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federal register

Tuesday
July 31, 1984

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Food and Drug Administration

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

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Presidential Documents

Title 3—

The President

Proclamation 5225 of July 27, 1984

Coast Guard Day, 1984

By the President of the United States of America

A Proclamation

On August 4, 1790, the oldest continuous seagoing service of this Nation was formed. The United States Coast Guard was originally organized as "a fleet of cutters" to stop illegal smuggling from the sea and collect revenue due on goods coming to the young Nation. Later called the Revenue Cutter Service, this small organization combined with the Life Saving Service in 1915 and assumed its now famous name—the United States Coast Guard.

Today, Coast Guard contributions to our Nation in the areas of national defense, maritime law enforcement, search and rescue, aids to navigation, merchant marine safety, environmental protection, ports and waterway safety, and boating safety have become a benchmark by which professional maritime excellence is judged.

This Nation relies heavily on the readiness of the Coast Guard's active duty, reserve, and civilian employees and the voluntary contribution of the 40,000 members of the Coast Guard Auxiliary to rescue victims, protect our environment, and defend this Nation, as the Coast Guard has done in every major conflict in which the United States has been involved.

The Congress, by Senate Joint Resolution 150, has authorized and requested the President to issue a proclamation designating August 4, 1984, as "Coast Guard Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 4, 1984, as Coast Guard Day in recognition of the profound importance of the missions and responsibilities entrusted to the Coast Guard. I invite all the Armed Forces—the Army, Navy, Marine Corps, Air Force, and Coast Guard—the Departments of Defense and Transportation, other Federal departments and agencies, the Governors of the States, the chief officials of local governments, and the people of the United States to observe this day in an appropriate manner.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of July, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-20254
Filed 7-27-84; 11:44 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5226 of July 27, 1984

National Volunteer Firefighters Recognition Day, 1984

By the President of the United States of America

A Proclamation

Throughout our history, the American spirit has been distinguished by the ready willingness of neighbors to join together and help one another. The tradition of voluntary community service is as important today as it was in the founding years of our country.

Our Nation's volunteer firefighters carry on this truly American tradition of citizen response for the common good. Like the Minutemen of our early years, these volunteers are ready to respond on short notice to help fellow citizens in need. Volunteer firefighters protect our lives, our families, and the economic life of our communities from the threat of destructive fire, often at great personal sacrifice. But these volunteers are more than firefighters. In many communities, they respond to a wide range of natural and technological emergencies.

These trained and organized volunteers, our neighbors, are a valuable national resource. It is fitting and proper that a grateful Nation should recognize the vital contributions of the one million men and women who serve in our Nation's volunteer fire and rescue companies and departments.

The Congress, by Senate Joint Resolution 136, has designated August 18, 1984, as "National Volunteer Firefighters Recognition Day" and has authorized and requested the President to issue an appropriate proclamation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Saturday, August 18, 1984, as National Volunteer Firefighters Recognition Day, and I call upon all Americans to join in appropriate programs, ceremonies, and activities to recognize the valuable contributions of these public-spirited volunteers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of July, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-20255
Filed 7-27-84, 11:45 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 335, Amdt. 2; Valencia Orange Reg. 337]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 2 of Regulation 335 increases the quantity of fresh California-Arizona Valencia oranges which may be shipped during the period July 20–26, 1984. Regulation 337 establishes the quantity of Valencia oranges that may be shipped during the period August 3–9, 1984. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the specified periods due to the marketing situation confronting the Valencia orange industry.

EFFECTIVE DATES: Amended Regulation 335 (§ 908.635) is effective for the period July 19–26, 1984. Regulation 337 (§ 908.637) is effective for the period August 3–9, 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 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 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 amendment and regulation are based upon the recommendation of and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

The amendment and regulation 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, at Ventura, California. The committee met again publicly on July 24, 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.

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 the information became available upon which the regulation and amendment are based and the effective dates necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on this action at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. To effectuate the declared purposes of the Act, it is necessary to make these provisions effective as specified, and handlers have been notified of these actions and their effective dates.

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

1. Section 908.635 Valencia Orange Regulation 335 is revised to read as follows:

§ 908.635 Valencia Orange Regulation 335.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 20–26, 1984, are established as follows:

(a) *District 1:* 254,000 cartons;
(b) *District 2:* 396,000 cartons;
(c) *District 3:* Unlimited cartons.

2. Section 908.637 is added as follows:

§ 908.637 Valencia Orange Regulation 337.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 3, 1984, through August 9, 1984, are established as follows:

(a) *District 1:* 254,000 cartons;
(b) *District 2:* 396,000 cartons;
(c) *District 3:* Unlimited cartons.

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

Dated: July 25, 1984.

Thomas R. Clark,

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

[FR Doc. 84–20089 Filed 7–30–84; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment to Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends rules and regulations issued under this marketing order to permit the optional use of upward adjustments by handlers in Districts 1 and 3 up to 100 percent of their average weekly pick. This action would provide such handlers an option of receiving a larger proportion of their allotment earlier in the season, enabling them to market their lemons more advantageously.

EFFECTIVE DATE: August 1, 1984 through July 31, 1985.

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; 47 FR 50196), regulating the handling of lemons grown in California and Arizona. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the 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.

The marketing order provides that the prorate base of each handler be based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the marketing order provides in § 910.53(f)(1) that handlers in these districts may make a request to the committee that their average weekly pick be increased by an amount, not exceeding 50 percent of such average, to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season.

Section 910.53(h) provides that the percentage of adjustment specified in § 910.53(f)(1) may be changed through amendment of the rules and regulations issued under the marketing order. Such percentage has been adjusted upward from 50 to 100 percent for the last two seasons by amending § 910.153(e)(3). Unless extended the maximum percentage of upward adjustment permitted will revert to 50 percent on August 1, 1984. The committee unanimously recommended that such percentage of adjustment be established at 100 percent for the period August 1, 1984, through July 31, 1985. This action would provide handlers the option of receiving a larger proportion of their allotment earlier during the 1984–85 season, enabling them to use their proportionate share of the marketing opportunity more advantageously.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the time intervening between the date when the information upon which this final rule is based became available and the time when this final rule must become effective in order to effectuate the declared policy of the Act is insufficient. Interested persons were given an opportunity to submit information and views on the provisions specified in this final rule at an open meeting, at which the committee without opposition recommended issuance of such provisions. It is necessary to effectuate the declared purposes of the Act to make this final rule effective as specified. This final rule relieves restrictions on the handlng of lemons, 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]

Therefore, § 910.153(e)(3) in Subpart — Lemon Administrative Committee Rules and Regulations (7 CFR 910.100–910.180), is amended by revising the first sentence of the paragraph to read as follows:

§ 910.153 Prorate bases and allotments.

* * * * *

(e) * * *

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided,* that during the period August 1, 1984, through July 31, 1985, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent. * * *

* * * * *

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

Dated: July 25, 1984.

Thomas R. Clark,

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

[FR Doc. 84–20086 Filed 7–30–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Sundance Cruises, Inc., Paquet Cruise Lines, Inc., and P. & O. Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the names of P. & O. Inc., Paquet Cruise Lines, Inc., and Sundance Cruises, Inc.

EFFECTIVE DATE: July 10, 1984.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into agreement with P. & O. Inc., Paquet Cruise Lines, Inc., and Sundance Cruises, Inc. on July 10, 1984 to provide for the preinspection of their passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilities processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 522 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the names "P. & O. Inc.", "Paquet Cruise Lines, Inc.", and "Sundance Cruises, Inc." under "At Vancouver".

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: July 24, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-20093 Filed 7-30-84; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Charges for the Production of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, D.C. The amendments are necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records. In addition, the amendments would provide for any future change in copying charges to become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new charges.

EFFECTIVE DATE: July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8689.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC maintains a Public Document Room (PDR) at its headquarters at 1717 H Street, NW, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the reproduction of records at the PDR have traditionally been accommodated by a copying service contractor selected by the NRC. The schedule of reproduction charges to the public established in the copying service contract is set forth in 10 CFR 9.14 of the Commission's regulations. Due to circumstances beyond the Commission's control, the present contract was abruptly terminated. As a result, the NRC has recently awarded a new copying service contract. On June 21, 1984, the Commission published proposed amendments to revise the fee schedule set forth in 10 CFR 9.14 (49 FR 25482). The proposed fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the reproduction of records at the PDR.

In addition, § 9.14(a)(5) of the proposed amendments provided for any future change in copying charges to become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new fee schedule.

Finally, the proposed amendments deleted those provisions of § 9.14(a) that did not pertain to the price to be charged for the copying of records. Accordingly, the name and address of the current contractor in § 9.4(a)(3)(ii) and the billing information in § 9.14(a)(1)(v) and § 9.14(a)(3)(ii) were deleted.

II. Comments

Two comment letters were received on the proposed rule, both from the nuclear industry. One commenter was concerned exclusively with the quality of the performance of the new contractor and with the contractor's new billing procedures. Although these comments are outside of the scope of this rulemaking, the Commission would note that performance standards have been incorporated into the new contract and contractor performance will be evaluated in the course of the NRC's normal contract review process.

The second commenter recommended that the charges specified in § 9.14(a)(1) be *maximum* charges. Consequently, only *increases* in these maximum charges would need to be published as a proposed rule. According to this commenter, the suggested revisions would eliminate the need for proposed rulemaking when costs *decreased* and would lower the number of mail order requests which are subsequently cancelled due to the lack of notice of the increased charges. In response, the Commission believes that it is obligated to specify the exact charges for the reproduction of records, rather than simply a maximum price. Therefore, any change in the prices specified in § 9.14(a)(1) will necessitate the use of the requisite rulemaking procedures.

III. Final rule

The final rule would revise the fee schedule set forth in 10 CFR 9.14(a) to reflect the new prices for the copying of NRC records that have resulted from the awarding of the new contract for the reproduction of records at the PDR. In addition, § 9.14(a)(5) of the final rule provides for any future changes in copying charges to become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new fee schedule. This provision will ensure that the full reproduction cost will be borne by the person requesting the records, and will not require the NRC to subsidize reproduction costs during the interim period.

The final rule will also delete those provisions of § 9.14(a) that do not pertain to the price to be charged for the copying of records. Accordingly, the name and address of the current contractor in § 9.14(a)(3)(ii) and the billing information in § 9.14(a)(1)(v) and § 9.14(a)(3)(ii) have been deleted. In the future, this information will routinely be available from the PDR.

