessment or ground rents against or affecting collateral are paid;

(b) the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

(e) the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart A, § 1980.6(2)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least semiannually and each real estate loan secured Borrower at least annually.

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

IX. *Defaults by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in Subpart F of Part 1980 or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

X. *Liquidation.*

If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. *Lender's proposed plan of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed plan of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan line of credit agreements and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On principal balances in excess of $200,000, and all other loans, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interest necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations.

2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such

amount due to the outstanding principal balance owed on the guaranteed debt (See G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days, thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances, where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XIII below.) In all cases a final Form FmHA 440–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, travel and overhead.

J. *Payment.* Loss settlements will be paid by FmHA within 60 days after the Lender has submitted, and FmHA has agreed to, the final Report of Loss form.

XI. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XII. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIV. *Transfer and Assumption Cases.* Refer to 7 CFR Part 1980, § 1980.577 of Subpart F.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt, FmHA's written consent will be obtained before the transferor-debtor (including personal guarantees) is released from personal liability. The Lender may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and F, and any future amendments of these regulations not inconsistent with this agreement.

XVI. *Execution of Agreements.* This agreement is executed prior to the execution of any Contract of Guarantee(s) under 7 CFR Part 1980, Subparts A and F and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Contract of Guarantee under Appendix G of 7 CFR Part 1980, Subpart F will be considered by FmHA on a case-by-case basis.

XVII. *Notice.*

All requests for Contract of Guarantee(s) and any notices or actions will be initiated through the following FmHA County offices:

XVIII. *Termination of Agreement.* This agreement will terminate as to the Lender's submission of requests for Contract of Guarantee(s) under Appendix G, 7 CFR Part 1980, Subpart F, on September 30, 1984, unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Appendix G, 7 CFR Part 1980, Subpart F and remaining extant at the time of expiration or revocation until those Contracts of Guarantee still extant are concluded.

IX. This Agreement is dated ———.

Lender: (Name) ———

(IRS I.D. Tax) No. ———

By ———

Title ———

Attest: ——— (Seal) ———

UNITED STATES OF AMERICA

Farmers Home Administration

By ———

Title ———

Authority: 7 U.S.C. 1989; sec. 209(c), title II of Pub. L. 95–334, as amended by Pub. L. 96–220 and Pub. L. 97–98, and as affected by Pub. L. 97–370; 7 CFR 2.23; 7 CFR 2.70.

Dated: April 12, 1984.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 84–12056 Filed 5–3–84; 8:45 am]

BILLING CODE 3410–07–M

federal register

Friday
May 4, 1984

Part VII

Department of Energy

Federal Energy Regulatory Commission

NGPA Notices of Determination by Jurisdictional Agencies; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1115]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 30, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the **Federal Register**. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC 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 Road, Springfield, Virginia 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 res. on old OCS lease

Section 103: New onshore production well

Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
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: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS

ISSUED APRIL 30, 1984

VOLUME 1115

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KENTUCKY DEPARTMENT OF MINES & MINERALS									
-APPALACHIAN OIL & GAS CO INC				RECEIVED:	04/06/84	JA: KY			
8428454	506984	1605100000		102-2		BONNIE LOU SMITH #1	WILDCAT	100.0	
8428421	506951	1605100000		102-3		FORDSON COAL COMPANY #1	UNNAMED FIELD-WILDCAT	16.0	COLUMBIA GAS TRAN
				RECEIVED:	04/06/84	JA: KY			
-ARGO ENERGY CORP							CAMPBELL CHURCH	0.0	
8428447	506977	1612100000		103		ASHER/KNUCKLES COMM WELL #1	CAMPBELL CHURCH	0.0	
8428448	506978	1612100000		103		C L FRAZIER WELL #3	CAMPBELL CHURCH	0.0	
8428444	506974	1612100000		103		EUGENE ASHER WELL #1	CAMPBELL CHURCH	0.0	
8428449	506979	1612100000		103		K HENSLEY WELL #1	CAMPBELL CHURCH	0.0	
8428445	506975	1612100000		103		MILLS/FREDERICK COMM WELL #1	CAMPBELL CHURCH	0.0	
8428450	506980	1612100000		103		RONALD JONES WELL #1	CAMPBELL CHURCH	0.0	
8428446	506976	1612100000		103		WOODSON DANIELS WELL #1			
-ASHLAND EXPLORATION INC				RECEIVED:	04/06/84	JA: KY			
8428425	506955	1607157278		103		THURSA B WILLIAMSON #5 - 098811	BIG SANDY	14.0	COLUMBIA GAS TRAN
8428422	506952	1607157780		103		THURSA B WILLIAMSON #6 - 099241	BIG SANDY	2.0	COLUMBIA GAS TRAN
				RECEIVED:	04/06/84	JA: KY			
-BOB HURT DRILLING CO							BIG CREEK - SOUTH WIL	0.0	COLUMBIA GAS TRAN
8428452	506982	1619500000		107-DV		FRALEY SURFACE - HENRY STRATTON #15	BIG CREEK - SOUTH WIL	0.0	COLUMBIA GAS TRAN
8428453	506983	1619500000		107-DV		FRALEY SURFACE - HENRY STRATTON #16	BIG CREEK - SOUTH WIL	0.0	COLUMBIA GAS TRAN
8428451	506981	1619500000		107-DV		HENRY STRATTON #14			
				RECEIVED:	04/06/84	JA: KY			
-CHLOE ENTERPRISES							PIKEVILLE FIELD	0.0	COLUMBIA GAS TRAN
8428384	506913	1619500000		107-DV		JOHN H RASNICK #1	PIKEVILLE FIELD	0.0	COLUMBIA GAS TRAN
8428385	506914	1619500000		107-DV		JOHN H RASNICK #2			
				RECEIVED:	04/06/84	JA: KY			
-COBRA OIL & GAS INC							LAKEVIEW EXT	0.0	COLUMBIA GAS CO O
8428392	506922	1615300000		103		CAPRENTER HEIRS (EARL SPURLOCK) #1	(CHARLIE MAY)	0.0	COLUMBIA GAS CO O
8428393	506923	1615300000		103		EARL SPURLOCK #1			
				RECEIVED:	04/06/84	JA: KY			
-COLUMBIA GAS TRANSMISSION CORP							KENTUCKY AREA C	25.6	COLUMBIA GAS TRAN
8428455	506985	1615900000		103		POCAHONTAS KENTUCKY 820536			
				RECEIVED:	04/06/84	JA: KY			
-COMPASS PETROLEUM INDUSTRIES INC							SHREWSBURY	7.3	EQUITABLE LIFE AS
8428394	506924	1608500000		103		ROBIN DINWIDDIE #2			
				RECEIVED:	04/06/84	JA: KY			
-EQUITABLE LIFE ASSURANCE SOCIETY							READY	11.0	MIDWESTERN GAS TR
8428439	506969	1608558067		107-DV		EQUITABLE-IDA LIKENS #5	NASH	22.0	MIDWESTERN GAS TR
8428388	506916	1606157281		107-DV		EQUITABLE-KIRBY WOOSLEY #1	NASH	22.0	MIDWESTERN GAS TR
8428387	506915	1608556728		107-DV		EQUITABLE-LANYCE FORSYTHE #1	NASH	11.0	MIDWESTERN GAS TR
8428440	506970	1606157626		107-DV		EQUITABLE-MOLLER CATTLE CO #1			
				RECEIVED:	04/06/84	JA: KY			
-GILBERT IMPORTED HARDWOODS INC							WOLF CREEK	8.0	COLUMBIA GAS TRAN
8428390	506920	1615900000		107-DV		GLEN RAY MOORE #1	WOLF CREEK	12.0	COLUMBIA GAS TRAN
8428391	506921	1615900000		107-DV		GLEN RAY MOORE #2			
				RECEIVED:	04/06/84	JA: KY			
-HAR-KEN OIL COMPANY							GRAHAM	365.0	TEXAS GAS TRANSMI
8428431	506961	1617700000		102-4		PEABODY #10	GRAHAM	365.0	TEXAS GAS TRANSMI
8428432	506962	1617700000		102-4		PEABODY #11	GRAHAM	365.0	TEXAS GAS TRANSMI
8428433	506963	1617700000		102-4		PEABODY #12	GRAHAM	365.0	TEXAS GAS TRANSMI
8428434	506964	1617700000		102-4		PEABODY #13	GRAHAM	365.0	TEXAS GAS TRANSMI
8428435	506965	1617700000		102-4		PEABODY #15	GRAHAM	365.0	TEXAS GAS TRANSMI
8428436	506966	1617700000		102-4		PEABODY #18	GRAHAM	365.0	TEXAS GAS TRANSMI
8428426	506956	1617700000		102-4		PEABODY #4	GRAHAM	365.0	TEXAS GAS TRANSMI
8428427	506957	1617700000		102-4		PEABODY #5	GRAHAM	365.0	TEXAS GAS TRANSMI
8428428	506958	1617700000		102-4		PEABODY #7			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8428429	506959	1617700000		102-4		PEABODY #8	GRAHAM	365.0	TEXAS GAS TRANSMI
8428430	506960	1617700000		102-4		PEABODY #9	GRAHAM	365.0	TEXAS GAS TRANSMI
-J W KINZER				RECEIVED:	04/06/84	JA: KY			
8428459	506989	1613300000		107-DV		MONTGOMERY COAL BLOCK 14 WELL 3	BULL CREEK	0.0	COLUMBIA GAS TRAN
8428458	506988	1619300000		107-DV		MONTGOMERY COAL BLOCK 7 WELL 3	BULL CREEK	0.0	COLUMBIA GAS TRAN
8428457	506987	1619300000		108		WASH COMBS #1	BULL CREEK	17.5	KENTUCKY WEST VIR
-JIMMY HAMILTON GAS & OIL				RECEIVED:	04/06/84	JA: KY			
8428397	506927	1611900000		107-DV		F B GAYHEART - WELL 301		24.9	INLAND GAS CO INC
8428401	506931	1611900000		103		GLEN CRAFT WELL 305		288.0	INLAND GAS CO INC
8428396	506926	1611900000		107-DV		GRANT COMBS - WELL 302		20.8	INLAND GAS CO INC
8428398	506928	1611900000		107-DV		J M BAILEY - WELL 304		36.4	INLAND GAS CO INC
8428395	506925	1611900000		107-DV		J M BAILEY WELL 303		25.8	INLAND GAS CO INC
8428399	506929	1611900000		107-DV		TOM B SUTTON - WELL 306		41.7	INLAND GAS CO INC
8428400	506930	1611900000		107-DV		W R SMITH - WELL 184		16.2	INLAND GAS CO INC
-KEPCO INC				RECEIVED:	04/06/84	JA: KY			
8428417	506947	1619500000		107-DV		J S MULLINS - #KF505	KENTUCKY EAST	4.8	KENTUCKY WEST VIR
8428418	506948	1619500000		103		J S MULLINS - #KF505	KENTUCKY EAST	24.7	KENTUCKY WEST VIR
8428419	506949	1613100000		103		RICE BROTHERS MINERAL - #KL543	KENTUCKY EAST	19.4	KENTUCKY WEST VIR
8428386	506912	1619500000		103		WILLIAM MULLINS - #KF507	KENTUCKY EAST	15.0	KENTUCKY WEST VIR
-LAMAR PROPERTIES				RECEIVED:	04/06/84	JA: KY			
8428437	506967	1610700000		102-4		FRANKLIN-LYNCH UNIT #1	NORTONVILLE	40.0	WEST KENTUCKY GAS
8428438	506968	1610700000		102-4		TEAGUE UNIT #1	NORTONVILLE	40.0	WEST KENTUCKY GAS
-MORGAN DRILLING INC				RECEIVED:	04/06/84	JA: KY			
8428420	506950	1615900000		102-3		VINEY MAYNARD #3		0.0	COLUMBIA GAS TRAN
-NEWSOM TIVIS				RECEIVED:	04/06/84	JA: KY			
8428411	506941	1619500000		107-DV		UNITED DEVELOPMENT #7	VIRGIE	0.0	COLUMBIA GAS TRAN
8428415	506945	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #1	VIRGIE	0.0	COLUMBIA GAS TRAN
8428408	506938	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #10	VIRGIE	0.0	COLUMBIA GAS TRAN
8428407	506937	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #11	VIRGIE	0.0	COLUMBIA GAS TRAN
8428406	506936	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #12	VIRGIE	0.0	COLUMBIA GAS TRAN
8428405	506935	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #13	VIRGIE	0.0	COLUMBIA GAS TRAN
8428404	506934	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #14	VIRGIE	0.0	COLUMBIA GAS TRAN
8428403	506933	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #15	VIRGIE	0.0	COLUMBIA GAS TRAN
8428402	506932	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #16	VIRGIE	0.0	COLUMBIA GAS TRAN
8428414	506944	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #3	VIRGIE	0.0	COLUMBIA GAS TRAN
8428413	506943	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #5	VIRGIE	0.0	COLUMBIA GAS TRAN
8428412	506942	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #6	VIRGIE	0.0	COLUMBIA GAS TRAN
8428410	506940	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #8	VIRGIE	0.0	COLUMBIA GAS TRAN
8428409	506939	1619500000		107-DV		UNITED MINERAL DEVELOPMENT #9	VIRGIE	0.0	COLUMBIA GAS TRAN
-OLIVER M ROBERTS				RECEIVED:	04/06/84	JA: KY			
8428456	506986	1619500000		107-DV		A J SPEARS #1	RIVER BRANCH OF JOHNS	0.0	COLUMBIA GAS TRAN
-PANBOWL PRODUCTION CO				RECEIVED:	04/06/84	JA: KY			
8428416	506946	1602500000		108		ELMER BOGGS #2	QUICKSAND	9.0	PANBOWL PRODUCTIO
-TURNER JOHN R				RECEIVED:	04/06/84	JA: KY			
8428389	506919	1602500000		103		ELMER BOGGS #3	QUICKSAND	40.0	PANBOWL PRODUCTIO
-UNITED RECOVERIES INC				RECEIVED:	04/06/84	JA: KY			
8428423	506953	1619500000		107-DV		HELEN LESLIE #1		0.0	COLUMBIA GAS TRAN
8428424	506954	1619500000		103		HELEN LESLIE #1		0.0	COLUMBIA GAS TRAN
-WELCH BROTHERS OIL & GAS INC				RECEIVED:	04/06/84	JA: KY			
8428442	506972	1623500000		103		BEN PATRICK #1	JELLICO CREEK	30.0	GLOBAL PETROLEUM
8428441	506971	1623500000		103		GEORGE BROWN #2	JELLICO CREEK	100.0	GLOBAL PETROLEUM
8428443	506973	1623500000		103		HAROLD PREWITT #1		10.0	
-WISER OIL CO				RECEIVED:	04/06/84	JA: KY	IVY GAP	0.0	
8428460	506990	1613100000		102-2		CURWOOD HUFF #1			

LOUISIANA OFFICE OF CONSERVATION

-AMOCO PRODUCTION CO				RECEIVED:	04/09/84	JA: LA			
8428471	84-0072	1711321233		107-DP		LOUISIANA FURS INC WELL #22	NORTH FRESHWATER BAYO	1095.0	FLORIDA GAS TRANS
-B D E PARTNERSHIP				RECEIVED:	04/09/84	JA: LA			
8428489	84-0094	1706721733		103		MADISON #1	MONROE	1460.0	MID LOUISIANA GAS
-COMMONWEALTH ENERGY INC				RECEIVED:	04/09/84	JA: LA			
8428490	84-0095	1711124091		103		ARVEAL B SMITH #1	MONROE	949.0	IMC PIPELINE CO I
8428494	84-0099	1711124093		103		ARVEAL B SMITH #3	MONROE	949.0	IMC PIPELINE CO I
8428463	84-0047	1706721736		103		BROWN #1 HSU 724	MONROE	1277.5	IMC PIPELINE CO I
8428487	84-0088	1706721752		103		C W SMITH #2	MONROE	949.0	IMC PIPELINE CO I
8428491	84-0096	1711124013		103		IRA GATES #1	MONROE	1095.0	IMC PIPELINE CO I
8428492	84-0097	1711124012		103		JACK GATES #1	MONROE	1022.0	IMC PIPELINE CO I
8428502	84-0100	1707322001		103		JOHNSON #1	MONROE	1022.0	IMC PIPELINE CO I
8428488	84-0089	1707322007		103		MRS G M HILL #2	MONROE	985.5	MID LOUISIANA GAS
8428485	84-0086	1707322009		103		MRS G M HILL #4	MONROE	1168.0	MID LOUISIANA GAS
8428462	84-0046	1706721741		103		NAVARRO #2	MONROE	839.5	IMC PIPELINE CO I
8428461	84-0045	1706721742		103		NAVARRO #3	MONROE	803.0	IMC PIPELINE CO I
8428493	84-0098	1711124011		103		SHIRLEY GANEY #1	MONROE	985.5	IMC PIPELINE CO I
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	04/09/84	JA: LA			
8428496	84-0107	1701724804		102-2		DAY #1	MIRA	79.6	ARKANSAS LOUISIAN
-D J F PETROLEUM CORP				RECEIVED:	04/09/84	JA: LA			
8428500	84-0119	1703122087		103		COOK #2	SPIDER	36.0	TEXAS EASTERN TRA
8428515	84-0121	1703122088		103		HUTCHINS #4	SPIDER	54.0	TEXAS EASTERN TRA
8428499	84-0118	1703121852		103		STOREY #1	SPIDER	36.0	TEXAS EASTERN TRA
-EXXON CORPORATION				RECEIVED:	04/09/84	JA: LA			
8428480	84-0139	1702321155		103		K B HANSZEN #19-D	CHALKLEY	40.0	TEXAS GAS TRANSMI
8428472	84-0075	1710121320		107-DP		W P FOSTER EST #1	GARDEN CITY	1800.0	GULF ENERGY & DEV
-GRIGSBY PETROLEUM INC				RECEIVED:	04/09/84	JA: LA			
8428514	84-0122	1705120493		103		VUA SL 7323 #1 SERIAL NO 159950	W LAKE PONTCHARTRAIN	365.0	SUGAR BOWL GAS CO
-GULF OIL CORPORATION				RECEIVED:	04/09/84	JA: LA			
8428512	84-0125	1707522544		103		S/L 195 'QQ' #293	QUARANTINE BAY FIELD	10.0	UNITED GAS PIPE L
-IMC EXPLORATION COMPANY				RECEIVED:	04/09/84	JA: LA			
8428498	84-0110	1706721277		103 108		KEMO #2	MONROE	109.5	IMC PIPELINE CO I
-JEEMS BAYOU PRODUCTION CORP				RECEIVED:	04/09/84	JA: LA			
8428478	84-0137	1703122178		103		CONTINENTAL CAN CO #7	GROGAN	0.0	TENNESSEE GAS PIP
8428486	84-0087	1703121427		102-2		GEORGE FAIR #1 LAF RA SUD	RED RIVER-BULL BAYOU	139.0	TEXAS EASTERN TRA
8428509	84-0131	1703122114		103		LOWERY INVESTMENT CO B #1	RED RIVER-BULL BAYOU	146.0	LOUISIANA INTRAST
8428505	84-0104	1703122240		102-2		MARSHALL A CALHOUN A #4	BUFFALO BAYOU	182.0	TEXAS EASTERN TRA
8428504	84-0103	1703122252		102-2		MARSHALL A CALHOUN A #5 LAF RA SU	BUFFALO BAYOU	300.0	TEXAS EASTERN TRA
8428503	84-0102	1703122257		102-2		MATTHEWS #1 LAF RA SUI	BUFFALO BAYOU	175.0	TEXAS EASTERN TRA
8428513	84-0124	1703122091		103		MCCULLOUCH-CALLON A S #3	RED RIVER-BULL BAYOU	219.0	LOUISIANA INTRAST
8428511	84-0126	1703122134		103		MUSLOW-SCURLOCK #1	RED RIVER-BULL BAYOU	124.0	LOUISIANA INTRAST
8428506	84-0105	1703122221		102-2		PORTER B #1	BUFFALO BAYOU	190.0	TEXAS EASTERN TRA
8428495	84-0106	1703121743		102-2		SUTHERLIN #1 LAF RA SUF	RED RIVER-BULL BAYOU	95.0	TEXAS EASTERN TRA
8428475	84-0134	1703122055		103		THIGPEN #2	RED RIVER-BULL BAYOU	20.0	LOUISIANA INTRAST
-MCCORMICK OPERATING CO				RECEIVED:	04/09/84	JA: LA			
8428467	84-0064	1711321218		103		FRED STOVALL #10-D	LIVE OAK 6116	300.0	LOUISIANA RESOURC
-MID LOUISIANA GAS COMPANY				RECEIVED:	04/09/84	JA: LA			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	VOLUME 1115 FIELD NAME	PROD	PURCHASER
8428479	84-0138	1711123985		103		MLGC FEE GAS #1218	MONROE GAS FIELD	18.4	MID LOUISIANA GAS
8428477	84-0136	1711123987		103		MLGC FEE GAS #1227	MONROE GAS FIELD	20.8	MID LOUISIANA GAS
8428507	84-0128	1707321981		103		MLGC FEE GAS #1231	MONROE GAS FIELD	23.4	MID LOUISIANA GAS
8428508	84-0129	1707321982		103		MLGC FEE GAS #1232	MONROE GAS FIELD	23.4	MID LOUISIANA GAS
8428510	84-0127	1707321983		103		MLGC FEE GAS #1233	MONROE GAS FIELD	21.6	MID LOUISIANA GAS
8428484	84-0085	1711124116		103		MLGC FEE GAS #1249	MONROE GAS FIELD	27.0	MID LOUISIANA GAS
8428482	84-0084	1711124117		103		MLGC FEE GAS #1250	MONROE GAS FIELD	24.5	MID LOUISIANA GAS
8428483	84-0083	1711124119		103		MLGC FEE GAS #1252	MONROE GAS FIELD	23.4	MID LOUISIANA GAS
8428481	84-0082	1711124151		103		MLGC FEE GAS #1254	MONROE GAS FIELD	20.9	MID LOUISIANA GAS
8428466	84-0050	1711124152		103		MLGC FEE GAS #1255	MONROE GAS FIELD	21.6	MID LOUISIANA GAS
8428465	84-0049	1711124153		103		MLGC FEE GAS #1256	MONROE GAS FIELD	23.3	MID LOUISIANA GAS
8428464	84-0048	1711124157		103		MLGC FEE GAS #1257	MONROE GAS FIELD	23.0	MID LOUISIANA GAS
-PELTO OIL CO				RECEIVED:	04/09/84	JA: LA			
8428469	84-0067	1702321892		107-DP		STATE LEASE 9086 #5	BEITY LAKE	292.0	TEXAS EASTERN TRA
-SPIRIT PETROLEUM				RECEIVED:	04/09/84	JA: LA			
8428474	84-0132	1711112390		103		MID LOUISIANA GAS CO #2 (183349)	MONROE	18.0	MID LOUISIANA GAS
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	04/09/84	JA: LA			
8428501	84-0120	1705721922		103		DIBERT STARK & BROWN #103	CHACAHOULA	32.0	LOUISIANA INTRAST
8428497	84-0109	1700100784		108		FRED LOEWER #1 NWB SU	N W BRANCH	11.0	LOUISIANA GAS SYS
8428476	84-0135	1703120762		103		SOUTHWOOD #19	SPIDER	175.0	LOUISIANA INTRAST
-SUPERIOR OIL CO				RECEIVED:	04/09/84	JA: LA			
8428473	84-0076	1710922604		107-DP		R W BUCKLEY UT 9 #9 91 RC SUA	FOUR ISLE DOME	500.0	UNITED GAS PIPE L
8428470	84-0068	1705120647		107-DP		S L 356A #1	QUEEN BESS ISLAND	4000.0	
-UNION TEXAS PETROLEUM				RECEIVED:	04/09/84	JA: LA			
8428468	84-0066	1710121338		107-DP		S/S 10251 #1	EAST LAKE SAND 5629	564.0	