In addition to the above revisions, all of which were proposed in the **Federal Register** Notice of June 21, 1984, the NRC Staff has recommended that the charge specified in § 9.14(b)(1) for the copying of records at locations other than the PDR conform to the new charge specified in § 9.14(a)(1)(i) for the copying of records at the PDR. The charges specified in these two sections have traditionally been the same in order to afford equitable treatment to those persons with access to the PDR, and those who do not have access to the PDR. In order to maintain this policy, the final rule has revised § 9.14(b)(1) to specify a charge of seven cents per page.

The final rule will be immediately effective upon publication. The Commission believes that good cause exists under 5 U.S.C. 553(d)(3) to waive the usual 30-day delay in the effective date of a final rule. Users of the PDR were notified on May 22, 1984 that a new contract was being awarded and were notified on June 8, 1984 of the new contract prices. Therefore, users of the PDR had a reasonable opportunity to prepare for the revised fee schedule contained in this final rule. In addition, the NRC has been subsidizing the difference in cost between the old fee schedule and the new fee schedule, pending the effective date of the final rule. An immediate effective date will eliminate the unnecessary costs incurred through this continued subsidy and will

place full reproduction costs on the person requesting the records.

Regulatory Flexibility Act

5 U.S.C. 552(a)(4)(A) requires the NRC, as a Federal agency, to promulgate regulations ". . . specifying a *uniform* schedule of fees applicable to all constitutent units of such agency." (emphasis added). Therefore, no analysis of any differential impacts on small entities is necessary.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552, and 31 U.S.C. 9710. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.14, paragraph (a) is revised to read as follows:

§ 9.14 Charges for production of records.

(a)(1) Charges for the copying of records at the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC by the copying service contractor are as follows:

(i) Seven cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 8½ × 14 inches for which the charges vary as follows depending on the reproduction process that is used: Xerox process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and a maximum of 44 inches in length) reduced or full size; Photographic process—$7.80 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 44 inches in length) full size only.

(ii) Seven cents per page for microform to paper copy, except for engineering drawings and any other records larger than 8½ × 14 inches for which the charge is $2.20 per square foot or $2.60 for a reduced size print (18 × 24 inches).

(iii) One dollar per microfiche to microfiche.

(iv) One dollar per aperture card to aperture card.

(2) Self-service, coin operated, copying machines are available at the PDR for the use of the public. Paper to paper is $0.10 per page. Microform to paper is $0.10 per page on the reader-printers.

(3) Mail order requests for contractor copying of NRC records may be made by writing to the PDR. The charges for mail order reproduction of records are the same as those set out in paragraph (a)(1) of this section, plus mailing or shipping charges.

(4) Accounts can be opened with the copying service contractor. The name and address and billing policy of the contractor can be obtained from the PDR.

(5) Any change in the above costs will become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new charges.

* * * * *

3. In § 9.14, paragraph (b)(1) is revised to read as follows:

§ 9.14 Charges for production of records.

(b) * * *

(1) Sizes up to 8½ × 14 inches made on office copying machines— $0.07 per page of copy.

* * * * *

Dated at Bethesda, MD, this 19th day of July 1984.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 84-20177 Filed 7-30-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 4 and 5

[Notice 1984-11]

Public Records and the Freedom of Information Act; Access to Public Disclosure Division Documents: Amendment of Fee Provisions

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal to Congress.

SUMMARY: The Commission is publishing today revised regulations governing the fee schedules for reproduction of materials available under the Freedom of Information Act and through the Commission's Public Disclosure Division. The fee schedules have been updated to reflect the actual cost of items listed. They have also been revised to set fees in a more general fashion by describing the costs of reproduction instead of listing each item for which a charge is made. In addition, these rules establish a new procedure for handling requests for duplication of microfilm and computer tapes. Under the new rules, the requester will pay the outside producer of the requested material directly, to eliminate the requirement of debiting the Commission's appropriation for these costs. Finally, the regulations contain a technical revision to Part 4, to clarify that the Commission does not charge for staff time spent on duplicating materials requested under the Freedom of Information Act. Further information on these revisions is provided in the supplemental information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street NW., Washington, D.C. (202) 523-4143 or Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: On May 29, 1984, the Commission published a Notice of Proposed Rulemaking seeking comments on the text of proposed revisions to 11 CFR Parts 4 and 5. 49 FR 22335. The comment period ended on June 28, 1984. One comment was received in response to the Notice, from the Citizen's Research Foundation. This comment focused primarily on a draft fee waiver provision concerning schools and libraries which the Commission deleted from the proposed rules before the NPRM was published. It also endorsed the concept of direct payment to private producers of microfilm and computer tape duplicates.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2, U.S.C., be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. Since the revisions to 11 CFR Part 5 implement provisions of Title 2, these regulations were transmitted to Congress on July 26, 1984.

Explanation and Justification of 11 CFR 4.9 and 5.6

The revised regulations contain no changes from the proposed language published in the May notice.

The primary purpose of these rules is to update the fee schedules for materials requested under the Public Records and Freedom of Information Act, 11 CFR Part 4, and Access to Public Disclosure Division Documents, 11 CFR Part 5, which have not been modified since the Commission first promulgated the schedules in 1979–80. The revisions in the fee schedules reflect changes in the "direct" cost to the Commission, or only those costs directly attributable to the actual reproduction of documents. It should be noted that, in the case of computer indices, the Commission has continued its present practice of processing requests for indices involving 20 committee ID numbers or less without charge. The one exception remains requests for a name search, for which the requester will be charged based on the computer time used. Since this program searches all records on file for activity by a particular individual, it requires much greater resources to produce, often using several hours of computer time.

The format of the fee schedules has also been altered. In the previous regulations, the publications for which charges are made were listed. This approach restricted the Commission's ability to add new publications or to revise the charges made for documents when they become more voluminous. The fee schedules as revised describe instead the Commission's actual costs for different types of reproduction, eliminating the need to set forth the price of each document. An up-to-date fee schedule for particular publications will continue to be made available in the Commission's Public Records Office.

A second purpose is to modify the billing procedure for microfilm and computer tape requests. In fulfilling its duties under the Freedom of Information Act, and in exercising its Public Disclosure functions, the Commission receives numerous requests for copies of records which appear on microfilm and on computer tape. Since the Commission does not have the facilities to duplicate microfilm or computer tape, private companies perform that service. Previously, the public requester paid the Commission a copying fee equal to the price billed to the Commission by the private duplicating firm. *See* schedules set out in 11 CFR 4.9(a) and 5.6(a). These monies were deposited directly into the U.S. Treasury, and the Commission paid the outside duplicating firm from its appropriation. The Commission therefore requested an opinion from the Comptroller General regarding a proposed change in procedures governing payment of fees for duplication of records. The Comptroller General approved the change in Commission billing arrangements. *See* Comp. Gen. Decision B–205151 (March 1, 1982).

Under the revised regulations, each time a member of the public requests information in the form of microfilm or computer tape copies, the Commission will arrange for a private firm to produce that information and forward it to the Commission. The Commission will collect from the requester the appropriate fee for the duplication; however, the requester will make that fee payable not to the Commission but to the private firm which performed the duplicating. The Commission, upon receipt of payment, will forward the records to the requester.

The cost ot the requester will continue to be regulated by the contract between the Commission and the private company and will not exceed the fees which the Commission would have been authorized to charge if it had processed the request in-house.

All non-exempt Commission documents which are on microfilm will continue to be available for inspection and copying at the Commission's Public Disclosure Division located on the street level, 1325 K Street, N.W., Washington, D.C.

Lastly, 11 CFR 4.9(a) has been modified for grammatical purposes and to delete language which purported to authorize the Commission to assess a fee for staff time spent in duplicating Freedom of Information Act materials. The Commission does not assess a fee for such time.

1. The authority citation for Part 4 reads as follows:

Authority: 5 U.S.C. 552.

2. The authority citation for Part 5 reads as follows:

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a) and 31 U.S.C. 483(a).

List of Subjects

11 CFR Part 4

Freedom of Information.

11 CFR Part 5

Archives and Records.

PART 4—[AMENDED]

11 CFR Part 4 is amended by revising § 4.9 as follows:

§ 4.9 Fees.

(a)(1) Fees will be charged for the staff time utilized in searching for records, and for the expenses involved in the duplication of such records. These fees shall not exceed the Commission's actual costs in processing requests for record, in accordance with the following schedule:

Photocopying from microfilm reader-printer..... $.15 per page
Photocopying from photocopying machines..... $.05 per page
Paper copies from microfilm—Paper Print Machine..... $.05 per frame/page

Reels of Microfilm:

Number of feet x $.061 per foot = $ (total cost per reel)

Publications: (new or not from stocks available)

Cost of photocopying (reproducing) document.....$.05 per page
Cost of binding document.....$.30 per inch
Plus cost of staff research time after first ½ hour (see Research Time)

Publications: (available stock)

If available from stock on hand, cost is based on previously calculated cost as stated in the publicaton (based on actual cost per copy, including reproduction and binding).

Computer Tapes:

Cost ($.0006 per Computer Resource Unit Utilized—CRU) to process the request plus the cost of the computer tape ($25) and professional staff time (see Research Time). The cost varies based upon request.

Computer Indexes:

No charge for 20 or fewer requests for computer indexes, except for a name search as described below.

C Index—Committee Index of Disclosure Documents—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will costs $.05 for each ID number requested.

E Index (Parts 1–4)—Candidate Index of Supporting Documents—No charge for requests of 20 or fewer candidate ID numbers. Requests for more than 20 ID numbers will cost $.10 for each ID number requested.

D Index—Committee Index of Candidates Supported/Opposed—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.30 for each committee ID number requested.

E Index (Complete)—Candidate Index of Supporting Documents—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each candidate ID number requested.

G Index—Selected List of Receipts and Expenditures—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each ID number requested.

Other computer index requests for more than 20 ID numbers will cost $.0006 per CRU (Computer Resource Unit) utilized.

Name Search—A computer search of an entire individual contributor file for contributions made by a particular individual or individuals will cost $.0006 per CRU (Computer Resource Unit) utilized.

Research Time:

Clerical: first ½ hour is free; remaining time costs $3.50 for each half hour (equivalent of a GS–5) for each request.

Professional: first ½ hours is free; remaining time costs $8.00 per each half hour (equivalent of a GS–12) for each request.

Other Charges:

Certification of a Document, $7.35 per quarter hour.

Transcripts of Commission Meetings not previously transcribed, $6.70 per half hour (equivalent of a GS–11 executive secretary).