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

-ADOBE OIL & GAS CORPORATION				RECEIVED:	04/06/84	JA: PA			
8428305	22430	3703321634		102-2		COMMONWEALTH OF PA #324 #2	THE KNOBS "E"	24.0	
-BETA 79-S T JOINT VENTURE				RECEIVED:	04/06/84	JA: PA			
8428376	21248	3706521972		108		MCKINLEY #1	PINECREEK	1.5	NATIONAL FUEL GAS
-CARDINAL OIL CO				RECEIVED:	04/06/84	JA: PA			
8428311	21330	3704921605		108		A KUZMA #1 82-2 PA PER ERI-21605	CONNEAUT	0.0	NATIONAL FUEL GAS
8428313	21332	3704921915		108		A MATASOWSKI #1 82-4	CONNEAUT	0.0	NATIONAL FUEL GAS
8428314	21333	3704921892		108		D CAMP #1 82-5 PA PER ERI-21892	CONNEAUT	0.0	NATIONAL FUEL GAS
8428315	21334	3704921893		108		D CAMP #2 82-6 PA PER ERI-21893	CONNEAUT	0.0	NATIONAL FUEL GAS
8428307	19376	3703921887		103		DARREL BRICKNER #1 82-36	CONNEAUT	0.0	COLUMBIA GAS TRAN
8428310	21329	3704921885		108		E BROOKS #1 82-1 PA PER ERI-21885	CONNEAUT	0.0	NATIONAL FUEL GAS
8428312	21331	3704921894		108		HUDACKY-WADSWORTH #1 82-3	CONNEAUT	0.0	NATIONAL FUEL GAS
8428309	21328	3704921583		108		JULIA EATON 81-41 PA PER ERI-21583	CONNEAUT	0.0	NATIONAL FUEL GAS
8428308	21327	3704921576		108		R N COPE 81-40 PA PER ERI-21576	CONNEAUT	0.0	NATIONAL FUEL GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/06/84	JA: PA			
8428316	20069	3706525543		108		BANNOE UNIT #1 WN-1814	BANKS	21.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED:	04/06/84	JA: PA			
8428321	22642	3703921999		103		A BYLER UNIT #1 KV-55	SPARTA	25.0	COLUMBIA GAS TRAN
8428325	22641	3703921999		107-TF		A BYLER UNIT #1 KV-55	SPARTA	25.0	COLUMBIA GAS TRAN
8428319	22636	3703921997		103		B BERKEY UNIT #1 KV-59	SPARTA	25.0	COLUMBIA GAS TRAN
8428323	22635	3703921997		107-TF		B BERKEY UNIT #1 KV-59	SPARTA	25.0	COLUMBIA GAS TRAN
8428320	22638	3703921998		103		BLOOMFIELD UNIT #1 KV-62	SPARTA	25.0	COLUMBIA GAS TRAN
8428326	22643	3703921998		107-TF		BLOOMFIELD UNIT #1 KV-62	SPARTANSBURG	25.0	COLUMBIA GAS TRAN
8428318	22633	3703921991		103		GEORGE LONG #1 KV-63	SPARTANSBURG	25.0	COLUMBIA GAS TRAN
8428322	22634	3703921991		107-TF		GEORGE LONG #1 KV-63	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
8428328	22731	3706326793		108		GLENN MACK #2 KN-20	SPARTANSBURG	25.0	COLUMBIA GAS TRAN
8428317	22632	3703921993		103		I ROSE KV-64	SPARTANSBURG	25.0	COLUMBIA GAS TRAN
8428324	22637	3703921993		107-TF		I ROSE KV-64	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
8428327	20951	3706326839		108		LEONARD GOSS #1 KA-126	UPPER DEVONIAN SANDS	25.0	COLUMBIA GAS TRAN
8428329	22732	3706325652		108		R P COAL CO #8 KJ-10	UPPER DEVONIAN SANDS	20.0	PEOPLES NATURAL G
8428330	22733	3706325551		108		WALTER PIEKARSKI #1 KN-8			
-FELMONT OIL CORPORATION				RECEIVED:	04/06/84	JA: PA			
8428333	22526	3702120229		103		JEAN POUTRAIN #1 F-363 SHALLOW	DRISCOLL HOLLOW	5.0	CONSOLIDATED GAS
8428331	22527	3702120229		102-3		JEAN POUTRAIN #1 F-363 DEEPER	DRISCOLL HOLLOW	25.0	CONSOLIDATED GAS
8428332	22739	3702120241		102-2		JEAN POUTRAIN #4 F-366	DRISCOLL HOLLOW FIELD	35.0	CONSOLIDATED GAS
-HARRIET J BROWN				RECEIVED:	04/06/84	JA: PA			
8428306	22622	3712500000		107-PE		CRUMRINE	DEEMSTON BOROUGH	3.6	PEOPLES NATURAL G
-INGRAM ENTERPRISES INC				RECEIVED:	04/06/84	JA: PA			
8428334	22629	3703922049		103		R LAIRD #2	LINESVILLE	30.0	NATIONAL FUEL GAS
-J & J ENTERPRISES INC				RECEIVED:	04/06/84	JA: PA			
8428335	21089	3706522147		108		F S BIZOUSKY #1	PUNXSUTAWNEY BORO	0.0	CONSOLIDATED GAS
8428336	21091	3706325149		108		ORVILLE WATSON #3	CENTER	0.0	T W PHILLIPS GAS
-KRIEBEL GAS CO INC				RECEIVED:	04/06/84	JA: PA			
8428338	22558	3703321734		103		MILLER/SHIELDS #1	CLOVER ROAD	30.0	
-KRIEBEL WELLS &3				RECEIVED:	04/06/84	JA: PA			
8428337	22528	3703321682		103		FREEMAN #2	TROUTVILLE	25.0	
8428339	22559	3703321745		103		SUNDERLIN #1	TROUTVILLE	30.0	
-MERIDIAN EXPLORATION CORP				RECEIVED:	04/06/84	JA: PA			
8428343	20610	3705324600		108		M10-076-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428344	20611	3705324601		108		M11-077-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428345	20612	3705324602		108		M12-078-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428346	20613	3705324603		108		M13-079-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428347	20614	3705324604		108		M14-080-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428348	20615	3705324569		108		M15-081-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428349	20616	3705324570		108		M16-082-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428350	20617	3705324571		108		M17-083-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428351	20618	3705324567		108		M18-084-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428352	20620	3705323185		108		M2-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428353	20621	3705323186		108		M3-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428354	20622	3705323187		108		M4-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428355	20623	3705323285		108		M5-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428356	20624	3705323286		108		M6-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428340	20532	3705324567		108		M7-073-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428341	20608	3705324568		108		M8-074-WARRANT 5212	WHIG HILL	1.0	NATIONAL FUEL GAS
8428342	20609	3705324599		108		M9-075-5212			
-MITCH-WELL ENERGY INC				RECEIVED:	04/06/84	JA: PA			
8428357	22646	3704922961		102-2		CARROLL-YOUNG #1	LEBOEUF FIELD	0.0	COLUMBIA GAS TRAN
8428358	22645	3704922961		107-TF		CARROLL-YOUNG #1	LEBOEUF FIELD	0.0	COLUMBIA GAS TRAN
-NRM PETROLEUM CORPORATION				RECEIVED:	04/06/84	JA: PA			
8428365	22614	3704923293		102-2		BALAS #1	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8428360	22590	3704923217		102-2		BRACE #1	ERIE	0.0	COLUMBIA GAS TRAN
8428369	22591	3704923217		107-TF		BRACE #1	ERIE	0.0	COLUMBIA GAS TRAN
8428374	22607	3704923280		107-TF		BROWN D #2	NEW IRELAND	0.0	COLUMBIA GAS TRAN
8428366	22616	3704923297		102-2		BROWN E #2	MICE VILLAGE	0.0	COLUMBIA GAS TRAN
8428361	22594	3704923079		102-2		HINKSON #1	ERIE	0.0	COLUMBIA GAS TRAN
8428370	22595	3704923079		107-TF		HINKSON #1	ERIE	0.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8428371	22597	3704923081		107-TF		MENGERA #1
8428362	22596	3704923081		102-2		MONGERA #1
8428363	22598	3704923120		102-2		MONGERA A #1
8428372	22599	3704923120		107-TF		MONGERA A #1
8428367	22618	3704923395		102-2		PORTER #1
8428375	22619	3704923395		107-TF		PORTER #1
8428368	22589	3704923137		107-TF		ROBERTSON A #1
8428359	22588	3704923137		102-2		ROBERTSON A7
8428364	22600	3704923110		102-2		TOMCHO #1
8428373	22601	3704923110		107-TF		TOMCHO #1
-S T JOINT VENTURE - 78 B				RECEIVED:	04/06/84	JA: PA
8428378	21249	3706521973		108		BULLERS #1
8428377	21242	3706521814		108		KIRKMAN #1
-S T JOINT VENTURE 82-D				RECEIVED:	04/06/84	JA: PA
8428379	22664	3703321708		102-2		MCGARVEY #1
8428380	22671	3703321709		102-2		MCGARVEY #2
-S T JOINT VENTURE 82E				RECEIVED:	04/06/84	JA: PA
8428382	22670	3703321712		102-2		NORWOOD COMPANY #1
8428381	22665	3703321728		102-2		SMITH #1 (44 ACRES)
-S T JOINT VENTURE 83A				RECEIVED:	04/06/84	JA: PA
8428383	22666	3703321705		102-2		SMITH #2 (65 ACRES)

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FIELD NAME	PROD	PURCHASER
NEW IRELAND	0.0	COLUMBIA GAS TRAN
NEW IRELAND	0.0	COLUMBIA GAS TRAN
ALDER RUN	0.0	COLUMBIA GAS TRAN
ALDER RUN	0.0	COLUMBIA GAS TRAN
NEW IRELAND	0.0	COLUMBIA GAS TRAN
NEW IRELAND	0.0	COLUMBIA GAS TRAN
LE BOEUF	0.0	COLUMBIA GAS TRAN
LE BACIEF	0.0	COLUMBIA GAS TRAN
ALDER RUN	0.0	COLUMBIA GAS TRAN
ALDER RUN	0.0	COLUMBIA GAS TRAN
PINECREEK	1.5	NATIONAL FUEL GAS
PINECREEK	25.0	NATIONAL FUEL GAS
JORDAN	25.0	COLUMBIA GAS TRAN
JORDAN	25.0	COLUMBIA GAS TRAN
JORDAN	25.0	COLUMBIA GAS TRAN
JORDAN	25.0	COLUMBIA GAS TRAN
KNOX	25.0	COLUMBIA GAS TRAN

[FR Doc. 84-12100 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1116]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 30, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the **Federal Register.** Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC 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 Road, Springfield, Virginia 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 res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
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: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS

ISSUED APRIL 30, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION **********									
-ALDEN AURORA GAS CO INC				RECEIVED: 04/09/84		JA: NY			
8428680	7291	3103717384		107-TF		DIEHL #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428676	7288	3103717390		107-TF		GAMMACK #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428679	7292	3102918152		107-TF		KIRKMAN #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428677	7289	3103717388		107-TF		RUHLMAN #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428678	7290	3103717386		107-TF		SCHWENDLER #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
-BEANE ENERGY CORP				RECEIVED: 04/09/84		JA: NY			
8428689	7297	3102918266		107-TF		BURZYNSKI #2	ALDEN-LANCASTER	10.0	BENEFIT DRILLING
8428688	7298	3102918268		107-TF		FREY #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428682	7294	3102918267		107-TF		SNYDER #2	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428683	7296	3102918312		107-TF		SNYDER #7	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428684	7295	3102918309		107-TF		ZOLA #1	ALDEN-DARIEN	10.0	BENEFIT DRILLING
8428681	7293	3102918269		107-TF		ZOLA #2	ALDEN-LANCASTER	10.0	BENEFIT DRILLING
-LENAPE RESOURCES CORP				RECEIVED: 04/09/84		JA: NY			
8428675	5940	3105117460		102-2	107-TF	C A ANDERSON UNIT #1 LRC #220	LIECESTER	20.0	ELIZABETHTOWN GAS
8428691	7145	3105117466		102-2	107-TF	D K LANIAK UNIT #1 LRC #224	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428697	5708	3105117428		102-2	107-TF	F E ANDERSON #1 LRC #191	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428692	5900	3105117427		102-2	107-TF	F E ANDERSON #2 LRC #192	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428696	5511	3105117425		102-2	107-TF	F E ANDERSON UNIT #2 LRC #185	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428698	5513	3105117434		102-2	107-TF	G E LAPP UNIT #1 LRC #190	UHLEY CORNERS	13.7	ELIZABETHTOWN GAS
8428685	5620	3105117363		108		H A CHAPMAN UNIT #1 LRC #149	CALEDONIA	8.8	ELIZABETHTOWN GAS
8428690	5622	3105117352		108		H W STEIN UNIT #1 LRC #140	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428699	5856	3105117359		102-2	107-TF	I G KEENEY UNIT #1 LRC #148	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428695	5710	3105117430		102-2	107-TF	K B SIMPSON #2 LRC #194	LEICESTER	20.0	ELIZABETHTOWN GAS
8428694	7143	3105117461		102-2	107-TF	K F BOVEE #1 LRC #221	CALEDONIA	20.0	ELIZABETHTOWN GAS
8428693	5902	3105117459		102-2	107-TF	R & D JOHNSON #1 LRC #215	WILDCAT	2.8	ELIZABETHTOWN GAS
8428687	5617	3105117368		108		S R POWELL #1 LRC #154	CALEDONIA	15.7	ELIZABETHTOWN GAS
8428686	5619	3105117355		108		WEEWOOD FARM UNIT #2 LRC #150			
-MITCHELL EXPLORATION CORP				RECEIVED: 04/09/84		JA: NY			
8428705	7235	3100918613		103	107-TF	E BISSEL UNIT #1 03872	WILDCAT (MEDINA)	13.7	COLUMBIA GAS TRAN
8428703	7239	3100318651		103	107-TF	H KOZIOL UNIT #1 03892	WILDCAT (MEDINA)	20.5	
8428702	7243	3100918553		103	107-TF	H KROTJE UNIT #1 03792	WILDCAT (MEDINA)	13.7	COLUMBIA GAS TRAN
8428704	7237	3100918558		103	107-TF	M ROGERS UNIT #1 03793	WILDCAT (MEDINA)	13.7	COLUMBIA GAS TRAN
8428701	7241	3100318679		103	107-TF	R KERR UNIT #1 03920	WILDCAT (MEDINA)	13.7	
-UNIVERSAL RESOURCES HOLDINGS INC				RECEIVED: 04/09/84		JA: NY			
8428700	7300	3101318205		103	107-DP	SMITH UNIT #1	CHARLOTTE	20.0	COLUMBIA GAS TRAN
-WOODMERE ENERGY DRILLING PROGRAM 82				RECEIVED: 04/09/84		JA: NY			
8428674	7030	3103717464		102-2		OBER #1	WILDCAT	20.0	NATIONAL FUEL GAS
********** WEST VIRGINIA DEPARTMENT OF MINES **********									
-ALAN GABLE OIL DEVELOPMENT CO				RECEIVED: 04/09/84		JA: WV			
8428652		4708505763		103		BONNELL #1	CLAY	0.0	CARNEGIE NATURAL
8428658		4708506043		103		BORDER #2	MURPHY	0.0	CONSOLIDATED GAS
8428661		4708505928		103		BYERS #1	ELLENBORO	0.0	CONSOLIDATED GAS
8428644		4710501030		103		CAIRO OIL #1	BURNING SPRING	0.0	CONSOLIDATED GAS