(2) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requester of the identity of the private contractor who will perform the duplication services. The fee for the production of computer tape or microfilm shall be made payable to that private contractor and shall be forwarded to the Commission.

(b) Commission publications for which fees will be charged under 11 CFR 4.9(a) include, but are not limited to, the following:

Advisory Opinion Index
Report on Financial Activity
Financial Control and Compliance Manual
MUR Index
Guideline for Presentation in Good Order
Office Account Index

(c) In the event the anticipated fees for all pending requests from the same requester exceed $25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due. Similarly, if the records requested require the production of microfilm, or of computer tapes, the Commission will not instruct its contractor to duplicate the records until the requester has submitted payment as directed or has made acceptable arrangements to pay the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

(d) The Commission may reduce or waive payment of any fees hereunder if it determines that such waiver or reduction is in the public interest because the proposed use of the information involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the individual or organization requesting the information.

PART 5—[AMENDED]

11 CFR Part 5 is amended by revising § 5.6 as follows:

§ 5.6 Fees.

(a)(1) Fees will be charged for copies of records which are furnished to a requester under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request, in accordance with the following schedule of standard fees:

Photocopying from microfilm reader-printer..... $.15 per page
Photocopying from photocopying machines..... $.05 per page
Paper copies from microfilm—Paper Print Machine..... $.05 per frame/page

Reels of Microfilm:

Number of feet × $.061 per foot = $ (total cost per reel)

Publications: (new or not from stocks available)

Cost of photocopying (reproducing) document.....$.05 per page
Cost of binding document.....$.30 per inch
Plus cost of staff research time after first ½ hour (see Research Time)

Publications: (available stock)

If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding).

Computer Tapes:

Cost ($.0006 per Computer Resource Unit Utilized—CRU) to process the request plus the cost of the computer tape ($25) and professional staff time (see Research Time). The cost varies based upon request.

Computer Indexes:

No charge for 20 or fewer requests for computer indexes, except for a name search as described below.

C Index—Committee Index of Disclosure Documents—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.05 for each ID number requested.

E Index (Parts 1–4)—Candidate Index of Supporting Documents—No charge for requests of 20 or fewer candidate ID numbers. Requests for more than 20 ID numbers will cost $.10 for each ID number requested.

D Index—Committee Index or Candidates Supported/Opposed—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.30 for each committee ID number requested.

E Index (Complete)—Candidate Index of Supporting Documents—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each candidate ID number requested.

G Index—Selected List of Receipts and Expenditures—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each ID number requested.

Other computer index requests for more than 20 ID numbers will cost $.0006 per CRU (Computer Resource Unit) utilized.

Name Search—A computer search of an entire individual contributor file for contributions made by a particular individual or individuals will cost $.0006 per CRU (Computer Resource Unit) utilized.

Research Time/Photocopying Time:

Clerical: first ½ hour is free; remaining time costs $3.50 for each half hour (equivalent of a GS–5) for each request.

Professional: first ½ hour is free; remaining time costs $8.00 per each half hour (equivalent of a GS–12) for each request.

Other Charges:

Certification of a Document, $7.35 per quarter hour.

Transcripts of Commission Meetings not previously transcribed, $6.70 per half hour (equivalent of a GS–11 executive secretary).

(2) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requester of the identity of the private contractor who will perform the duplication services. The fee for the production of computer tape or microfilm shall be made payable to that private contractor and shall be fowarded to the Commission.

(b) Commission publications for which fees will be charged under 11 CFR 5.6(a) include, but are not limited to, the following:

Advisory Opinion Index
Report on Financial Activity
Financial Control and Compliance Manual
MUR Index
Guideline for Presentation in Good Order
Office Account Index

(c) In the event the anticipated fees for all pending requests from the same requester exceed $25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due.

Similarly, if the records requested require the production of microfilm or of computer tapes, the Commission will not instruct its contractor to duplicate the records until the requester has submitted payment as directed or has made acceptable arrangements to pay the total amount due. If any fee is not

precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

(d) The Commission may reduce or waive payments of fees hereunder if it determines that such waiver or reduction is in the public interest because the furnishing of the requested information to the particular requester involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the person or organization requesting the information.

Dated: July 26, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84-20147 Filed 7-30-84; 8:45 am]

BILLING CODE 6715-01-M

11 CFR Part 9008

[Notice 1984-13]

Federal Financing of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission is publishing today technical amendments to its regulations at 11 CFR Part 9008, governing public financing of Presidential Nominating Conventions. These amendments bring the regulations into conformance with recent changes in Title 26, United States Code, enacted by Congress. The amendments raise the level of entitlement for major parties under these provisions from $3 million to $4 million.

EFFECTIVE DATE: July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On June 29, 1984, the House of Representatives and the Senate passed H.R. 5950. Pub. L. 98-355. This bill increased the public financing entitlement of the major parties for their presidential nominating conventions under 26 U.S.C. § 9008 from $3 million to $4 million. The provisions of the bill became effective upon being signed by the President, which occurred on July 11, 1984. The Commission has accordingly made technical amendments to its regulations, at 11 CFR 9008.1(a) and 9008.3(a), in conformance with the legislation.

Because these amendments simply reflect changes in the law, they are not substantive rules requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553, or delay in prescription under the legislative review provisions of 26 U.S.C 9009(c). These amendments are, therefore, made effective on July 31, 1984.

These final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that no committee subject to these rules is a small entity.

List of Subjects in 11 CFR Part 9008

Campaign funds, Political committees and parties.

The authority citation for Part 9008 reads as follows:

Authority: 26 U.S.C. 9008.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

1. 11 CFR 9008.1(a) is revised to read as follows:

§ 9008.1 Scope.

(a) This Part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential Nominating Convention. Under 26 U.S.C. 9008(d), expenditures with regard to such a convention by a national committee receiving public funds are limited to $4,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

* * * * *

2. 11 CFR 9008.3(a) is revised to read as follows:

§ 9008.3 Entitlement to Payments from the Fund.

(a) *Major parties.* Subject to the provisions of 11 CFR Part 9008, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.8 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $4 million, as adjusted by the Consumer Price Index under 11 CFR 9008.4(a).

* * * * *

Dated: July 26, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84-20148 Filed 7-30-84; 8:45 am]

BILLING CODE 6715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Revision 2—Amdt. 38]

Delegations of Authority to Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On March 3, 1983 the Administrator approved a delegation of authority, on a one year pilot project basis in Region IV only, now expired, that gave designated Senior Loan Specialists authority to approve, decline, or take servicing and liquidation actions on loans. These designated officers were delegated authority equal to the Supervisory Loan Specialist, Financing Division, District Office (D/O), the Supervisory Loan Specialist, Portfolio Management, D/O, and the Supervisory Loan Specialist, Liquidation, D/O, but with no supervisory authority for responsibility. The Senior Loan Specialists functioned under supervision of a regular supervisor such as a Deputy District Director, an Assistant District Director/Finance and Investment, or a Chief, Financing Division and freed Supervisory Loan Officers from some of their routine work, allowed them more time for management of a broader segment of their offices and additionally, greatly improved the supervisor/employee ratio.

The Administrator has now approved a new delegation of authority reinstituting that authority to designated Senior Loan Specialists, in Region IV only, on a temporary basis to expire December 31, 1984 and additionally, ratifies those actions taken by designated Senior Loan Specialists in Region IV during the period from March 9, 1984 to the effective date hereof this document which would have been proper if the original delegation had not expired.

EFFECTIVE DATE: July 31, 1984, not to exceed December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Information Resources Management Branch, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Telephone No. (202) 653-8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101

is adopted without resort to those procedures;

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies); Administrative practice and procedure; Organization and functions (Government agencies). For the reasons set forth in the preamble and pursuant to authority in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3–2 is amended as set forth below:

§ 101.3–2 [Amended]

1. Part I, Section A, paragraph 1. a. add a new subparagraph (10) as below, and redesignate existing subparagraphs (10) through (14) as (11) through (15).

	Approve	Decline
(10) Senior Loan Specialist, Financing, D/O, Region IV only	250,000	350,000

2. Part I, Section A, paragraph 1. b. add a new subparagraph (10) as below, and redesignate existing subparagraphs (10) through (16) as (11) through (17).

	Approve	Decline
(10) Senior Loan Specialist, Financing, D/O, Region IV only	250,000	500,000

3. Part I, Section B, paragraph 2. a. add a new subparagraph (10) as below, and redesignate existing subparagraphs (10) and (11) as (11) and (12).

(10) Senior Loan Specialist, Financing, D/O, Region IV only

4. Part I, Section B, paragraph 2. b. add a new subparagraph (10) as below, and redesignate existing subparagraphs (10) and (11) as (11) and (12).

(10) Senior Loan Specialist, Financing, D/O, (on fully undisbursed loans), Region IV only

5. Part I, Section B, paragraph 3. b. add a new subparagraph (2) as below.

(2) Senior Loan Specialist, Financing, D/O, (on fully undisbursed loans), Region IV only

6. Part I, Section B, paragraph 4. add a new subparagraph j. as below, and redesignate existing subparagraphs j. and k. as k. and l.

j. Senior Loan Specialist, Financing, D/O, (on fully undisbursed loans), Region IV only

7. Part I, Section A, paragraph 1. d. add a new subparagraph (10) as below, and redesignate existing subparagraphs (10) through (12) as (11) through (13).

(10) Senior Loan Specialist, Portfolio Management or Liquidation Section, D/O, Region IV only.

Dated: July 20, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–20214 Filed 7–30–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 16

Administrative Practices and Procedures; Conforming Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; conforming amendment.

SUMMARY: The Food and Drug Administration (FDA) is removing that portion of its regulations that cross-references the reimbursement for participation in a hearing regulations. FDA is taking this action because it inadvertently failed to remove this cross-reference when the agency revoked the regulations for reimbursement for participation in its administrative proceedings.

EFFECTIVE DATE: July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Richard T. Hunt, Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1982 (48 FR 12951), FDA removed its regulations (21 CFR Part 10, Subpart C) that established a pilot program for reimbursement of public participants in certain FDA administrative proceedings. The pilot reimbursement program was terminated because the United States Court of Appeals for the Fourth Circuit held that FDA does not have authority to reimburse public participation in its administrative proceedings. *Pacific Legal Foundation* v. *Goyan*, 664 F.2d 1221 (4th Cir. 1981).

In the conforming amendments to the March 26, 1982 document that FDA published on June 18, 1982 (47 FR 26375), FDA inadvertently failed to remove 21 CFR 16.22(a)(5). This provision cross-references the pilot reimbursement program previously codified in 21 CFR Part 10, Subpart C. This document corrects that error.

The agency has determined that the notice, public comment, and delayed effective date ordinarily required by the Administrative Procedure Act (5 U.S.C. 553 (b), (d)) are unnecessary for this notice because the agency is removing a nonsubstantive and obsolete cross-reference.

List of Subjects in 21 CFR Part 16

Administrative practice and procedure.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

§ 16.22 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.)); the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 as amended (42 U.S.C. 201 et seq.)); the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)); the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)); the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b)); the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807 (21 U.S.C. 467f(b))); the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)); the Federal Import Milk Act (secs. 1 through 9, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149)); the Tea Importation Act (secs. 1 through 10, 29 Stat. 604–607 as amended (21 U.S.C. 41–50)); the Federal Caustic Poison Act (sec. 2 et seq., 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.)); the Fair Packaging and Labeling Act (sec. 1 et seq., 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.)); the Agricultural, Rural Development, and Related Agencies Bill (Pub. L. 95–448, 92 Stat. 1073, 1091) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 16 is amended in § 16.22 *Initiation of regulatory hearing* by removing paragraph (a)(5).

Effective date. July 31, 1984.

Dated: July 25, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–20076 Filed 7–30–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 376

[DoD Directive 5154.28]

Joint Tactical Command, Control, and Communications Agency (JTC^{3}A)

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned functions and responsibilities to the Director, Joint Tactical Command, Control, and Communications Agency (JTC³A), and has delegated to the Director specific authorities. This rule serves as the instrument that authorizes the Director to carry out the JTC³A charter.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on July 5, 1984, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Directorate for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202–695–4281.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 551(a)(1) of Title 5, United States Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 376

Organization and functions (government agencies), Command, control, and communications.

Accordingly, 32 CFR, Chapter I, is amended by adding a new Part 376, reading as follows:

PART 376—JOINT TACTICAL COMMAND, CONTROL, AND COMMUNICATIONS AGENCY (JTC³A)

Sec.

376.1 Purpose.
376.2 Applicability.
376.3 Definitions.
376.4 Mission.
376.5 Organization and management.
376.6 Responsibilities and functions.
376.7 Relationships.
376.8 Authorities.
376.9 Administration.

Authority: 10 U.S.C. section 125.

§ 376.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense and the provisions of 10 U.S.C., section 125, this Part establishes the Joint Tactical Command, Control, and Communications Agency (JTC³A) with responsibilities, functions, relationships, and authorities as outlined below.

§ 376.2 Applicability.

This Part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 376.3 Definitions.

(a) *The Joint Tactical Command, Control, and Communications (JTC³) Architecture.* The aggregate of documented elements of a JTC³ program that define and guide the planning, programing, development, testing, evaluation, implementation, and configuration management of entities that compose the program. The JTC³ architecture accomplishes the following:

(1) Describes the overall concept for tactical command, control, and communications and nonstrategic nuclear forces C³ in joint and combined operations based upon the threat projections and force requirements approved by the Joint Chiefs of Staff.

(2) Identifies the characteristics of tactical C³ systems supporting joint and combined operations necessary to meet the following validated requirements:

(i) Operational and system performance requirements.

(ii) Interconnectivity requirements.

(iii) Secure communications requirements.

(3) Documents the technical and procedural interface standards required to achieve systems compatibility and interoperability.

(4) Documents the procurement and fielding schedules needed to meet implementation objectives.

(5) When approved, serves as authoritative guidance for Master Program Plans of the DoD Components and for preparation of Program Objective Memorandums.

(b) *Technical Interface Standards.* Consist of specifications of the functional, electrical, and physical characteristics necessary to allow the exchange of information across an interface between different tactical C³ systems or equipment.

(c) *Procedural Interface Standards.* Consist of specifications for the manner of accomplishing the exchange of information across an interface. They define:

(1) The form or format in which information is to be exchanged.

(2) The prescribed information exchange language, syntax, and vocabulary to be used in the information exchange.

(3) Interface operating procedures that govern the information exchange.

(d) *Tactical/Mobile C³ Systems.* Those deployable C³ systems that support tactical operations.

(e) *Joint C³ Systems.* C³ systems that interoperate with systems of other Military Services or other nations in joint or combined operations.

§ 376.4 Mission.

The JTC³A shall ensure the interoperability of tactical command, control, and communications (C³) systems for joint or combined operations (including nonstrategic nuclear forces) through the development and maintenance of a joint architecture, interface standards, and interface definitions for tactical/mobile C³ systems.

§ 376.5 Organization and management.

(a) The JTC³A shall consist of a Director and subordinate organizational elements that are established by the Director within assigned resources.

(b) The Director, JTC³A, shall report to the Secretary of Defense through the Under Secretary of Defense for Research and Engineering (USDR&E) for all matters relating to systems engineering and acquisition. The Joint Chiefs of Staff (JCS) shall provide guidance and direction for matters involving planning, requirements development and integration, prioritization, and operational concepts, policies, and procedures.

§ 376.6 Responsibilities and functions.

(a) The *Under Secretary of Defense for Research and Engineering* shall:

(1) Coordinate and recommend to the Secretary of Defense a program and budget for the JTC³A.

(2) Assign specific tasks to the JTC³A for matters relating to development and acquisition management, including system engineering, design, and development, for joint tactical/mobile C³ systems.

(3) Review and make recommendations regarding implementation of the overall joint tactical C³ architecture, interface standards, and interface definitions developed by the JTC³A and submitted to the Secretary of Defense by the JCS.

(4) Approve Military Service development plans and make recommendations on related programing documents for tactical and nonstrategic nuclear forces C³ programs that require interoperation across joint or combined boundaries.

(5) Ensure compliance of DoD Components with the approval of tactical command, control, and communications architecture.

(b) The *Under Secretary of Defense for Policy* (USD(P)) shall provide policy guidance for JTC³A activities except

operational policy guidance, which will be provided by the JCS.

(c) The *Joint Chiefs of Staff* shall:

(1) Provide guidance and direction to the JTC³A for operational matters involving planning and requirements development and integration, including prioritization, operational concepts, policies, and procedures.

(2) Establish and validate joint or combined tactical C³ requirements applicable to JTC³A programs.

(3) Review and provide recommendations to the Secretary of Defense concerning development plans and related programing documents for tactical C³ programs that require interoperation across joint or combined boundaries, to assist in determining their adequacy, feasibility, and suitability in support of joint doctrine, assigned operational missions, and contingency plans.

(4) Review for implementation the overall joint tactical C³ architecture, interface standards, and interface definitions developed by the JTC³A and provide these to the Secretary of Defense for approval.

(5) Approve military manpower for the JTC³A, in accordance with JCS Memorandum of Policy (MOP) 173, "Manpower for Joint and International Activities," May 7, 1981.

(6) Provide guidance and direction for JTC³A configuration management activities.

(7) Ensure compliance of DoD Components with the approved tactical command, control, and communications architecture.

(d) The *Commanders of Unified and Specified Commands* shall:

(1) Identify their tactical C³ requirements (including secure communications requirements) for joint or combined operations, as they occur, for JCS comment and validation.

(2) Conduct or participate in exercises and technical tests to evaluate joint or combined tactical C³ systems, procedures, and standards.

(e) The *Secretaries of the Military Departments* shall:

(1) Identify their tactical C³ requirements (including secure communications requirements) for joint or combined operations, as they occur, to the JCS.

(2) Provide to the Director, JTC³A, proposed changes that impact on configuration, schedules, or applicable system or interface specifications of the tactical C³ systems architecture.

(3) Manage the configuration control of equipment under their purview.

(4) Designate for each Military Service a single office with responsibility for all its JTC³A matters.

(5) Plan, program, and budget for the implementation of the approved joint tactical C³ architecture.

(6) Advise the JCS and the Director, JTC³A, of changes of funds, personnel, facilities, or materials that would affect the development or implementation of the approved JTC³ architecture or their participation in that architecture.

(7) Undertake tasks assigned by the USDR&E in support of the JTC³A.

(8) Provide military personnel for assignment to the JTC³A in accordance with the JCS-approved Joint Manpower Program, processed under the provisions of JCS MOP 173.

(f) The *Director, National Security Agency/Chief, Central Security Service (NSA/CSS)* shall:

(1) Provide communications security (COMSEC) input and advise on the development of joint and combined architectures, design standards, and interface definitions, and coordinating such actions.

(2) Develop COMSEC architectures complementary to these of the JTC³A.

(3) Assess the security provided by proposed tactical C³ architectures.

(g) The *Director, Joint Tactical Command, Control, and Communications Agency* shall:

(1) Provide the USDR&E with engineering support for joint tactical/mobile C³ system design and development.

(2) Develop and maintain a joint tactical C³ architecture by defining the architecture for joint tactical communications systems (including nonstrategic nuclear forces C³) and by defining interface specifications required to ensure interoperability and information flow among C² systems in accordance with the guidance and direction provided by the JCS and the USDR&E.

(3) Develop, test, and maintain technical and procedural interface standards to be used by tactical C³ systems in joint or combined military operations, in accordance with guidance provided by the JCS and the USDR&E, and verify that such systems have implemented properly the approved interface standards.

(4) Advise the USDR&E, the USD(P), and the JCS on joint tactical C³ matters.

(5) Monitor and coordinate programs for which JTC³A has responsibility but which are included in the programs of other DoD Components and governmental agencies, and monitor other programs that may affect tactical C³ interoperability.

(6) Provide source documents from which the DoD Components can develop training materials to facilitate implementation of the tactical C³ architecture.

(7) Develop and maintain data bases of developmental and operational interoperability standards.

(8) Coordinate secure communications interoperability requirements with the NSA/CSS, the Defense Communications Agency (DCA), the Defense Intelligence Agency (DIA), the Military Departments, and the JCS.

(9) In coordination with NSA/CSS and the Military Departments, and in accordance with DoD Directive C-5200.5, develop a tactical secure communications architecture as an integral part of the overall joint architecture, including orderly and timely introduction of systems to satisfy interoperability requirements.

(10) Develop and maintain tactical communications system technical standards under the Defense Standardization and Specification Program (DoD Directive 4120.3) in coordination with the Military Departments and appropriate Defense Agencies, as assigned and directed.

(11) Develop, in coordination with appropriate governmental activities, U.S. positions on combined tactical C³ interoperability matters. Represent the United States as designated by the USDR&E or JCS, as appropriate, in international forums responsible for the development, testing, and maintenance of technical and procedural interface standards for use by tactical C³ systems in combined operations. Provide direct technical support, as assigned or directed by the USDR&E or JCS, as appropriate, to allied tactical C³ interoperability forums and to U.S. representatives to these forums.