BILLING CODE 6717-01-M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8428642		4707301534		103		CHAMBERS #3	JEFFERSON	0.0	
8428665		4708505694		103		DAVIS #1	ELIZABETH	0.0	CONSOLIDATED GAS
8428659		4708505987		103		ELDER #3	MURPHY	1.3	CONSOLIDATED GAS
8428651		4707301621		103		FARNSWORTH #2	MCKIM	0.0	PLEASANTS COUNTY
8428653		4708505564		103		H G BALL #1	UNION	0.0	CARNEGIE NATURAL
8428667		4708505617		103		HILL #1	MACFARLAN	0.0	CONSOLIDATED GAS
8428664		4708505639		103		JACKSON #1	GRANT	1.3	CONSOLIDATED GAS
8428646		4708506569		103		JACKSON #10	GRANT	0.0	CONSOLIDATED GAS
8428645		4708506561		103		JACKSON #15	GRANT	0.0	CONSOLIDATED GAS
8428663		4708505640		103		JACKSON #2	GRANT	1.2	CONSOLIDATED GAS
8428650		4708505868		103		JACKSON #20	GRANT	0.0	CONSOLIDATED GAS
8428656		4708506248		103		JACKSON #3 REVISED	GRANT	0.0	CONSOLIDATED GAS
8428662		4708505642		103		JACKSON #4	GRANT	1.1	CONSOLIDATED GAS
8428657		4708505816		103		JACKSON #8 (NOTE: FORMERLY ELDER #8	GRANT	1.0	CONSOLIDATED GAS
8428647		4708505738		103		KIBBEE #1	GRANT	0.0	CONSOLIDATED GAS
8428654		4708506636		103		LAMBERT #1	CLAY	0.0	CONSUMERS GAS UTI
8428648		4708505838		103		LAYFIELD #2	GRANT	0.0	CONSUMERS GAS UTI
8428640		4708505856		103		MAGNUM "SCADDEN" #1	GRANT	0.0	CONSOLIDATED GAS
8428643		4707301638		103		METHENEY #2	JEFFERSON	0.0	CONSOLIDATED GAS
8428660		4708505932		103		NICHOLS #1	SCHULTZ	1.5	CONSOLIDATED GAS
8428655		4708505965		103		NICHOLS #2	SCHULTZ	1.0	CONSOLIDATED GAS
8428666		4708505483		103		ROSS #1	SCHULTZ	2.0	CONSOLIDATED GAS
8428649		4707301520		103		S R ROGERS #1	WILLOW ISLAND	1.0	CONSOLIDATED GAS
8428641		4708506057		103		SCADDEN #6	GRANT	0.0	CONSOLIDATED GAS
-ALLEGHENY & WESTERN ENERGY CORP				RECEIVED:	04/09/84	JA: WV			
8428526		4701100763		107-DV		A BLANKENSHIP #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428574		4701100763		103		A BLANKENSHIP #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428569		4701100769		103		BARBOUR #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428568		4701100772		103		BARRETT #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428528		4701100766		107-DV		E FORTNER #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428572		4701100766		103		E FORTNER #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428521		4701100729		107-DV		E H JOHNSON #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428573		4701100765		103		E H JOHNSON #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428579		4701100729		103		E H JOHNSON #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428527		4701100765		107-DV		E H JOHNSON #2	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428523		4701100739		107-DV		J WHEELER #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428577		4701100739		103		J WHEELER #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428567		4701100768		103		M HATTEN #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428525		4701100761		107-DV		PULLEN #2	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428575		4701100761		103		PULLEN #2	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428524		4701100760		107-DV		PULLEN #3	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428576		4701100760		103		PULLEN #3	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428522		4701100738		107-DV		SPURLOCK #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428578		4701100738		103		SPURLOCK #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8428529		4701100767		107-DV		V ADKINS #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428570		4701100767		103		V ADKINS #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
-APPCO OIL & GAS CORP				RECEIVED:	04/09/84	JA: WV			
8428637		4708506491		107-DV		ROWE #1	GRANT	0.0	CONSOLIDATED GAS
8428636		4710701261		107-DV		WESTFALL #5	CLAY	0.0	GAS TRANSPORT INC
-ARABIE INC				RECEIVED:	04/09/84	JA: WV			
8428566		4708703543		107-DV		HILDRETH #1-A	HARPER DISTRICT	24.0	ROARING FORK GAS
8428565		4708703541		107-DV		HILDRETH #2	HARPER DISTRICT	22.0	ROARING FORK GAS
-ASHLAND EXPLORATION INC				RECEIVED:	04/09/84	JA: WV			
8428625		4708703440		102-3		ELIZABETH W PERKINS #26 - 091931	NEW FIELD	15.0	CONSOLIDATED GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:	04/09/84	JA: WV			
8428612		4708330822		103		L HARMAN #1 -	DRY FORK	25.0	
8428615		4708320822		102-2		L HARMAN #1	DRY FORK	25.0	
8428613		4700121949		107-DV		WOLFE #2	GLADE DISTRICT	15.3	BROOKLYN UNION GA
8428614		4700121949		103		WOLFE #2	GLADY DISTRICT	15.3	BROOKLYN UNION GA
8428616		4700121949		102-3		WOLFE #2	GLADE DISTRICT	15.3	BROOKLYN UNION GA
-BRAXTON OIL AND GAS CORP				RECEIVED:	04/09/84	JA: WV			
8428590		4708300767		107-DV		MALM #5	ELLAMORE	40.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/09/84	JA: WV			
8428591		4708505528		108		FRANKLIN D SPEARS 12756	GRANT	1.0	GENERAL SYSTEM PU
8428586		4710900299		108		GUY L CHAMBERS 9310	OCEANA	14.0	GENERAL SYSTEM PU
8428545		4710900255		108		LOUP CREEK COLLIERY CO 9174	OCEANA	14.0	GENERAL SYSTEM PU
8428552		4703302282		108		M R LODGE 12627	SIMPSON	4.0	GENERAL SYSTEM PU
8428585		4700101608		108		PAUL PICKENS 12697	ELK	17.0	GENERAL SYSTEM PU
8428543		4704700859		108		POCAHONTAS LAND CO 12714	ADKIN	7.0	GENERAL SYSTEM PU
8428548		4700101777		108		RALPH L JONES 12762	PHILIPPI	8.0	GENERAL SYSTEM PU
8428550		4708506392		103		VESTA MITCHELL 12881	GRANT	0.2	GENERAL SYSTEM PU
8428551		4708506371		103		VESTA MITCHELL 12882	GRANT	1.0	GENERAL SYSTEM PU
8428549		4700100209		108		WILBUR CASTO 10705	UNION	9.0	GENERAL SYSTEM PU
8428555		4706100343		108		WM J LEMASTERS 11900	BATELLE	5.0	GENERAL SYSTEM PU
-DAUCO DRILLING CO				RECEIVED:	04/09/84	JA: WV			
8428584		4701120722		103		EDGAR CLAY #2	RACCOON CREEK	12.0	COLUMBIA GAS TRAN
-DELTA DRILLING CO				RECEIVED:	04/09/84	JA: WV			
8428517		4708703787		107-DV		C P LOONEY #1	SMITHFIELD	0.0	COLUMBIA GAS TRAN
8428518		4708703789		107-DV		LOONEY-RAMSEY #1	SMITHFIELD	0.0	COLUMBIA GAS TRAN
8428519		4708703788		107-DV		NIDA-KELLY UNIT #1	WALTON	0.0	COLUMBIA GAS TRAN
-EASTERN AMERICAN ENERGY CORPORATION				RECEIVED:	04/09/84	JA: WV			
8428571		4709100372		103		BURTON #1	FLEMINGTON	10.0	EASTERN PIPELINE
8428520		4703505324		107-DV		JACKSON #2	MURPHY	5.0	CONSOLIDATED GAS
8428580		4708505324		103		JACKSON #2	MURPHY	5.0	CONSOLIDATED GAS
8428581		4700101975		103		TALBOTT #1	VALLEY	10.0	EASTERN PIPELINE
-FOX DRILLING CO INC				RECEIVED:	04/09/84	JA: WV			
8428629		4700101713		103		C KELLY #1 (47-001-1713)	COVE	10.0	TENNESSEE GAS TRA
8428627		4700101665		103		E D MARSH #1 47-001-1665	GRADY CREEK	10.0	TENNESSEE GAS TRA
8428631		4700101807		103		S AUVIL #1 (47-001-1807	COVE	10.0	TENNESSEE GAS TRA
-FRANKLIN ADKINS				RECEIVED:	04/09/84	JA: WV			
8428626		4709921778		107-DV		ASBURY #2	LINCOLN DISTRICT	18.0	COLUMBIA GAS TRAN
8428628		4709921778		103		ASBURY #2	LINCOLN DISTRICT	18.0	COLUMBIA GAS TRAN
-GENE STALNAKER INC				RECEIVED:	04/09/84	JA: WV			
8428516		4708506384		103		GIEBELL B-93-4	CLAY	11.8	PENNSBORO GLASS F
-GENESIS LTD #2				RECEIVED:	04/09/84	JA: WV			
8428556		4700101322		108		BARBOUR CTY FAIRGROUNDS #1	LAUREL RUN	15.0	COLUMBIA GAS TRAN
-GERONIMO OIL & GAS				RECEIVED:	04/09/84	JA: WV			
8428564		4707301239		107-DV		PRYOR #1	MCKIM DISTRICT	11.0	COLUMBIA GAS TRAN
8428563		4707301249		107-DV		PRYOR #2 PLE 1249-47-073	MCKIM DISTRICT	18.3	COLUMBIA GAS TRAN
-HARBERT ENERGY CORP				RECEIVED:	04/09/84	JA: WV			
8428592		4708505971		108		FRANCIS #1 (5971)	GRANT	20.0	CONSOLIDATED GAS
8428594		4708505887		108		FRANCIS #3 (5887)	GRANT	14.0	CONSOLIDATED GAS
8428593		4708505933		108		MOSS #1 (5933)	GRANT	15.0	CONSOLIDATED GAS
8428595		4708505906		108		NICHOLS #2 (5906)	GRANT	17.0	CONSOLIDATED GAS