(12) Perform financial management functions relating to JTC³A-funded programs and assist in reviews by the Secretary of Defense and JCS of programs and budgets supporting the JTC³A mission.

(13) Monitor the Commander-in-Chief (CINC) C² Initiative Program for possible effects on the JTC³ architecture.

(14) Perform, in coordination with the DCA, system planning functions for current and future tactical satellite communications terminals, such as the Ground Mobile Forces equipment.

(15) Support the USD(P) and the JCS in evaluating and commenting on proposals, required operational capabilities (ROCs), and developments within the scope of the JTC³A mission.

(16) Recommend to the USDR&E and the Military Departments, those research, development, test, and evaluation (RDT&E) programs or

projects required to accomplish the JTC³A mission.

§ 376.7 Relationships.

(a) For the performance of assigned functions, the Director, JTC³A, shall:

(1) Coordinate with other DoD Components having collateral or related functions and responsibilities.

(2) Maintain active liaison with other DoD Components for the exchange of information and advice on programs in the field of assigned responsibility.

(3) Make use of established facilities and services in the Department of Defense and other government agencies whenever practical to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the Director, JTC³A, on all matters related to the mission, responsibilities, and functions of JTC³A.

§ 376.8 Authorities.

The Director, JTC³A, or designee, is specifically delegated authority to:

(a) Command the JTC³A.

(b) Establish JTC³A headquarters and field organizations and, within overall authorized personnel ceiling, allocate military and civilian spaces among such organizations in accordance with established DoD policies.

(c) Develop, defend, and administer a budget for the JTC³A in accordance with established DoD Five Year Defense Program (FYDP) and Planning, Programing, and Budgeting System (PPBS) policies and procedures (DoD Instruction 7045.8, DoD Directive 7045.14, and DoD Instruction 7045.7).

(d) Communicate directly with appropriate personnel of other DoD Components on matters related to the mission and programs of the JTC³A.

(e) Prescribe, in accordance with this Part and in coordination with the DoD Components concerned, procedures, principles, standards, and practices to accomplish the assigned mission.

(f) Monitor and report to the Secretary of Defense and the JCS compliance by the DoD Components with the approved tactical C³ architecture.

(g) Obtain plans, reports, information, advice, and assistance from other DoD Components, consistent with the policies and criteria of DoD Directive 5000.19, as necessary, to carry out assigned functions and responsibilities.

§ 376.9 Administration.

(a) The Director, JTC³A, shall be a commissioned officer in the grade of O–7 or above appointed by the Secretary of Defense from nominees submitted by the Military Departments through the JCS.

(b) The assignment of other military and civilian personnel to the JTC³A shall be subject to the approval of the Director, JTC³A.

(c) The JTC³A shall be authorized such personnel, facilities, funds, and other administrative support as considered necessary by the Secretary of Defense. JTC³A shall develop and submit a Joint Manpower Program in accordance with JCS MOP 173.

(d) Administrative support required by JTC³A shall be provided by the Secretary of the Army on a reimbursable basis in accordance with DoD Directive 4000.19, except that the JTC³A will retain separate authority for budget preparation, justification, execution, and other DoD FYDP and PPBS activities.

(e) The Heads of other DoD Components shall provide supplementary support to the JTC³A as may be required under DoD Instruction 7045.8 and within the constraints of available resources.

Dated: July 23, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–19918 Filed 7–30–84; 8:45 am]

BILLING CODE 3810–01–M

PANAMA CANAL COMMISSION

35 CFR Part 111

Revised Shipping and Navigation Rules; Diving Operations

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: In order to conform to Occupational Safety and Health Administration Requirements, the Panama Canal is today approving changes in the requirements concerning the type of flag used to mark the location of diving operations in the Panama Canal.

Other provisions rendered surplusage by this change are also being deleted.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724–0104, or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 52–7511.

SUPPLEMENTARY INFORMATION: On May 3, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 18873) setting forth changes in the rules for prevention of collisions in the Panama Canal. Interested parties were given the opportunity to submit comments by June 4, 1984. During that time period, no comments were received by the agency; accordingly, the substantive changes hereby adopted by this document are as follows:

The present regulations concerning diving require the use of a U.S. Diver's Flag to mark industrial or commercial diving operations, § 111.38(a), and recreational diving, § 111.38(b). This section is revised to require the use of the International Code Flag "A", in keeping with the Occupational Health and Safety Administration's standards for marking diving operations. Paragraph (c) requires that vessels approaching or passing an area where commercial, industrial or recreational diving operations are underway to reduce speed sufficiently to avoid creating a dangerous wash or wake.

Section 111.27(e) is revised to conform to the changes made in § 111.38.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this proposed rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 111

Vessels, Anchorage grounds, Harbors, Marine safety, Maritime carriers, Navigation (water).

PART 111—[AMENDED]

Accordingly, Part 111 is changed as follows:

1. Section 111.38 is revised to read as follows:

§ 111.38 Diving Operations (Rule 38)

(a) When industrial or commercial diving operations are being conducted in the Canal, or waters adjacent thereto, a revolving red light shall be displayed in all weathers from sunset to sunrise from the diving barge or other craft serving the diver. The light shall be so mounted and of sufficient intensity as to be visible for not less than 1 mile. The International Code Flag "A", not less than 18 inches in height and of standard proportions, shall be displayed from such craft by day where it may best be seen. A rigid replica of this flag may be substituted in lieu thereof.

(b) Recreational skin diving in waters of the Canal, including Gaillard Cut and the channel through Gatun and Miraflores Lakes and in the waters of all ships' anchorages, is prohibited unless authorized in writing by the Chief, Navigation Division or his designee. Authorization shall not be given for skin diving at night. When recreational skin diving activities are under way in the Canal, or waters adjacent thereto, a flag of the type described in paragraph (a) of this section shall be displayed from the craft serving the skin diver in a manner which allows all-round visibility; however, the flag displayed for recreational diving shall be not less than 12 inches in height and of the standard proportions.

(c) Vessels approaching or passing an area where diving activities are under way shall reduce speed sufficiently to avoid creating a dangerous wash or wake.

2. In § 111.27, paragraph (e) is revised to read as follows:

§ 111.27 Vessels not under Command or Restricted in their Ability to Maneuver (Rule 27)

* * * * *

(e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit all lights and shapes prescribed by paragraph (d) of this section, the lights and shapes prescribed by § 111.38 shall be exhibited.

* * * * *

Authority: 22 U.S.C. 3811, E.O. 12215.

Dated: July 9, 1984.

Fernando Manfredo, Jr.,

Acting Administrator, Panama Canal Commission.

[FR Doc. 84-20229 Filed 7-30-84; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-007; OAR-FRL-2643-2]

Approval and Promulgation of Implementation Plans; Tennessee: Removal of Construction Moratorium From Nashville-Davidson County

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is today revoking a construction moratorium and funding restrictions imposed under sections 173(4) and 176(b) of the Clean Air Act on April 5, 1984, on the Nashville-Davidson County carbon monoxide (CO) nonattainment area. On May 3, 1984, EPA received the approved, signed contract for the operation of an Inspection and Maintenance (I/M) program for Nashville-Davidson County, Tennessee. Since this submittal demonstrates a good faith effort toward implementing an I/M program in an expeditious manner, EPA is removing the construction moratorium and funding restrictions imposed under sections 173(4) and 176(b) of the Clean Air Act. This moratorium prohibited the issuance of any new permits to affected sources, even if an application had already been submitted. Restrictions on EPA grant funds under section 176(b) were finalized in the April 5, 1984, notice. However, because the issue of the appropriate formula for applying these restrictions had not been resolved, EPA's finding did not impact any grants at that time. Sanctions under section 110(a)(2)(I) of the Act which were imposed on April 5, 1984, will still be in place until EPA takes final action on the entire CO SIP; this prohibits the issuance of permits for which a complete application had not been submitted as of April 5, 1984. EPA has determined that good cause exists to make today's action effective immediately (see **SUPPLEMENTARY INFORMATION** below).

EFFECTIVE DATE: This action is effective on July 31, 1984.

ADDRESSES: You may inspect copies of the submittal and EPA's evaluation during normal business hours at the following locations:

EPA, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, 150 9th North Ave., Terra Building, Nashville, Tennessee 37203.

Copies of the submittal can be inspected during normal business hours at the following locations:

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

FOR FURTHER INFORMATION CONTACT: Waymond Blackmon, EPA Region IV, Air Management Branch, 404/881-2864 or FTS 257-286.

SUPPLEMENTARY INFORMATION: On April 5, 1984 (49 FR 13522), EPA disapproved Tennessee's 1982 revision to its Carbon Monoxide (CO) State Implementation Plan (SIP) for the Metropolitan Nashville-Davidson County area. The plan submitted by the State/local agency failed to provide an acceptable Inspection and Maintenance (I/M) program. Disapproval of the CO portion of the SIP invoked a ban on the construction of major new or modified stationary sources of carbon monoxide in the Nashville-Davidson County nonattainment area as required by section 110(a)(2)(I) of the Act (42 U.S.C. 7410(a)(2)(I)), because of the original failure to implement a program in 1982 and the more recent failure to enter into a contract for operation of an I/M program.

EPA also found that Tennessee's 1979 CO SIP for Nashville was not being implemented. This finding also imposed a moratorium on construction of major new or modified sources of CO in the nonattainment area under section 173(4) of the Act. Restrictions on EPA grant funds under section 176(b) of the Act were also proposed in the August 3, 1983, notice (48 FR 35314) and finalized in the April 5, 1984, notice. However, because the issue of the appropriate formula for applying these restrictions had not been resolved, EPA's finding did not impact any grants at that time.

On May 3, 1984, EPA received the approved, signed contract for the operation of an I/M program for Nashville-Davidson County, Tennessee. Since this submittal demonstrates a good faith effort toward implementing an I/M program in an expeditious manner, EPA is today removing the construction moratorium and funding restrictions imposed under sections 173(4) and 176(b) of the Act. This moratorium prohibited the issuance of any new permits to affected sources which had already made a complete application. Although the Davidson County Clerk, the primary enforcement agency, filed suit to enjoin implementation of the I/M program, the County denied all requested relief except as related to alleged "Sunshine Law" violations. On May 21, 1984, the

Court issued a memorandum concluding that a Writ of Mandamus should be issued against the County Clerk requiring him in effect to enforce the program. An Order and Peremptory Writ of Mandamus was subsequently filed for entry by the County Attorney. Based on the outcome of the legal proceedings, it appears that the requisite enforcement functions will be performed.

Sanctions imposed under section 110(a)(2)(I) of the Act will remain in place until such time as EPA can take final action on the entire CO SIP; this prohibits the issuance of permits for which a complete application had not been submitted as of April 5, 1984. However, EPA anticipates submittal of a complete SIP in the near future. EPA will take action on this SIP revision and the related section 110(a)(2)(I) construction moratorium as soon as possible.

EPA finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and related public procedure are impracticable, unnecessary, or contrary to the public interest in this case. EPA's April 5, 1984, notice of final disapproval cited as the critical reasons for EPA's determination of nonimplementation, first, the failure of Nashville to enter into a particular contract for operation of the program, and, second, its failure to assure EPA that the I/M program would be enforced. Nashville has now entered into the necessary contract, and has provided assurance that the program will be enforced.

Moreover, in its August 3, 1983, proposal to impose the construction moratorium and funding sanctions, EPA solicited comments on the immediate removal of these sanctions without further notice and opportunity for comment if the State submitted evidence to the Agency that it was implementing its SIP. EPA received no adverse comments on this matter.

Furthermore, notice and comment here could result in the cancellation of a proposed energy recycling plant in Nashville. The plant, which cannot receive construction permits until the section 173(4) moratorium is lifted, will be economically viable only if it can sell the steam it generates to nearby customers. If the construction moratorium is not lifted immediately, the major proposed steam customer may withdraw its commitment to purchase energy from the plant and arrange to employ an alternate energy source. Construction of the energy recycling plant will allow Nashville to manage its waste more effectively. For the reasons stated above, EPA finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this action immediately effective.

40 CFR 52.2225 is amended today to make it clear that sources of CO which had not made a complete application for a permit by the date on which EPA disapproved the 1982 Part D revision of the Nashville-Davidson County CO SIP are still subject to a construction ban by virtue of the provisions of section 110(a)(2)(I) of the Clean Air Act; sources which had their complete application in by April 5, 1984, can be allowed to construct, however. In amending § 52.2225 on April 5, 1984 (49 FR 13522), to show disapproval of the 1982 CO SIP for the area, EPA inadvertently failed to revoke the conditional approval set forth in paragraph (b) for the 1979 CO SIP for this area; this paragraph is removed today since the conditional approval is made irrelevant by the deficiencies in the 1982 SIP.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

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

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovermental relations.

(Sec. 110, 172, 173, 176 and 301(a), of the Clean Air Act as amended (42 U.S.C. Sec. 7410, 7502, 7503, 7506, and 7601(a))

Dated July 24, 1984.

William D. Ruckelshaus,

Administrator.

PART 52 —[AMENDED]

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

Subpart RR—Tennessee

Section 52.2225 is amended by removing paragraph (b) and revising paragraph (a) to read as follows:

§ 52.2225 Control strategy: Carbon monoxide and ozone.

(a) *Part D disapproval.* (1) The 1982 revision of the part D plan for the Nashville CO nonattainment area is disapproved for failure to assure implementation of a vehicle inspection and maintenance program. No major new or modified sources of carbon monoxide can be built in the area by virtue of the provisions of section 110(a)(2)(I) of the Clean Air Act unless the sources had made a complete application for a permit by April 5, 1984.

(b) [Reserved]

* * * * *

[FR Doc. 20100 Filed 7-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-1136; RM-4519]

TV Broadcast Station in Marianna, Fl.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 51 to Marianna, Florida, as that community's first local commercial television assignment, at the request of Marianna Television, Inc.

DATE: Effective: September 28, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Marianna, Florida) MM Docket No. 83-1136, RM-4519.

Adopted: July 12, 1984.

Released: July 23, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 51655, published November 10, 1983, proposing the assignment of UHF TV Channel 51 to Marianna, Florida, as that community's first local commercial television channel, at the request of Marianna Television, Inc. ("petitioner"). Petitioner has filed comments reiterating its intention to apply for the frequency, if assigned. No other comments were received.

2. Channel 51 can be assigned in compliance with the Commission's minimum distance separation requirements provided the transmitter is sited at least 6 miles northwest of Marianna. This will avoid a short-spacing to TV Station WBSP, Channel 51 in Ocala, Florida.

3. We believe the assignment of a first local commercial television assignment at Marianna is in the public interest as an interest in its use has been received. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 28, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Marianna, FL	*16+, 51

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–20134 Filed 7–30–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1118; RM–4474]

TV Broadcast Station in Naples, FL; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 46 to Naples, Florida, as that community's second local television assignment, at the request of Meycom, Inc.

DATE: Effective: September 28, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Naples, Florida) MM Docket No. 83–1118, RM–4474.

Adopted: July 12, 1984.
Released: July 23, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 49885, published October 28, 1983, proposing the assignment of UHF TV Channel 46 to Naples, Florida, as that community's second television allocation, at the request of Meycom, Inc. ("petitioner"). Petitioner has filed comments reiterating its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. In view of the fact that the channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements, and an intention to activate the channel has been received, we believe it would be in the public interest to assign the channel, as proposed. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 28, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Naples, FL	26–, 46

3. It is further ordered, That this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–20133 Filed 7–30–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1345; RM–4595]

TV Broadcast Station in Sturgeon Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 42 to Sturgeon Bay, Wisconsin, as that community's first local television channel, at the request of Sturgeon Bay Television Company.

DATE: Effective: September 28, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Sturgeon Bay, Wisconsin) MM Docket No. 83–1345, RM–4595.

Adoped: July 12, 1984.
Released: July 23, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 467, published January 4, 1984, soliciting comments on the request of Sturgeon Bay Television Company ("petitioner") to assign UHF TV Channel 42 to Sturgeon Bay, Wisconsin, as that community's first local television facility. The petitioner has filed comments reiterating its intention to apply for Channel 42, should it be assigned. No other comments were received.

2. The channel can be assigned in compliance with the Commission's minimum mileage separation and other technical requirements. Concurrence in the assignment has been received from the Canadian Government as Sturgeon Bay is located within 400 kilometers (250 miles) of the U.S.-Canadian border.

3. We believe the assignment of a first local television channel to Sturgeon Bay would be in the public interest as a desire to provide such service to the community has been expressed. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 28, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Sturgeon Bay, WI	42

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-20136 Filed 7-30-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 82-83; RM Nos. 3705, 3729, 3734, 3778, 3831, 3833, 3860; FCC 84-345]

Radiotelephony Expansion High Frequency Amateur Bands; RM-4228 Petition for Telephony Operations on Frequencies Between 7075-7100 kHz in Hawaii and in Areas Near Region 3

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules by expanding telephony privileges on frequencies 3750-4000 kHz, 21200-21450 kHz, 28300-29700 kHz, and 7075-7100 kHz (Hawaii and in areas near Region 3). These amendments are necessary so that amateur radio operators will have additional radiotelephone frequencies on which to operate. The result of this action is to relieve the overcrowding on the presently-allocated frequencies for radiotelephony in the Amateur Radio Service.

EFFECTIVE DATE: 0001, Universal Coordinated Time (UTC), September 1, 1984.

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

FOR INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Second Report and Order

In the matters of expansion of the telephony segments of the high frequency amateur radio service bands PR Docket No. 82-83, RM-3705, RM-3729, RM-3734, RM-3778, RM-3831, RM-3833, RM-3860. Petition for rule making to authorize telephony operation on the frequencies 7075-7100 kHz in the State of Hawaii, RM-4228.

Adopted: July 18, 1984.
Released: July 20, 1984.
By the Commission.

1. On March 31, 1983, the Commission adopted a Further Notice of Proposed Rule Making (48 FR 16305; April 15, 1983) proposing to change operating privileges in radiotelephone subbands 3750-4000 kHz and 21200-21450 kHz, to authorize telephony operations on all frequencies from 28300 to 29700 kHz, and to authorize telephony operation on frequencies 7075-7100 kHz in Hawaii and in areas near Region 3. Twenty-six comments and one reply comment were filed in this proceeding.[1] A First Report and Order in this proceeding authorizing telephony on the frequencies 14150-14200 kHz was adopted on March 31, 1983 (FCC 83-118; 48 Fed. Reg. 16275, April 15, 1983).

3750-4000 kHz

2. With respect to frequencies 3750-4000 kHz, we proposed that 3750-3775 kHz be allocated for telephony for the Amateur Extra class only, that 3775-3850 kHz be allocated for telephony for Amateur Extra and Advanced, and that 3850-4000 kHz be allocated for telephony for Amateur Extra, Advanced and General class operators. Some commenters suggested alternative allocations for this band. For example, they proposed that Novice class operators be given an enlarged Novice subband, 3675-3750 kHz for Novices or 3675-3725 kHz for Novices and Technicians. They said that novices could benefit from the good evening propagation conditions of this band to practice and improve Morse code skills. Also, they felt that an expanded Novice subband would minimize interference from Canadian stations due to the lower band edge.

3. Raphael Soifer suggested that Advanced Class operators be given 3075-3775 kHz and that Amateur Extras be given 3775-3800 kHz. His concern was to keep the subband 3775-3800 kHz from becoming overpopulated and to have in it the fewest number of operators, the Amateur Extra class. By doing this, the United States amateur operators would be able to hear foreign operators trying to contact them in the subband 3775-3800 kHz. Specifically, Mr. Soifer fears that the influx of 90,000 Advanced Class operators in the 3775-3850 kHz subband would overpopulate that subband and destroy it for everyone. Jim Monahan also opposed the concept of 3775-3850 kHz for Extras and Advanced for the same reason and said interference would be caused to Japanese and Australian stations. He opts for 3775-3800 kHz for Extras and 3750-3775 kHz for Extras and Advanced.

4. On the other hand, The Canadian Radio Relay League, Inc. (Canadian League), does not want United States Amateur Extra class operators on 3750-3775 kHz because additional stations would interfere with Canadian public service nets. Also, the Canadian League points out that Canadian operators use those frequencies for communications between large urban centers. The Canadian League said that it intends to request the use of the subband 3675-3700 kHz from its regulatory authority if radiotelephone expansion occurs in the 3.5 MHz band. The use of telephony in that subband could cause interference to the telegraph operations which take place there. In contrast to the above comments, the American Radio Relay League, Inc. (ARRL), stated that radiotelephony in the 3750-4000 kHz subband was much-needed and would not degrade either domestic or foreign telegraphy operation, nor would it have a significant adverse impact on foreign telephony operation. Gary C. Mitchell's comments were in the form of a rule making petition to allow General class operators to operate below 3890 kHz in Region 3 because their present allocation, 3890-3900 kHz, experiences interference from mainland China broadcast stations. His petition is being considered as a comment in this proceeding.