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-HAUGHT INC				RECEIVED:	04/09/84 JA: WV				
8428583		4708505615		108		M STANLEY H-1323	GRANT DISTRICT	35.0	CONSOLIDATED GAS
8428582		4708505440		108		STANLEY H-1302	GRANT DISTRICT	20.0	CONSOLIDATED GAS
-J & J ENTERPRISES INC				RECEIVED:	04/09/84 JA: WV				
8428618		4703302477		108		B-395	TENMILE	0.0	CONSOLIDATED GAS
8428617		4704102959		108		B-400	HACKERS CREEK	0.0	CONSOLIDATED GAS
8428620		4700101549		108		B-426	PHILIPPI	0.0	CONSOLIDATED GAS
-KAISER EXPLORATION & MINING CO				RECEIVED:	04/09/84 JA: WV				
8428531		4703501745		107-DV		BILL REGER KEM #241	ELK/POCA	29.4	KAISER ALUMINUM &
8428530		4703501816		107-DV		BILLY REGER KEM #316	FAIRPLAIN	15.0	KAISER ALUMINUM &
8428669		4703501832		107-DV		C A JEWELL KEM #377	SILVERTON	11.0	KAISER ALUMINUM &
8428533		4703501672		107-DV		CARLOS 1 EPLING KEM #149	ELK/POCA	15.0	KAISER ALUMINUM &
8428534		4703501897		107-DV		CHESTER BOARD KEM #447	ELK/POCA	15.0	KAISER ALUMINUM &
8428532		4703501689		107-DV		ESTEL SIMMONS KEM #158	ELK/POCA	15.0	KAISER ALUMINUM &
8428668		4703501824		107-DV		J DARR WINTER KEM #160	ELK/POCA	15.0	KAISER ALUMINUM &
8428671		4703501868		107-DV		JOHN REYNOLDS KEM #339	ELK/POCA	15.0	KAISER ALUMINUM &
8428535		4703501895		107-DV		KEITH JONES KEM #343	FAIRPLAIN	15.0	KAISER ALUMINUM &
8428672		4703501891		107-DV		KENNETH CARNEY KEM #472	ELK/POCA	15.0	KAISER ALUMINUM &
8428673		4703501874		107-DV		RAYMOND CASTO KEM #435	ELK/POCA	15.0	KAISER ALUMINUM &
8428670		4703501849		107-DV		T J RANDOLPH KEM #280	ELK/POCA	15.0	KAISER ALUMINUM &
-KENNETH DAVIS				RECEIVED:	04/09/84 JA: WV				
8428557		4701120696		107-DV		OKEY HATFIELD #3	WEST HAMLIN	8.0	COLUMBIA GAS TRAN
-L & B OIL CO INC				RECEIVED:	04/09/84 JA: WV				
8428587		4707301525		107-DV		J B WILSON #1	JEFFERSON	25.0	
-PENNZOIL COMPANY				RECEIVED:	04/09/84 JA: WV				
8428632		4708703593		108		C W RADEKER #31	RICHARDSON	8.3	CONSOLIDATED GAS
8428635		4708703634		108		C W RADEKER #36	RICHARDSON	8.3	CONSOLIDATED GAS
-PETROLEUM DEVELOPMENT CORP				RECEIVED:	04/09/84 JA: WV				
8428607		4708506365		102-3		SEWELL KIBEE #1	LOCUST RUN	990.0	CONSOLIDATED GAS
8428619		4708506365		103		SEWELL KIBEE #1	LOCUST RUN	990.0	CONSOLIDATED GAS
8428606		4708506365		107-DV		SEWELL-KIBEE #1	LOCUST RUN	990.0	CONSOLIDATED GAS
-PETROLEUM RESOURCES INC				RECEIVED:	04/09/84 JA: WV				
8428608		4708505815		103		DEBERRY #1	UNION	30.0	CONSOLIDATED GAS
8428610		4702103937		103		GOLDSMITH #2A	GLENVILLE	25.0	CONSOLIDATED GAS
8428605		4704103313		103		MCCLAIN #1A	COLLINS	70.0	CONSOLIDATED GAS
8428622		4704103309		103		MULLINAX #4B	COLLINS	40.0	CONSOLIDATED GAS
8428621		4704103310		103		MULLINAX #5B	COLLINS	60.0	CONSOLIDATED GAS
8428609		4704103316		103		WATSON #1A	COLLINS	50.0	CONSOLIDATED GAS
8428611		4702103936		103		WELCH #2A	GLENVILLE	30.0	CONSOLIDATED GAS
-QUAKER STATE OIL REFINING CORP				RECEIVED:	04/09/84 JA: WV				
8428560		4703923734		103		B MCCABE #2	ELK DISTRICT	5.5	COLUMBIA GAS TRAN
8428559		4710321225		103		JOHN MILLS JR #155	GRANT DISTRICT	2.2	CONSOLIDATED GAS
8428558		4710321226		103		JOHN MILLS JR #156	GRANT DISTRICT	2.2	CONSOLIDATED GAS
8428562		4703923581		103		JOHN RAY #2	BIG SANDY DISTRICT	8.8	COLUMBIA GAS TRAN
8428561		4703923587		103		V DOUGLAS #2	ELK DISTRICT	4.4	COLUMBIA GAS TRAN
-RIMROCK PRODUCTION CORP				RECEIVED:	04/09/84 JA: WV				
8428638		4710501008		107-DV		GREENVILLE #1	HUGHES RIVER	52.9	CABOT CORP
8428639		4710500981		107-DV		J W HALE #1-A	LEE RUN	18.3	CABOT CORP
-ROCKWELL PETROLEUM CO				RECEIVED:	04/09/84 JA: WV				
8428634		4702101322		108		BYRD #1	BYRD	0.0	CONSOLIDATED GAS
8428633		4702101247		108		COOPER #1	BYRD	0.0	CONSOLIDATED GAS
8428630		4702101196		108		CRITES #1	CRITES	0.0	CONSOLIDATED GAS
-STERLING DRILLING AND PROD CO INC				RECEIVED:	04/09/84 JA: WV				
8428553		4701502034		108		BRAGG #622	OTTER DISTRICT	26.3	BROOKLYN UNION GA
8428554		4701502051		108		BRAGG #657	OTTER DISTRICT	21.7	BROOKLYN UNION GA
8428547		4700701629		108		KIDD #463	SALT LICK DISTRICT	28.7	
8428546		4704103090		108		MCWHORTER #524	SKIN CREEK DISTRICT	5.0	BROOKLYN UNION GA
8428588		4702103823		108		SPONAUGLE #499	CENTER DISTRICT	21.5	COLUMBIA GAS TRAN
8428589		4702103824		108		SPONAUGLE #500	CENTER DISTRICT	5.7	COLUMBIA GAS TRAN
-STONEWALL GAS CO INC				RECEIVED:	04/09/84 JA: WV				
8428624		4701703225		103		COX #2 186-S	NEW MILTON	129.0	CONSOLIDATED GAS
8428623		4701703242		103		HOWARD HUSK #2 124-S	SOUTHWEST	15.0	EQUITABLE GAS CO
-SWIFT ENERGY CO				RECEIVED:	04/09/84 JA: WV				
8428542		4702103771		108		ALLEN #1A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428541		4702103772		108		ALLEN #2A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428540		4702103773		108		ALLEN #3-A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428598		4702103819		108		CLARK #1	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428599		4702103820		108		CLARK "A" #1A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428600		4702103821		108		CLARK "A" #2A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428597		4702103811		108		CLARK "A" #3A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428603		4704103008		108		CLARK "B" #2	ASPINALL FINSTER	25.0	TENNESSEE GAS PIP
8428602		4704103009		108		CLARK "B" #3	ASPINALL FINSTER	25.0	TENNESSEE GAS PIP
8428604		4704103073		108		GARTON #1	FINSTER-ASPINALL	25.0	TENNESSEE GAS PIP
8428539		4702103774		108		LYNCH #1	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428538		4702103785		108		MICK #1A	GLENVILLE NORTH	2.5	TENNESSEE GAS PIP
8428601		4702103844		108		TOMBLIN #1-A	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428536		4702103808		108		WELCH #1	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428537		4702103786		108		WELCH #4	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428596		4702103810		108		WELCH #5	GLENVILLE NORTH	25.0	TENNESSEE GAS PIP
8428544		4700701707		108		WELCH #6	SALT LICK	25.0	TENNESSEE GAS PIP
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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM									
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-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	04/09/84 JA: NM L				
8428736	RNM0215-83	3004100000		108		FARRELL-FEDERAL #6	CHAVEROO (SAN ANDRES)	0.4	CITIES SERVICE OI
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	04/09/84 JA: NM L				
8428744	RNM0375-83	3001523508		103		GOVERNMENT AM #1	UNDESIGNATED ATOKA	102.0	
-CONOCO INC				RECEIVED:	04/09/84 JA: NM L				
8428741	RNM0358-83	3002528011		103		LOCKHART B-13A #9	NMFU - DRINKARD	3.6	GETTY OIL CO
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/09/84 JA: NM L				
8428742	RNM001483PB	3002500000		108-PB		JUSTIS BC FEDERAL COM #3	JUSTIS	0.0	EL PASO NATURAL G
-EXXON CORPORATION				RECEIVED:	04/09/84 JA: NM L				
8428747	RNM0001-84	3001524379		103		YATES C FEDERAL #15	AVALON (DELAWARE)	80.0	PHILLIPS PETROLEU
8428740	RNM0342-83	3001524501		103		YATES C FEDERAL #22	UNDESIG AVALON	15.0	
-GETTY OIL COMPANY				RECEIVED:	04/09/84 JA: NM L				
8428738	RNM0011-84	3001524496		103		D D FEDERAL 24 WELL #1	UNDESIGNATED CANYON L	173.3	TRANSWESTERN PIPE
-HNG OIL COMPANY				RECEIVED:	04/09/84 JA: NM L				
8428726	RNM0127-84	3002528488		102-2		PITCHFORK RANCH "28" FEDERAL COM #1	PITCHFORK RANCH	0.0	TRANSWESTERN PIPE
-JUBILEE ENERGY CORP				RECEIVED:	04/09/84 JA: NM L				
8428732	RNM0136-84	3002528479		103		EXXON "A" FEDERAL #3	DOUBLE "X" DELAWARE	3.6	PHILLIPS PETROLEU
8428731	RNM0134-84	3002528081		103		GRAHAM FEDERAL #1	DOUBLE "X" DELAWARE	81.8	PHILLIPS PETROLEU
8428733	RNM0135-84	3002528522		103		GRAHAM FEDERAL #2	DOUBLE "X" DELAWARE	3.6	PHILLIPS PETROLEU
-MINERALS INC				RECEIVED:	04/09/84 JA: NM L				
8428739	RNM0140-84	3002528442		103		GOVERNMENT "A" #2	GRAMA RIDGE	300.0	MINERALS INC

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-MONSANTO COMPANY				RECEIVED:	04/09/84	JA: NM L
8428730	RNM0139-84	3001524664		103		BURTON FLAT DEEP UNIT #15
-PERRY R BASS				RECEIVED:	04/09/84	JA: NM L
8428727	RNM0119-84	3001524147		102-2	103	POKER LAKE UNIT #52
8428729	RNM0118-84	3001524196		102-2	103	POKER LAKE UNIT #59
-PHILLIPS OIL CO				RECEIVED:	04/09/84	JA: NM L
8428746	RNM0002-84	3001524455		103		ROCKY #1
-POGO PRODUCING COMPANY				RECEIVED:	04/09/84	JA: NM L
8428728	RNM0074-84	3002527814		102-2		MOSBACHER 20 #1
-PREMIER PRODUCTION CO				RECEIVED:	04/09/84	JA: NM L
8428737	RNM0034-84	3001524373		103		ALICE FEDERAL #1
-WORLDWIDE ENERGY CORPORATION				RECEIVED:	04/09/84	JA: NM L
8428725	RNM-0160-83	3002528075		103		E J WELLS #3
-YATES PETROLEUM CORPORATION				RECEIVED:	04/09/84	JA: NM L
8428743	RNM0364-83	3001524534		103		EASTERN SHORE "XM" FED #1
8428734	RNM0053-84	3001524613		103		FEDERAL "CD" #4
8428745	RNM0006-84	3001524631		103		FEDERAL "CD" #6
8428735	RNM0052-84	3001524634		103		FEDERAL "EF" #3
8428724	RNM0192-83	3000561976		102-3	107-TF	POWERS "OL" FED #10-Y
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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROCK SPRINGS, WY						
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-BELCO PETROLEUM CORPORATION				RECEIVED:	04/09/84	JA: WY S
8428715	W171-3	4903505673		108		BNG-67
8428723	W178-3	4903520627		108		C 78-26
8428722	W230-3	4903520704		103		C 80-25
8428721	W184-3	4903520611		102-4		MICKELSON CREEK FEDERAL 1-17
-DIAMOND CHEMICALS CO				RECEIVED:	04/09/84	JA: WY S
8428717	W228-3	4902320533		103		FONTENELLE II 33-13
-ENERGETICS OPERATING CO				RECEIVED:	04/09/84	JA: WY S
8428711	W238-3	4903520682		103		FEDERAL 20-17
8428712	W237-3	4903520682		107-PE		FEDERAL 20-17
8428706	W242-3	4903520679		103		FEDERAL 20-29
8428708	W241-3	4903520679		107-PE		FEDERAL 20-29
8428719	W234-3	4903721331		102-2		FEDERAL 23-14
8428707	W242-3	4903520677		107-PE		FEDERAL 30-17
8428718	W233-3	4903520677		103		FEDERAL 30-17
8428709	W240-3	4903520680		103		FEDERAL 30-8
8428710	W239-3	4903520680		107-PE		FEDERAL 30-8
8428713	W236-3	4903520683		103		FEDERAL 40-28
8428714	W235-3	4903520683		107-PE		FEDERAL 40-28
-TEXACO INC				RECEIVED:	04/09/84	JA: WY S
8428716	W232-3	4903722162		103		TABLE ROCK UNIT #60
8428720	W229-3	4903722174		103		TABLE ROCK UNIT #63

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FIELD NAME	PROD	PURCHASER
BURTON FLAT DEEP UNIT	18.0	
WILDCAT	300.0	
DOGTOWN DRAW	850.0	
WILDCAT (YESO)	0.0	
WILDCAT	200.0	
TURKEY TRACK SR QUEEN	18.0	PHILLIPS PETROLEU
JALMAT	0.0	EL PASO NATURAL G
UNDES WOLFCAMP	0.0	
EAGLE CREEK S/A	0.0	TRANSWESTERN PIPE
EAGLE CREEK S/A	0.0	TRANSWESTERN PIPE
EAGLE CREEK S/A	0.0	TRANSWESTERN PIPE
PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
TIP TOP SHALLOW	0.0	NORTHWEST PIPELIN
MILLS PROSPECT	0.0	NORTHWEST PIPELIN
C-56	0.0	NORTHWEST PIPELIN
MICKELSON CREEK	0.0	NORTHWEST PIPELIN
FONTENELLE	49.0	PACIFIC GAS TRANS
BIRD CANYON	498.0	NORTHWEST PIPELIN
BIRD CANYON	498.0	NORTHWEST PIPELIN
BIRD CANYON	325.0	NORTHWEST PIPELIN
BIRD CANYON	325.0	NORTHWEST PIPELIN
LITTLE MONUMENT II UN	60.0	NORTHWEST PIPELIN
BIRD CANYON	341.0	NORTHWEST PIPELIN
BIRD CANYON	341.0	NORTHWEST PIPELIN
BIRD CANYON	690.0	NORTHWEST PIPELIN
BIRD CANYON	690.0	NORTHWEST PIPELIN
BIRD CANYON	32.0	NORTHWEST PIPELIN
BIRD CANYON	32.0	NORTHWEST PIPELIN
TABLE ROCK	19.4	COLORADO INTERSTA
TABLE ROCK	176.7	COLORADO INTERSTA

[FR Doc. 84-12101 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1117]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 30, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC 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 Road, Springfield, Virginia 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 (1,000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease

Section 103: New onshore production well

Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
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: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED APRIL 30, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
				RECEIVED:	04/09/84	JA: MI			
-SMITH PETROLEUM CO									
8428846		2102500000		102-4		J R WALTER 1-12	CONVIS 12	95.8	BATTLE CREEK GAS
MISSISSIPPI OIL & GAS BOARD									
				RECEIVED:	04/11/84	JA: MS			
-CALLON PETROLEUM COMPANY									
8428847	7-84-372	2312720095		102-4	103	GEORGE MAGEE GAS UNIT - WELL #1	OAK GROVE	18.0	FRM INC
-GETTY OIL COMPANY									
8428849	4-84-467	2309120134		107-DP		RAY DAWSON 33-14 #1	E MORGANTOWN	0.0	TRANSCONTINENTAL
-LESTER C DUCKWORTH CO									
8428848	6-84-372	2312720093		102-4		WALKER ESTATE 34-4 #1	OAK GROVE	2160.0	FRM INC
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
				RECEIVED:	04/11/84	JA: NM			
-AMERADA HESS CORPORATION									
8428896		3002500000		108		A B BAKER NO 4 (DUAL)		1.8	NORTHERN NATURAL
8428899		3002500000		108		IDA WIMBERLEY #14 (DUAL)	JUSTIS	1.2	EL PASO NATURAL G
8428898		3002522004		108		STATE WE "K" #1	OSUDO S	1.0	PHILLIPS PETROLEU
-AMOCO PRODUCTION CO				RECEIVED:	04/11/84	JA: NM			
8428895		3002527960		102-4		BEST GAS COM #1	OSUDO-WEST MORROW	424.0	PHILLIPS PETROLEU
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	04/11/84	JA: NM			
8428900		3000500000		108		SIGNAL STATE #7	CHAVEROO (SAN ANDRES)	12.0	CITIES SERVICE OI
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	04/11/84	JA: NM			
8428897		3002506591		108		STATE S #6	BLINEBRY	9.0	GETTY OIL CO
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/11/84	JA: NM			
8428914		3004506150		108-PB		BROOKHAUGH COM D #5	BLANCO SOUTH	0.0	EL PASO NATURAL G
8428916		3003905573		108-PB		LINDRITH UNIT #49	BLANCO SOUTH	0.0	EL PASO NATURAL G
8428915		3003906966		108-PB		SAN JUAN 27-4 UNIT #23 PC & MV	TAPACITO & BLANCO	0.0	EL PASO NATURAL G
8428919		3003920488		108-PB		SAN JUAN 27-5 #136	TAPACITO	0.0	EL PASO NATURAL G
8428920		3003920612		108-PB		SAN JUAN 27-5 #153	TAPACITO	0.0	EL PASO NATURAL G
8428917		3003920617		108-PB		SAN JUAN 27-5 UNIT #152	TAPACITO	0.0	EL PASO NATURAL G
8428918		3003907983		108-PB		SAN JUAN 32-5 UNIT #10	BLANCO	0.0	EL PASO NATURAL G
8428913		3004505721		108-PB		THOMPSON A #1	BALLARD PC	0.0	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	04/11/84	JA: NM			
8428892		3003921486		108-PB		GOBERNDOR #2	GOBERNADOR PICTURED C	0.0	NORTHWEST PIPELIN
8428893		3003921486		108-PB		GOBERNDOR #2	GOBERNADOR PICTURED C	0.0	NORTHWEST PIPELIN
8428894		3003921486		108-PB		GOBERNDOR #2	GOBERNADOR PICTURED C	0.0	NORTHWEST PIPELIN
8428891		3004521484		108-PB		HOLT 4	BLANCO PICTURED CLIFF	0.0	NORTHWEST PIPELIN
8428885		3003907952		108-PB		ROSA UNIT 17	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8428886		3003907472		108-PB		SAN JUAN 29-5 #38	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8428887		3003907472		108-PB		SAN JUAN 29-5 UNIT 38	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8428883		3003922678		108-PB		SAN JUAN 30 5 UNIT 41	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8428884		3003921027		108-PB		SAN JUAN 30-5 UNIT 41	BLANCO MESAVERDA	0.0	NORTHWEST PIPELIN
8428888		3003921277		108-PB		SAN JUAN 30-5 UNIT 58	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8428889		3003921277		108-PB		SAN JUAN 30-5 UNIT 58	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8428890		3003921277		108-PB		SAN JUAN 30-5 UNIT 58			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8428904		3003923120		103		SAN JUAN 31-6 UNIT #48	BASIN DAKOTA	85.2	NORTHWEST PIPELIN
8428905		3003923120		107-TF		SAN JUAN 31-6 UNIT #48	BASIN DAKOTA	85.2	NORTHWEST PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/11/84	JA: NM			
8428903		3002527425		108		E VAC GB/SA UNIT TR 2109 #002	VACUUM GB/SA	1.0	EL PASO NATURAL G
8428901		3002502926		108		EAST VAC GB/SA UNIT TR 2913 #003	VACUUM GB/SA	2.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO				RECEIVED:	04/11/84	JA: NM			
8428910		3004500000		108-PB		ALBINO CANYON #1	BLANCO	0.0	EL PASO NATURAL G
8428911		3004500000		108-PB		ALBINO CANYON #1 MV	BLANCO	0.0	EL PASO NATURAL G
8428912		3004500000		108-PB		ALBINO CANYON #1 MV	BLANCO	0.0	EL PASO NATURAL G
8428906		3003922786		108		BIXLER RANCH #1	EAST BLANCO	3.0	NORTHWEST PIPELIN
8428909		3004509726		108-PB		CURRENT #1 PC	AZTEC	0.0	EL PASO NATURAL G
8428908		3004507831		108-PB		MANGUM #5	BASIN	0.0	SOUTHERN UNION GA
8428907		3004523067		108-PB		PAGE #2A	BLANCO	0.0	SOUTHERN UNION GA
-WARREN PETR CO				RECEIVED:	04/11/84	JA: NM			
8428902		3002506976		105		CENTRAL DRINKARD UNIT #130	DRINKARD	3.2	EL PASO NATURAL G
**********									
OHIO DEPARTMENT OF NATURAL RESOURCES									
**********									
-A & R COMPANY				RECEIVED:	04/10/84	JA: OH			
8428925		3416724182		108		DEAN ABICHT #2 OH-09-1102	NEWPORT	3.6	COLUMBIA GAS TRAN
8428927		3416725849		108		E & R FLANDERS #1 OH-34-2901	NEWPORT	1.0	COLUMBIA GAS TRAN
8428924		3416724173		108		EDDY & BINGLER #1 OH-08-0901	NEWPORT	1.2	COLUMBIA GAS TRAN
8428921		3416723996		108		JOS C EDDY #1-B OH-04-0601	NEWPORT	2.6	COLUMBIA GAS TRAN
8428923		3416724169		108		JOS C EDDY #1-C OH-06-0701	NEWPORT	2.6	COLUMBIA GAS TRAN
8428926		3416724910		108		LARRY HAYNES NO 1 OH-28-2001	NEWPORT	0.5	COLUMBIA GAS TRAN
8428922		3416724133		108		PETTY & HOLBERT #1 OH-10-0801	NEWPORT	4.5	COLUMBIA GAS TRAN
-ATWOOD RESOURCES INC				RECEIVED:	04/10/84	JA: OH			
8428928		3415723958		103	107-TF	GARBER/HOSTETLER UNIT #1	STRASBURG	15.0	
-AUSTIN DEVELOPMENT CO				RECEIVED:	04/10/84	JA: OH			
8428929		3403124507		108		HOFSTETLER-BACHNA #6		4.5	COLUMBIA GAS TRAN
-BAKERWELL INC				RECEIVED:	04/10/84	JA: OH			
8428930		3407524236		103		MARTIN #1	KNOX	20.0	COLUMBIA GAS TRAN
-BERRESFORD ENTERPRISES INC				RECEIVED:	04/10/84	JA: OH			
8428932		3416726307		107-TF		CHARLES NEWBERGER #2	WATERFORD	0.0	
8428938		3416727417		107-TF		COMBS #2	WATERFORD	0.0	
8428931		3416725982		107-TF		ERNEST BROOKER #1	WATERFORD	0.0	
8428936		3416727265		107-TF		L SCHILLING #10	WATERFORD	0.0	
8428935		3416727264		107-TF		L SCHILLING #11	WATERFORD	0.0	
8428937		3416727319		107-TF		L SCHILLING #18	WATERFORD	0.0	
8428933		3416727047		107-TF		L SCHILLING #4	WATERFORD	0.0	
8428934		3416727263		107-TF		L SCHILLING #6	WATERFORD	0.0	
-BOBBY ANDERSON				RECEIVED:	04/10/84	JA: OH			
8428939		3416725899		107-TF		CARVER #2	WARREN	3.6	COLUMBIA GAS TRAN
8428940		3416726044		107-TF		CARVER #4	WARREN	3.6	COLUMBIA GAS TRAN
8428941		3416726365		107-TF		HENDRICKSON #1	WARREN	3.6	COLUMBIA GAS TRAN
-CHRIS OIL CO				RECEIVED:	04/10/84	JA: OH			
8428944		3405921474		108		BEHEN #1		14.0	EAST OHIO GAS CO
8428945		3405921566		108		BEHEN SIGMAN #1		42.0	EAST OHIO GAS CO
8428946		3411922516		108		BROWN #1		9.0	EAST OHIO GAS CO
8428942		3405921397		108		GIBSON #1		37.0	EAST OHIO GAS CO
8428951		3415721388		108		HURSEY #1		33.0	EAST OHIO GAS CO
8428949		3415721386		108		HURSEY #2		24.0	EAST OHIO GAS CO
8428943		3405921468		108		ROBERTSON #1		38.0	EAST OHIO GAS CO
8428948		3415721367		108		SCHUPP #1		11.0	EAST OHIO GAS CO
8428950		3415721387		108		TAYLOR #1		40.0	EAST OHIO GAS CO
8428947		3415721340		108		WILSON #1		7.7	EAST OHIO GAS CO
-CLYDE BAUMAN				RECEIVED:	04/10/84	JA: OH			
8428953		3404520845		103		BAUMAN #10	RICHLAND	0.0	COLUMBIA GAS TRAN
8428952		3404520844		103		BAUMAN #11	RICHLAND	0.0	COLUMBIA GAS TRAN
8428956		3404520848		103		BAUMAN #7	RICHLAND	0.0	COLUMBIA GAS TRAN
8428954		3404520846		103		BAUMAN #8	RICHLAND	0.0	COLUMBIA GAS TRAN
8428955		3404520847		103		BAUMAN #9	RICHLAND	0.0	COLUMBIA GAS TRAN
-CORINNE CO				RECEIVED:	04/10/84	JA: OH			
8428957		3405522950		103	107-TF	SIX-WAY SYNDICATE #1	MONTVILLE	33.0	
-EAGLE MOUNTAIN 1981-A LTD				RECEIVED:	04/10/84	JA: OH			
8428959		3416726975		107-TF		BAKER-LAMB #1	BARLOW	3.5	COLUMBIA GAS TRAN
8428958		3416726973		107-TF		EDDY #2	BARLOW	2.5	COLUMBIA GAS TRAN
-ENERGY DISTRIBUTORS INC				RECEIVED:	04/10/84	JA: OH			
8428961		3407322455		103		CARL HORN #2	WASHINGTON	15.0	
8428960		3407322436		103		HAWK #1	WASHINGTON	20.0	
-G W F CORP				RECEIVED:	04/10/84	JA: OH			
8428963		3416726281		103	107-TF	DAVID T ATHA #1	ADAMS	0.0	
8428964		3416726570		103	107-TF	DAVID T ATHA #2-A	ADAMS	0.0	
8428962		3400922937		103	107-TF	G LACKEY #2	ROME	15.0	TEXAS EASTERN TRA
-HATFIELD JOHN J				RECEIVED:	04/10/84	JA: OH			
8428967		3416923673		103		WERTZ #3	BAUGHMAN	9.0	
-JAMES DRILLING CORP				RECEIVED:	04/10/84	JA: OH			
8428965		3400720788		108		BARBARA ANN WIESE #1		2.0	JONES & LAUGHLIN
8428966		3400720966		108		DAVID A WEST #1		4.0	JONES & LAUGHLIN
-LEADER EQUITIES INC				RECEIVED:	04/10/84	JA: OH			
8428968		3411523332		103		HIVNOR #1	DEERFIELD	13.0	
-LIBERTY OIL & GAS CORP				RECEIVED:	04/10/84	JA: OH			
8428969		3410521823		107-RT		DUANE WOLFE #1	OLIVE	16.0	COLUMBIA GAS TRAN
8428970		3410522323		107-TF		GLEN ROBINSON "B" #1	ORANGE	18.0	COLUMBIA GAS TRAN
-OXFORD OIL CO				RECEIVED:	04/10/84	JA: OH			
8428979		3413321068		103		KENNETH MILLS #1	SHALERSVILLE	8.0	
-PENN-OHIO ENERGY CORP				RECEIVED:	04/10/84	JA: OH			
8428971		3405525760		103	107-TF	HELLER #2	CLARIDON	0.0	EAST OHIO GAS CO
-SCIENTIFIC EXPLORATION INC				RECEIVED:	04/10/84	JA: OH			
8428974		3407523153		108		BUSH #1		18.8	COLUMBIA GAS TRAN
8428975		3407523170		108		CASTELL #1		40.3	COLUMBIA GAS TRAN
8428976		3407523174		108		CASTELL #2		40.3	COLUMBIA GAS TRAN
8428972		3407522810		108		PAMPERED BEEF #1		53.4	COLUMBIA GAS TRAN
8428973		3407522811		108		PAMPERED BEEF #2		53.4	COLUMBIA GAS TRAN
-STRATA CORP				RECEIVED:	04/10/84	JA: OH			
8428977		3400922649		103	107-TF	POSTON #4	ROME	10.0	TEXAS EASTERN TRA
8428978		3400922957		103	107-TF	RAM OPERATING CO INC #3	BERN	35.0	TEXAS EASTERN TRA
-TITAN ENERGY CORP				RECEIVED:	04/10/84	JA: OH			
8428980		3407322908		103		C & M RISCH #1	FALLS	10.0	HOCKING GAS CO
8428981		3407322909		103		EMERSON #1	FALLS	10.0	HOCKING GAS CO
8428982		3412726110		103		NIXON #1	MONDAY CREEK	10.0	OHIO OIL & GAS GA
-TRAK 3 & 4				RECEIVED:	04/10/84	JA: OH			
8428983		3410522827		107-TF		LIGHTFOOT/SWISHER #3	LOWER MISSISSIPPIAN	0.0	
-TRISTAR PETROLEUM RESOURCES				RECEIVED:	04/10/84	JA: OH			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8428985		3411122973		107-DV		HARMON #2	GRAYSVILLE	14.6	COLUMBIA GAS TRAN
8428984		3411122972		107-DV		KUTA #2	GRAYSVILLE	14.0	COLUMBIA GAS TRAN
8428987		3411122992		107-DV		MCHUGH #5	PERRY	14.4	COLUMBIA GAS TRAN
8428988		3411123006		107-DV		MCHUGH #7	GRAYSVILLE	18.5	COLUMBIA GAS TRAN
8428986		3411122974		107-DV		PLATT #2	GRAYSVILLE	18.0	COLUMBIA GAS TRAN
WEST VIRGINIA DEPARTMENT OF MINES									
-ALLEGHENY & WESTERN ENERGY CORP				RECEIVED:	04/10/84	JA: WV			
8428881		4701100769		107-DV		BARBOUR #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428880		4701100772		107-DV		BARRETT #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428875		4701100773		103		C L FULKS #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428879		4701100773		107-DV		C L FULKS #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
8428882		4701100768		107-DV		M HATTEN #1	GUYANDOTTE DISTRICT	36.0	COLUMBIA GAS TRAN
-CHESTERFIELD ENERGY CORP				RECEIVED:	04/10/84	JA: WV			
8428862		4700101966		103		BIBEY WELL #1 47-001-1966	BARKER	0.0	TENNECO OIL CO
8428867		4703302929		103		DEFAZIO WELL #1 47-033-2929	CLAY	0.0	PENNZOIL CO
8428863		4700101967		103		EDMOND WELL #1 47-001-1967	BARKER	0.0	TENNECO OIL CO
8428859		4700101950		103		F E BOOTH #1 47-001-1950	BARKER	0.0	TENNECO OIL CO
8428866		4700101952		103		H BOOTH WELL #1 47-001-1952	BARKER	0.0	TENNECO OIL CO
8428873		4700101944		103		H BOOTH WELL #2 47-001-1944	BARKER	0.0	TENNECO OIL CO
8428869		4701703244		103		LEGGETT WELL #1 47-017-3244	GRANT	0.0	COLUMBIA GAS TRAN
8428871		4700101942		103		NESTOR WELL #2 47-001-1942	COVE	0.0	TENNECO OIL CO
8428865		4700101955		103		NESTOR WELL #3 47-001-1955	COVE	0.0	TENNECO OIL CO
8428864		4700101956		103		NESTOR WELL #4 47-001-1956	COVE	0.0	TENNECO OIL CO
8428872		4700101943		103		PURKEY WELL #1 47-001-1943	BARKER	0.0	TENNECO OIL CO
8428870		4701703248		103		SHAUGHNESSY WELL #1 47-017-3248	GREENBRIER	0.0	COLUMBIA GAS TRAN
8428861		4700101979		103		SHOMO WELL #3 47-001-1979	BARKER	0.0	TENNECO OIL CO
8428860		4700101953		103		T BOOTH WELL #1 47-001-1953	BARKER	0.0	TENNECO OIL CO
8428868		4709702583		103		YOUNG WELL #2 47-097-2583	UNION	0.0	CORHART REFRACTOR
-DELTA DRILLING CO				RECEIVED:	04/10/84	JA: WV			
8428874		4708703789		103		LOONEY-RAMSEY #1	SMITHFIELD	0.0	COLUMBIA GAS TRAN
-GENE STALNAKER INC				RECEIVED:	04/10/84	JA: WV			
8428856		4708506381		103		GIEBELL B-90-1	CLAY	12.0	PENNSBORO GLASS F
8428857		4708506382		103		GIEBELL B-91-2	CLAY	11.0	PENNSBORO GLASS F
8428858		4708506383		103		GIEBELL B-92-3	CLAY	10.0	PENNSBORO GLASS F
8428852		4702104076		103		HARDMAN S-121-1	CENTER	7.0	CONSOLIDATED GAS
8428855		4709501029		103		JOE DOM S-111-1	MEADE	9.0	CONSOLIDATED GAS
8428853		4708506583		103		LANGFORD S-119-2	UNION	12.0	CONSOLIDATED GAS
8428851		4702104039		103		PICKENS B-86-1	DEKALB	10.0	CONSOLIDATED GAS
8428854		4708506661		103		WEBB S-123-2	GRANT	10.0	CONSOLIDATED GAS
-PETROBEL INVESTMENTS N V				RECEIVED:	04/10/84	JA: WV			
8428878		4708506687		107-DV		TAYLOR CARR 1-A	UNION DISTRICT	0.0	CONSOLIDATED GAS
-RUBIN RESOURCES INC				RECEIVED:	04/10/84	JA: WV			
8428876		4703903989		107-DV		DODD #1	DODD LEASE	0.0	COLUMBIA GAS TRAN
8428877		4703903986		107-DV		KCS #8	CARBIDE	0.0	COLUMBIA GAS TRAN
-SWIFT ENERGY CO				RECEIVED:	04/10/84	JA: WV			
8428850		4704103069		108		MCPHERSON "C" #1	FINSTER-ASPINALL	25.0	TENNESSEE GAS PIP
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM									
-AAA OPERATING CO INC				RECEIVED:	04/09/84	JA: NM K			
8428764	NM1286-83	3004525846		103		FEDERAL M #1-A	BLANCO MESAVERDE	275.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	04/09/84	JA: NM K			
8428820	NM-1877-83-P	3004511723		108-PB		ABRAMS GAS COM B #2	AZTEC	0.0	EL PASO NATURAL G
8428821	NM-1505-83-P	3004511723		108-PB		ABRAMS GAS COM B #2	AZTEC	0.0	EL PASO NATURAL G
8428767	NM1326-83	3004525206		108		CHRISMAN GAS COM #1E	BASIN DAKOTA	17.0	EL PASO NATURAL G
8428756	NM64-84	3004525525		107-CS		EALUM GAS COM "C" #1	UNDESIGNATED - FRUITL	70.0	NORTHWEST PIPELIN
8428823	NM-58-84-PB	3004507832		108-PB		GALLEGOS CANYON UNIT COM "D" #160	BASIN	0.0	EL PASO NATURAL G
8428753	NM62-84	3004525783		103		JACK FROST GAS COM "C"/TRUE #1E	BASIN DAKOTA	33.0	EL PASO NATURAL G
8428755	NM60-84	3004525648		103		JACK FROST GAS COM "E"/TRUE #1E	BASIN DAKOTA	36.0	EL PASO NATURAL G
8428822	NM-11-84-PB	3002920568		108-PB		JICARILLA CONT 146 #23	GONZALES	0.0	EL PASO NATURAL G
8428752	NM58-84	3003923187		103		JICARILLA TRIBAL 396 #4	CHACON-DAKOTA/UNDESIG	38.0	NORTHWEST PIPELIN
8428754	NM61-84	3004525638		103		USA C A MCADAMS "D"/TRUE #2E	BASIN DAKOTA	28.0	EL PASO NATURAL G
-CAULKINS OIL COMPANY				RECEIVED:	04/09/84	JA: NM K			
8428749	NM-44-84-B	3003923085		103		BREECH D 140 M	BLANCO MESA VERDE	15.0	GAS CO OF NEW MEX
8428766	NM-44-84-A	3003923085		103		BREECH D 140 M	BASIN DAKOTA	15.0	GAS CO OF NEW MEX
8428748	NM-45-84-A	3003923142		103		BREECH F 1 E	BASIN DAKOTA	15.0	NORTHWEST PIPELIN
8428750	NM-45-84-B	3003923142		103		BREECH F 1 E	SOUTH BLANCO TOCITO	3.0	NORTHWEST PIPELIN
-CONOCO INC				RECEIVED:	04/09/84	JA: NM K			
8428768	NM-1299-83	3003923268		103		AXI APACHE M #8A	AXI APACHE AREA	141.0	GAS CO OF NEW MEX
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/09/84	JA: NM K			
8428783	NM-72-84-PB	3004520760		108-PB		ATLANTIC A #11	BLANCO	0.0	EL PASO NATURAL G
8428776	NM-64-84-PB	3004520758		108-PB		ATLANTIC C #9	BLANCO	0.0	EL PASO NATURAL G
8428815	NM-1214-83-P	3003920305		108-PB		CANYON LARGO UNIT #159	OTERO	0.0	EL PASO NATURAL G
8428817	NM-1743-83-P	3003920305		108-PB		CANYON LARGO UNIT #159	OTERO	0.0	EL PASO NATURAL G
8428769	NM-48-84-PB	3003920758		108-PB		CANYON LARGO UNIT #208	BALLARD	0.0	EL PASO NATURAL G
8428798	NM-43-84-PB	3003920790		108-PB		CANYON LARGO UNIT #228	SOUTH BLANCO	0.0	EL PASO NATURAL G
8428782	NM-69-84-PB	3004520492		108-PB		DAY #5	BLANCO	0.0	EL PASO NATURAL G
8428791	NM-37-84-PB	3004521515		108-PB		DAY #8	BLANCO	0.0	EL PASO NATURAL G
8428796	NM-32-84-PB	3004520906		108-PB		DAY A #15	BLANCO	0.0	EL PASO NATURAL G
8428807	NM-34-84-PB	3004523689		108-PB		FIELDS #13	BLANCO	0.0	EL PASO NATURAL G
8428819	NM-1916-83-P	3004508917		108-PB		GARTNER #3	FULCHER KUTZ	0.0	EL PASO NATURAL G
8428811	NM-73-84-PB	3004506332		108-PB		GORDON #5	SOUTH BLANCO	0.0	EL PASO NATURAL G
8428803	NM-56-84-PB	3004520819		108-PB		GRAMBLING A #4	BLANCO	0.0	EL PASO NATURAL G
8428795	NM-45-84-PB	3004521983		108-PB		GRAMBLING C #11 J	BLANCO	0.0	EL PASO NATURAL G
8428775	NM-65-84-PB	3004521151		108-PB		HARDIE #10	BLANCO	0.0	EL PASO NATURAL G
8428794	NM-46-84-PB	3004521086		108-PB		HARDIE #11	BLANCO	0.0	EL PASO NATURAL G
8428792	NM-36-84-PB	3004520904		108-PB		HARDIE #6	BLANCO	0.0	EL PASO NATURAL G
8428787	NM-61-84-PB	3004521085		108-PB		HARDIE #8	SOUTH BLANCO	0.0	EL PASO NATURAL G
8428780	NM-66-84-PB	3003906851		108-PB		HARRINGTON #2	BLANCO	0.0	EL PASO NATURAL G
8428778	NM-68-84-PB	3004508920		108-PB		HOWELL #5	BLANCO	0.0	EL PASO NATURAL G
8428812	NM-5-84-PB	3004521776		108-PB		HOWELL D #1A	OTERO & AZTEC	0.0	EL PASO NATURAL G
8428786	NM-62-84-PB	3004521453		108-PB		HUBBELL #14 CH & FT	BASIN	0.0	EL PASO NATURAL G
8428813	NM-12-84-PB	3004505830		108-PB		HUERFANO UNIT #104 DK	BLANCO	0.0	EL PASO NATURAL G
8428777	NM-63-84-PB	3004521191		108-PB		JONES #4	SOUTH BLANCO	0.0	EL PASO NATURAL G
8428802	NM-49-84-PB	3004520922		108-PB		JONES A #7	SOUTH BLANCO	0.0	EL PASO NATURAL G
8428808	NM-33-84-PB	3004507056		108-PB		MICHENER A #1	BLANCO	0.0	EL PASO NATURAL G
8428801	NM-50-84-PB	3004521025		108-PB		MUDGE #38PC	FULCHER KUTZ	0.0	EL PASO NATURAL G
8428779	NM-67-84-PB	3004507195		108-PB		OMLER #7	FULCHER KUTZ	0.0	EL PASO NATURAL G
8428785	NM-74-84-PB	3004512168		108-PB		OMLER #8	BLANCO	0.0	EL PASO NATURAL G
8428784	NM-71-84-PB	3004508643		108-PB		RIDDLE A #5	BASIN	0.0	EL PASO NATURAL G
8428797	NM-44-84-PB	3003920484		108-PB		SAN JUAN 27-4 UNIT #60	TAPACITO	0.0	EL PASO NATURAL G
8428770	NM-47-84-PB	3003920732		108-PB		SAN JUAN 27-4 UNIT #62			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8428800	NM-0051-84PB	3003920825		108-PB		SAN JUAN 27-4 UNIT #84
8428771	NM-54-84-PB	3003920902		108-PB		SAN JUAN 27-4 UNIT #86
8428805	NM-28-84-PB	3003920955		108-PB		SAN JUAN 27-4 UNIT #90
8428772	NM-53-84-PB	3003920829		108-PB		SAN JUAN 27-4 UNIT #91
8428774	NM-57-84-PB	3003907205		108-PB		SAN JUAN 27-5 UNIT NP #55
8428790	NM-29-84-PB	3003920510		108-PB		SAN JUAN 28-4 UNIT #35
8428818	NM-1953-83-P	3003921866		108-PB		SAN JUAN 28-5 UNIT #103
8428814	NM-1713-83-P	3003907430		108-PB		SAN JUAN 28-5 UNIT #26
8428773	NM-52-84-PB	3003920897		108-PB		SAN JUAN 28-6 UNIT #194
8428789	NM-30-84-PB	3003900000		108-PB		SAN JUAN 29-7 UNIT #78
8428788	NM-31-84-PB	3003907497		108-PB		SAN JUAN 29-7 UNIT #95
8428809	NM-1177-83-P	3003907852		108-PB		SAN JUAN 30-6 UNIT #45
8428816	NM-1838-83-P	3003907852		108-PB		SAN JUAN 30-6 UNIT #45
8428806	NM-27-84-PB	3004511185		108-PB		SCOTT #2
8428799	NM-42-84-PB	3004520854		108-PB		SELLERS #7
8428810	NM-75-84-PB	3004520791		108-PB		SUNRAY #4
8428793	NM-35-84-PB	3004521134		108-PB		SUNRAY H #4
8428804	NM-55-84-PB	3004521050		108-PB		TURNER #6
8428781	NM-70-84-PB	3004520489		108-PB		WOODRIVER #3
-ENERGY RESERVES GROUP INC				RECEIVED:	04/09/84	JA: NM K
8428832	NM-0001-84	3004505240		108-PB		BRANNON FEDERAL #2
-GETTY OIL COMPANY				RECEIVED:	04/09/84	JA: NM K
8428828	NM-8-84-PB	3004506679		108-PB		CHARLEY PAH #1
8428827	NM-7-84-PB	3004506459		108-PB		G R GENTLE #1
8428824	NM-2-84-PB	3004506480		108-PB		JOHN CHARLES #2
8428825	NM-10-84-PB	3004513247		108-PB		NEAH VICTORIA #1
8428826	NM-9-84-PB	3004506876		108-PB		NEAH VICTORIA #2
-GRACE PETROLEUM CORPORATION				RECEIVED:	04/09/84	JA: NM K
8428757	NM63-84	3003922324		108		FEDERAL 12-1
-MERRION OIL & GAS CORP				RECEIVED:	04/09/84	JA: NM K
8428831	NM-6-84-PB	3004320273		108-PB		JICARILLA 428 #4
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	04/09/84	JA: NM K
8428830	NM-3-84-PB	3003920162		108-PB		JICARILLA B #8
8428829	NM-4-84-PB	3003907057		108-PB		JICARILLA E #2
-SCHALK DEVELOPMENT COMPANY				RECEIVED:	04/09/84	JA: NM K
8428837	NM-23-84-PB	3003920929		108-PB		SCHALK #52-6
8428838	NM-22-84-PB	3003920929		108-PB		SCHALK #52-6
8428836	NM-24-84-PB	3003921057		108-PB		SCHALK 29-4 #1
8428843	NM-25-84-PB	3003921057		108-PB		SCHALK 29-4 #1
8428840	NM-20-84-PB	3003920802		108-PB		SCHALK 49-3
8428841	NM-19-84-PB	3003920802		108-PB		SCHALK 49-3
8428842	NM-18-84-PB	3003920802		108-PB		SCHALK 49-3
8428845	NM-17-84-PB	3003920802		108-PB		SCHALK 49-3
8428839	NM-21-84-PB	3003920929		108-PB		SCHALK 52-6
8428833	NM-14-84-PB	3003920579		108-PB		SCHALK 55-1
8428834	NM-15-84-PB	3003920579		108-PB		SCHALK 55-1
8428835	NM-16-84-PB	3003920579		108-PB		SCHALK 55-1
8428844	NM-13-84-PB	3003920579		108-PB		SCHALK 55-1
-UNICON PRODUCING CO				RECEIVED:	04/09/84	JA: NM K
8428763	NM-892-83	3004524506		103		NEWSOM "A" #6E
8428765	NM-1273-83	3004500000		108		ZACHRY #5
-YAFFEE H A				RECEIVED:	04/09/84	JA: NM K
8428751	NM-57-84	3003906145		108		YAFFEE #2
-PHILLIPS OIL CO				RECEIVED:	04/09/84	JA: UT K
8428761	NM-70-84	4303730930		103		RATHERFORD UNIT #20-22
8428762	NM-69-84	4303730918		103		RATHERFORD UNIT #20-24
8428758	NM-68-84	4303730931		103		RATHERFORD UNIT #20-33
8428760	NM-66-84	4303730914		103		RATHERFORD UNIT #29-31
8428759	NM-67-84	4303730937		103		RATHERFORD UNIT #29-42