21200-21450 kHz

5. For this subband, we proposed 21200-21225 kHz, General Amateur Extra only; 21225-21300 kHz, Amateur Extra and Advanced; 21300-21450 kHz, Amateur Extra, Advanced and General. The comments for these allocations were generally supportive. Some commenters proposed variations of the Commission proposal. David Novoa suggested 21200-21250 kHz for Extra and 21250-21300 kHz for Extras and Advanced class operators. No reason was given for deviating from our proposal. Joe Speroni suggested that the present Novice subband be relocated from 21100-21200 kHz to 21050-21100 kHz. He said that this would prevent the Novice subband from effectively eliminating exclusive foreign phone bands. He suggested keeping a power limit as a requirement in the Novice subbands for Novice and Technician class operators, but only as a recommended limit for other amateur operators when operating in the Novice subbands.

[1] Although the comments of William G. Welsh, Donald R. Aldred, Herbert C. Holeman, John F. Sehring and the reply comments of the Johns Hopkins University Applied Physics Laboratory Amateur Radio Club were not timely filed, we accept them as late-filed comments.

28300–29700 kHz

6. Comments regarding expansion of the 28 MHz telephony subband were about evenly divided. Those favoring the Commission's proposal generally did so without specific comments. Harry Blocher, however, proposed that this subband be limited to Advanced and Extras only, with 28400–28500 kHz for Extra and Advanced, and 28300–28400 kHz for Extras only. Kenneth Taylor supported the expansion but wanted 38300–28500 kHz for Novice operation. He believes Novices would be able to make more long distance contracts (DX contracts) thereby increasing their enthusiasm for amateur radio.

7. The opponents had various reasons for their opposition. R. Perry Awe said that no expansion was necessary in view of the number of frequencies in the 28 MHz band as compared with other bands. Joseph Schroeder objected to the Commission's proposal to move the lower edge of the 28 MHz phone subband down to 28300 kHz. He notes that 28200–28300 kHz is presently used worldwide for beacons which determine band conditions and predict propagation. According to Schroeder, if U.S. amateur operators were to operate radiotelephony above 28300 kHz, non-U.S. phone operators would often choose to operate in the band area now used for beacons in order to escape interference from powerful U.S. stations, thus destroying the usefulness of the beacons. The Northern Illinois DX Association held the same view as Schroeder. Philip Galasso recommended 28 MHz telephone operation as low as 28200 kHz. He stated that amateur operators in other countries plan their operations to avoid interfering with beacons. He said that the virtue of his plan was that it would also allow voice operation on beacons. John Sehring suggested that existing band plans be duplicated to increase the number of channels without going below 29.1 MHz. He also raised the question of the conflict between repeaters in the 28 MHz subband and satellite communications and recommended that telephony expansion in this subband be phased-in gradually.

8. In reply comments, the Johns Hopkins University Applied Physics Laboratory Amateur Radio Club (Hopkins) strongly opposed the 28 MHz telephony expansion. Hopkins recently acquired a beacon on 28296 kHz and does not want interference caused to it by foreign amateur operators who may operate below 28300 kHz. Hopkins also noted that the pressure of downward operation of radiotelephony in the 28 MHz band would have an adverse effect on telegraphy operation of Novices. Hopkins concluded that there is no need to expand the number of telephone frequencies in the 28 MHz band, but if such expansion does take place, it should not go below 28400 kHz.

RM–4228 7075–7100 kHz

Hawaii and Areas Near Region 3

9. The comments contained no consensus with respect to the expansion of the 40 meter band (7000–7300 kHz) for telephony. Comments ranged from no expansion to suggesting that a subband be allocated at 7000–7150 kHz since that segment would be relatively free of disruption from high-powered broadcast stations. Other comments suggested enlarged Novice frequency allocations in this band. For example, Kenneth R. Taylor suggested that if Novices had frequencies between 7050–7150 kHz, they could work in the band when they were at home in the evening free of foreign broadcast interference. Jim Monahan suggested that the portion 7090–7100 kHz be allocated for Amateur Extra class operators, speculating that most operators would probably use this portion of 40 meters just to make initial contact and then move back to cross-band contact to conserve spectrum. The ARRL and R. Perry Awe opposed any expansion in the 40 meter band saying that changes which may benefit telephone operations would undoubtedly aggravate the already difficult situation encountered by telegraphy operators.

10. The ARRL said that it did support the proposed authorization of frequencies 7075–7100 kHz for telephony operation in Hawaii as petitioned for by Randall F. Sobol because it was a unique situation. William Baisley and Gary C. Mitchell also supported use of 7075–7100 kHz for telephony in Hawaii and elsewhere in that area. The ARRL said that amateur operators in Hawaii using telephony experience interference from broadcast stations in Regions 1 and 3 and that this would be relieved by allowing them to use 7075–7100 kHz just as though they were located in Region 3. Philip Galasso suggested that 7075–7100 kHz be authorized for all fifty states, not just Hawaii, pointing out that above 7150 kHz there is nighttime interference and that Canadian operators shift to the lower frequencies in the 40 meter band for voice operation when the interference becomes intolerable. Daniel K. Robbins and Herbert C. Holeman both want 7075–7100 kHz operation permitted in Alaska. They note its proximity to Region 3 Asian broadcast, military telegraph and RTTY stations which cause interference to amateur operators in Alaska. James Pratt submitted comments opposing 7075–7100 kHz for Hawaii. He states that amateur operators, on both the east and west coasts, experience broadcast interference and must contend with it. His alternative is to allow Extra class operators in the entire United States and its possessions to transmit on 7075–7100 kHz, and, if this is not acceptable, to make no changes regarding this subband. James Gundry and David Novoa also wanted 7075–7100 kHz for all U.S. Amateur Extra class operators, while Raphael Soifer wanted a voice segment of 10 kHz for Amateur Extras only in the 7000–7100 kHz range. Gary C. Mitchell requested that General Class operators in Region 3 be authorized to operate in the subband 7050–7100 kHz. Joseph Speroni suggested that U.S. amateurs in Region 3 be authorized secondary operation on a non-interference basis in the subband 7100–7300 kHz. He also proposed that 7000–7025 kHz be allocated in Region 2 for Amateur Extras only.

Discussion

11. It is apparent from the comments that there is no uniform opinion in the matter of expanding telephony privileges for amateur operators in the high frequency bands. With respect to the subband 3750–4000 kHz, we do not agree with enlarging Novice privileges there. Keeping Novice privileges to a relative minimum is the best incentive for Novice licensees to upgrade their licenses. Further, while we recognize that permitting Amateur Extras to operate on the expanded telephone frequencies in the 3.5 MHz band could involve sharing with some operations of Canadian amateur operators, we believe that the overcrowding in that band requires that we allow Amateur Extras radiotelephone operation in the subband 3750–3775 kHz. We are aware that this allocation might cause the Canadian operators to petition their Government to move their radiotelephone operations to 3675–3700 kHz. If so, United States telegraph operators would have to make the necessary adjustments to such Canadian operating practices. We believe that the privileges set forth in our proposal are justified and equitable to all license classes. Therefore, we are adopting the following as the changes to be made in the authorizations for these subbands: 3750–3775 kHz, Amateur Extra only; 3775–3850 kHz Amateur Extra and Advanced; 3850–4000 kHz, Amateur Extra, Advanced and General.

12. We adopt the allocation that we proposed for the 21200–21450 kHz band and authorize appropriate changes to be

made in the authorizations for these subbands: 21200–21225 kHz, Amateur Extra only; 21225–21300 kHz, Amateur Extra and Advanced; 21300–21450 kHz, Amateur Extra, Advanced and General. We do not believe that the relocation of Novice operations in the 21 MHz band in order to preclude interference to foreign radiotelephony operations is desirable. U.S. Novices using telegraphy and foreign operators using telephony must be willing to share their respective portions of the band and resolve any interference problems that may occur. The peak envelope power output of a transmitter being operated on Novice frequencies may not exceed 200 watts. Since the function of a limitation on power is to prevent interference, we know of no valid reason for removing this restriction for other than Novice and Technician class stations when they are operating on Novice frequencies, as Mr. Speroni has suggested.

13. The most significant objections to the expansion of radiotelephony operation in the 28 MHz band concerned interference that might be caused to beacon operation between 28200–28300 kHz. It was asserted that foreign operators using voice would operate in the beacon subband in order to escape interference from U.S. operators using radiotelephony at 28300 kHz and upwards. Expansion in the 28 MHz band was also opposed because it was felt that there were already sufficient telephone frequencies in that band. We have no data on the occupancy of this band. Raphael Soifer, in his comments, stated that at least the portion between 28300–28500 kHz is sparsely populated. We believe that it is possible to expand the radiotelephony operations in the 28 MHz band without severe damage occurring to beacon operation. Planning on the part of U.S. operators and cooperation by foreign operators will be the key to successful sharing of the additional frequencies for radiotelephony in this band. There are no persuasive arguments in the comments which would cause us to prohibit Morse code or digital communications (radio-teleprinting) between 28300–28500 kHz. Morse code would also continue to be permitted on all the frequencies in the 28 MHz band. We adopt our proposal and authorize radiotelephony operations on all frequencies in the band 28300–29700 kHz.

14. There were a variety of suggestions for allocating radiotelephone frequencies in the 7 MHz subband. However, we concur with the ARRL that radiotelephone expansion in this subband would be detrimental to telegraph operations. For that reason, we are not making any changes in this band except for the 7075–7100 kHz portion. With respect to that subband, we had proposed to make it available for telephony in Hawaii and in areas near Region 3. We reasoned that Hawaii was in such proximity to Region 3 where those frequencies can be used for radiotelephony that it would be beneficial for amateur operators in Hawaii and in areas near Region 3 to use that subband for telephone operations and thus get relief from the interference they now experience from broadcast stations in Regions 1 and 3. The commenters generally favored this proposal. The suggestion that Alaska be included as an area where the frequencies in subband 7075–7100 kHz would be available for radiotelephony is meritorious because Alaska is also close to Region 3 and amateur operators in Alaska also experience interference from Region 3 radio stations. Therefore, we authorize the subband 7075–7100 kHz for radiotelephony in Hawaii and in areas near Region 3, including Alaska.