VOLUME 1117

FIELD NAME	PROD	PURCHASER
TAPACITO	0.0	EL PASO NATURAL G
TAPACITO	0.0	EL PASO NATURAL G
TAPACITO	0.0	EL PASO NATURAL G
TAPACITO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BASIN	0.0	EL PASO NATURAL G
BASIN	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BASIN DAKOTA	10.7	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
LYBROOK	0.0	GAS CO OF NEW MEX
BALLARD	0.0	NORTHWEST PIPELIN
TAPACITO	0.0	NORTHWEST PIPELIN
BLANCO	0.0	NORTHWEST PIPELIN
BLANCO	0.0	NORTHWEST PIPELIN
BLANCO	0.0	NORTHWEST PIPELIN
BLANCO	0.0	NORTHWEST PIPELIN
EAST BLANCO	0.0	NORTHWEST PIPELIN
EAST BLANCO	0.0	NORTHWEST PIPELIN
EAST BLANCO	0.0	NORTHWEST PIPELIN
EAST BLANCO	0.0	NORTHWEST PIPELIN
BLANCO	0.0	NORTHWEST PIPELIN
BASIN	0.0	NORTHWEST PIPELIN
BASIN	0.0	NORTHWEST PIPELIN
BASIN	0.0	NORTHWEST PIPELIN
BASIN	0.0	NORTHWEST PIPELIN
PICTURED CLIFFS	131.0	GAS CO OF NEW MEX
AZTEC PICTURED CLIFFS	38.0	GAS CO OF NEW MEX
TAPACITO PICTURED CLI	8.0	EL PASO NATURAL G
GREATER ANETH	657.0	EL PASO NATURAL G
GREATER ANETH	29.9	EL PASO NATURAL G
GREATER ANETH	29.6	EL PASO NATURAL G
GREATER ANETH	1825.0	EL PASO NATURAL G
GREATER ANETH	21.9	EL PASO NATURAL G

[FR Doc. 84-12102 Filed 5-3-84; 8:45 am]

BILLING CODE 6717-01-C

federal register

Friday
May 4, 1984

Part VIII

Department of Health and Human Services

Office of Human Development Services

Administration of Developmental Disabilities; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement 13.632-841]

Administration of Developmental Disabilities

AGENCY: Office of Human Development Services, DHHS.

SUBJECT: Announcement of availability of funds for fiscal year 1984 to university affiliated facilities to conduct feasibility studies leading to the establishment of satellite centers.

SUMMARY: The Administration on Developmental Disabilities (ADD) announces that applications are being accepted from University Affiliated Facilities to conduct Feasibility Studies. These studies will determine the feasibility of establishing new Satellite Centers in areas with populations of more than two million which currently do not have UAFs or Satellite Centers supported with funds from Section 121 of the Developmental Disabilities Assistance and Bill of Rights Act of 1978, as amended (42 U.S.C. 6000–6081). A University Affiliated Facility is a public or non-profit facility associated with or an integral part of a university which receives administrative and core support from ADD to operate a program which provides—

- Interdisciplinary training for personnel concerned with developmental disabilities.
- Demonstration of the provision of exemplary services relating to persons with developmental disabilities.
- Dissemination of findings relating to the provision of services to persons with developmental disabilities; and providing researchers and government agencies sponsoring service related research with information on the needs for further service related research.

A Satellite Center is an entity which is affiliated with one or more university affiliated facilities and which functions as a community or regional extension of such facilities in the delivery of services to persons with developmental disabilities.

FOR FURTHER INFORMATION CONTACT: Roland J. Queene, Director, ADD/Division of Program Development and Demonstrations, 200 Independence Avenue, SW., Room 340E, Washington, D.C. 20201, Telephone: (202) 245–1961.

DATE: The closing date for receipt of applications is June 4, 1984.

Part I: General Considerations

A. Program Description

The Developmental Disabilities program was established by the Developmental Disabilities Services and Facilities Construction Act (Pub. L. 91–517, as amended). The program assists States to assure that persons with developmental disabilities receive appropriate care, treatment, habilitation and support services. Programs funded under the Act are:

- Basic State formula grants
- Systems for protection and advocacy of individual rights
- Grants to University Affiliated Facilities for interdisciplinary training, exemplary services and information dissemination
- Special projects of national significance.

B. Purpose of This Program Announcement

This announcement solicits applications from University Affiliated Facilities (UAFs) which are grantees of ADD to conduct Feasibility Studies in States with populations of more than two million residents. The purpose of the Feasibility Study is to determine whether there is a need and whether it is feasible to establish a Satellite Center in an area which currently does not have a UAF or a Satellite Center supported with ADD funds. During the conduct of the Feasibility Study, each applicant (UAF) will serve as host and technical advisor to a prospective Satellite Center.

C. Background

In 1977 Feasibility Studies were conducted by UAFs in conjunction with the State Developmental Disabilities Councils. Subsequently five new Satellite Centers were established.

The number of UAFs and Satellite Centers (36 UAFs and 5 Satellite Centers) receiving administrative and core support from ADD has remained constant since 1978. A recent Departmental review resulted in a recommendation for a modest expansion of the Satellite Center network in clearly underserved areas. To address this need, ADD has accepted the report recommendation and is limiting eligibility for prospective Satellite Centers to areas where the population exceeds two million and where there is no UAF or Satellite Center currently supported with funds from ADD.

D. Eligible Applicants

Any existing UAF (supported with funds from ADD) can serve as host and apply for funds to conduct a Feasibility Study on behalf of an organization in any of the areas listed below which have a population of more than two million residents (according to the 1980 census) and which do not have a UAF or Satellite Center committed to serving persons with developmental disabilities.

State	Population (thousands)
1. Arizona [1]	2,860
2. Arkansas	2,291
3. Connecticut	3,153
4. Illinois	11,448
5. Minnesota	4,133
6. Oklahoma	3,177
7. Puerto Rico	3,251
8. Texas	15,282
9. Virginia	5,491

[1] The Dine Satellite Center located in Arizona serves the Navajo Nation in several States but does not serve any other individuals with developmental disabilities residing in Arizona.

E. Available Funds

The Administration on Developmental Disabilities expects to award approximately $35,000 in FY 1984 for Feasibility Study grants. ADD anticipates awarding between five and seven grants ranging from $5,000 to $7,000 each. These studies are to be completed by September 15, 1984.

Part II: FY 1984 Application Content

A. Requirements

The Administration on Developmental Disabilities is requesting applicants to prepare a brief application (no more than 10 pages of text and 20 pages of appendices) which will include the items below. Applications will not be considered unless items (a) through (e) have been addressed.

(a) Assurance that: (1) The applicant has agreed to serve as host and technical advisor to a prospective Satellite Center; (2) the prospective Satellite Center is located in an area whose population is more than two million; and (3) there is no UAF or Satellite Center in the area to be served currently receiving funds from ADD.

(b) Assurance of cooperation between the host UAF (applicant), the prospective Satellite Center, and the State Developmental Disabilities Council in which the prospective Satellite Center is located. A signed statement is required from the Chairman of the State Developmental Disabilities Council which indicates support for the establishment of a Satellite Center and assures that the application for a Feasibility Study grant has been developed in consultation with the Council.

(c) A geographic and demographic description of the area which the

prospective Satellite Center would serve.

(d) A description of existing community services, service gaps and how needed services would be provided by the prospective Satellite Center.

(e) A description of the organizational capability of the prospective Satellite Center.

B. Application Review

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review by a panel of experts. The results of this review will assist the Commissioner, ADD, in making the final funding decision.

C. Instructions for Completing Applications

In order to expedite the processing of applications, applicants must follow the instructions provided. Each application package must include an original and a minimum of two additional copies of the application. While an original and two copies are required, five additional copies are requested in order to facilitate processing and review. No applicant will be penalized for submitting only the original and two required copies. The original and the copies must be stapled in the upper left corner. The original application must have original signatures.

Applications must include the following material:

1. A Standard Form (SF) 424, page 1, Appendix A.
2. A cover page and abstract.
3. A narrative (10 pages, double spaced maximum) which includes items (c), (d) and (e) listed in Part II, A.
4. Appendices (20 pages maximum) which include items (a) and (b) listed in Part II, A.

D. Closing Date for Receipt of Applications

The closing date for receipt of applications under this announcement is June 4, 1984. Applications must be mailed or hand delivered to: HDS/Division of Grants and Contracts Management, 330 Independence Avenue S.W., Room 1740, Washington, D.C. 20201, Attention: William McCarron, No. 13.632–841.

Mailed Applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications Submitted by Other Means. Applications submitted by any means except mailing first class through U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late Applications. Applications which do not meet these criteria will not be considered in the current competition.

Dated: May 2, 1984.

Jean K. Elder, Ph.D.,

Commissioner Administration on Developmental Disabilities.

Approved: May 2, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

APPENDIX A

OMB Approval No. 29-R0218

FEDERAL ASSISTANCE

1. TYPE OF ACTION (Mark appropriate box)
- ☐ PREAPPLICATION
- ☐ APPLICATION
- ☐ NOTIFICATION OF INTENT (Opt.)
- ☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION — a. NUMBER; b. DATE (Year month day) 19

3. STATE APPLICATION IDENTIFIER — a. NUMBER; b. DATE ASSIGNED (Year month day) 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name :
- b. Organization Unit :
- c. Street/P.O. Box :
- d. City :
- e. County :
- f. State :
- g. ZIP Code:
- h. Contact Person (Name & telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog) — a. NUMBER; b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A–State; B–Interstate; C–Substate District; D–County; E–City; F–School District; G–Special Purpose District; H–Community Action Agency; I–Higher Educational Institution; J–Indian Tribe; K–Other (Specify):
Enter appropriate letter ☐

9. TYPE OF ASSISTANCE
A–Basic Grant; B–Supplemental Grant; C–Loan; D–Insurance; E–Other
Enter appropriate letter(s) ☐☐

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)

11. ESTIMATED NUMBER OF PERSONS BENEFITING

12. TYPE OF APPLICATION
A–New; B–Renewal; C–Revision; D–Continuation; E–Augmentation
Enter appropriate letter ☐

13. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

15. TYPE OF CHANGE (For 12c or 12e)
A–Increase Dollars; B–Decrease Dollars; C–Increase Duration; D–Decrease Duration; E–Cancellation; F–Other (Specify):
Enter appropriate letter(s) ☐☐☐

16. PROJECT START DATE (Year month day) 19

17. PROJECT DURATION (Months)

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ (Year month day) 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

	No response	Response attached
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE; c. DATE SIGNED (Year month day) 19

SECTION III—FEDERAL AGENCY ACTION

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25. APPLICATION RECEIVED (Year month day) 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. DEFERRED
- ☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

33. ACTION DATE ▶ (Year month day) 19

34. STARTING DATE (Year month day) 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE (Year month day) 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.

b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

STANDARD FORM 424 PAGE 1 (10-75)
Prescribed by GSA, Federal Management Circular 74-7

[FR Doc. 84-12211 Filed 5-3-84; 8:45 am]
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