15. In summary, the radiotelephony expansion that we adopt by this Order is the plan that was submitted by the ARRL in its comments to the Notice of Inquiry in this proceeding. The only addition to that plan that we adopt today is to allow radiotelephony at 7075–7100 kHz in certain geographic areas in proximity to Region 3.

16. It is ordered, That the petition for rule making (RM–4228) filed by Randall F. Sobol is granted.

17. It is further ordered, That Part 97 is amended as set forth in the Appendix. This action is taken pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.[2]

18. It is further ordered, That these rule amendments shall become effective [0001 UTC], September 1, 1984.

19. It is further ordered, That the Secretary shall cause a copy of this Second Report and Order to be published in the **Federal Register.**

20. It is further ordered, That this proceeding is terminated.

21. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632–4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

[2] On March 28, 1984, the ARRL filed a Motion for Expedited Action, requesting that the Commission issue a Second Report and Order in this proceeding immediately. In view of the action taken herein, that Motion is moot.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. Section 97.7(a) is revised as follows:

§ 97.7 Privileges of operator licenses.

(a) Amateur Extra and Advanced Class. All authorized amateur privileges including exclusive frequency operating authority in accordance with the following table:

Frequencies	Class of license authorized
3500–3525 kHz	Amateur extra only.
3750–3775 kHz	Do.
7000–7025 kHz	Do.
14,000–14,025 kHz	Do.
14,150–14,175 kHz	Do.
21,000–21,025 kHz	Do.
21,200–21,225 kHz	Do.
3775–3850 kHz	Amateur extra and advanced.
7150–7225 kHz	Do.
14,175–14,225 kHz	Do.
21,225–21,300 kHz	Do.

* * * * *

2. In § 97.61(a), that portion of the table under the heading "kHz" is revised to read as follows. The entries in the table under the headings "MHz" and "GHz" remain the same.

§ 97.61 Authorized frequencies and emissions.

(a) * * *

Frequency band	Emissions	Limitations (see paragraph (b))
Kilohertz		
1800 to 2000	A1, A3	
3500 to 4000	A1	
3500 to 3750	F1	
3750 to 4000	A3, A4, A5, F3, F4, F5	4
4383.8	A3A, A3J	13
7000 to 7300	A1	3, 4
7000 to 7150	F1	3, 4
7075 to 7100	A3, F3	11
7150 to 7300	A3, A4, A5, F3, F4, F5	3, 4
14000 to 14350	A1	
14000 to 14150	F1	
14150 to 14350	A3, A4, A5, F3, F4, F5	
21000 to 21450	A1	
21000 to 21200	F1	
21200 to 21450	A3, A4, A5, F3, F4, F5	
28000 to 29700	A1	
28000 to 28300	F1	
28300 to 29700	A3, A4, A5, F3, F4, F5	

3. Secton 97.61(b) (11) is revised to read as follows:

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) * * *

(11) The use of A3 and F3 in this band is limited to amateur radio stations located outside Region 2 and amateur

radio stations located within Region 2 which are west of 130 degrees West longitude.

* * * * *

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

[FR Doc. 84-20015 Filed 7-30-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 84-265; FCC 84-322]

Reimbursement of Out-of-Pocket Costs for Volunteer Administered Amateur Radio Examinations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules to provide for reimbursement of out-of-pocket costs incurred by volunteer examiners and volunteer examiner coordinators in connection with administering or coordinating amateur operator license examinations. The rules are necessary so that the volunteers can recover their prudently-incurred expenditures. The effect of this action is to establish regulations which permit reimbursement to volunteers for their necessary expenses.

EFFECTIVE DATE: August 31, 1984.

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

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Report and Order

In the matter of reimbursement of Out-of-Pocket Costs for volunteer administered amateur radio examinations (PR Docket No. 84-265).

Adopted: July 12, 1984.

Released: July 20, 1984.

By the Commission. Commissioner Rivera absent.

1. On March 6, 1984, the Commission adopted a Notice of Proposed Rule Making (49 FR 10316; March 20, 1984) proposing to reimburse volunteer examiners (VE's) and volunteer examiner coordinators (VEC's) for out-of-pocket costs incurred by them in connection with preparing, processing or administering examinations for amateur station operator licenses.[1] Eight comments and one reply comment were filed in this proceeding.

2. The comments were generally supportive of the concept of reimbursement. The comments focused on three major issues:

(a) How the reimbursement fee is to be collected and apportioned between the VEC's and the VE's;

(b) Whether the rules should include a list of expenses for which reimbursement would be allowed; and

(c) The matter of general or overhead expenses of the VEC's.

3. The volunteer examiners and the volunteer examiner coordinators will have to work interdependently if the program is to work smoothly. We will not specify who should collect the exam fee. The VEC's and the VE's in a particular region will have the flexibility to negotiate that matter between themselves. We envision that the VE's and the VEC's will develop a close working relationship and will be able to decide themselves what works best for them. They must decide what portion of the fee each will get. Since both could incur out-of-pocket expenses, they will have to make a fair distribution of the fee to offset those costs. The American Radio Relay League, Inc. (ARRL) in its comments concurred with the Commission concerning the collection and apportionment of the fee.

4. The comments suggested that we specify in the rules those expenses that we consider to be legitimate reimbursable costs. Mr. William G. Welsh, Trustee of the Lockheed Employees Recreation Club (LERC) Amateur Radio Club wanted the list to include such reimbursable items as advertising, equipment, printing, postage, telephone, supplies and special test room furniture such as space separators on tables. We believe that it is inadvisable to attempt to pinpoint permissible or prohibited reimbursable expenses. Any list that we compiled would necessarily be incomplete. Rather, the guideline that we establish is that if the expense relates to the amateur radio operator examination, it is a legitimate reimbursable cost. If, on the other hand, the expense incurred cannot be construed by a reasonable person to be necesary for the examination that is given, it is a prohibited item and may not be reimbursed.

5. If reimbursements are sought for expenses incurred, the VE's and the VEC's are required to keep records of their expenses and are further required to certify once a year to the Commission that the expenses incurred in administering or coordinating exams were necessary and prudent. In his comments, Mr. David Popkin suggested that our rules should specify the period of time the annual certification covers and the date on which it is to be submitted. We agree and have modified proposed rule § 97.36 to state that the certification must be received by the Commission each year on or before January 31 and must cover the time period from January 1 to December 31 of the preceding year. We will retain the certifications for one year. VEC's and VE's will be required to keep their records of expenses and reimbursements for 3 years.

6. Another matter that was raised in the comments was that of the general or overhead expenses of the VEC's. We realize that there may be certain expenses which are in the nature of capital investments. These could include filing cabinets in which to secure examination papers or code testing equipment. Such necessary administrative tools may have to be amortized over a number of examination sessions. We appreciate that VE's or VEC's will have to designate some part of the moneys that they collect to such capital expenditures. They must be mindful, however, that the statute mandates that their expenditures be prudent.

7. Rule § 97.36(c) requires that the VEC's and the VE's keep records of their out-of-pocket expenses and reimbursements. David Popkin and Joseph Schroeder suggested that the VEC's and the VE's maintain some proof of each expense incurred and that the records kept be in accordance with good accounting procedures. The records that VEC's and VE's keep should substantiate their expenses. In the event of a question about an expense, we will require the VEC's or the VE's to produce proof of it.

8. We recognize that the costs to administer an examination may not always be known in advance of the session or at the time when the fee is collected. Accordingly, we will permit the fees to be based on estimated expenses. The reimbursements for all examination sessions coordinated during the period beginning January 1 through December 31 of each year may not exceed the projected out-of-pocket reimbursable expenses incurred by the VEC's and the VE's for those

[1] Paragraph 10 of our Notice of Proposed Rule Making (NPRM) stated that 30 days would be allowed for comments, with 15 days thereafter for reply comments. However, paragraph 12 of the NPRM specified the comment date as April 16, 1984, with replies due May 1, 1984. Since those dates are less than the 30 and 15 days that we stated we would allow, we are accepting as timely all comments filed on or before April 20, 1984, and all replies filed on or before May 7, 1984.

examination sessions divided by the number of persons expected to take the examinations. For example, if 5,000 examinees are expected to sit for examinations during a given year and the necessary reimbursable expenses are forecast to be $10,000 then the reimbursement fee from each candidate would be $2.00. Where the total reimbursement fees collected during a year exceed or fall short of the actual reimbursable expenses incurred, the reimbursement fee for the following year can be adjusted accordingly. In any event, the reimbursement fee may not exceed the maximum amount allowed by law which is $4.00 for 1984. This amount will be adjusted annually thereafter for changes in the Department of Labor Consumer Price Index.

9. A suggestion has also been made to include a provision in the rules to prohibit VEC's from discriminating against any VE's for accepting reimbursement or declining to accept reimbursement for the services which are volunteered. Such a provision would put VEC's on notice that the accreditation of VE's must be objective and cannot be influenced by the VE's personal choice regarding the matter of reimbursement. Some VEC's might tend to favor VE's who opt in favor of reimbursement; other VEC's may prefer VE's who do not want to be reimbursed. Appropriate changes are included in § 97.515 to make it clear that accreditation of VE's by VEC's must not depend upon the VE's decision to accept or decline reimbursement.

10. The Dayton Amateur Radio Association (DARA) endorsed the Commission's proposal. DARA inquired if travel expenses in connection with administering exams and training of VE's were reimbursable expenses. There is no question that these items are related to the exams and, therefore, may be claimed as valid expenses for which reimbursement may be sought. DARA also raises questions concerning the fees collected: for example, where the funds from fees are to be deposited, what to do with earned interest on the funds and what disposition to make of surplus funds. We cannot make hard-and-fast guidelines concerning the myriad aspects of handling money. In general, however, surplus funds, earned interest and the like should be used to reduce the following year's examination fee. VEC's or VE's who have account termination balances derived from fees must turn such fees over to a VEC who is actively coordinating exams to be used to offset out-of-pocket costs. In short, we expect the VEC's and the VE's to use good business judgment with respect to the reimbursement amounts and to be certain that they are not used for any purpose other than for covering necessary and prudent expenses. DARA also suggests that standard forms be used for the annual certification to the Commission that the VE's and VEC's must make concerning their expenses and reimbursements. We encourage the VEC's to develop such a form for themselves and the VE's if they feel it would be useful. The annual certification is just to be a simple statement that the expenses for which reimbursement was sought were necessary and prudent. We do not want an itemized list of expenses.

11. The reply comment from the Capitol Hill Amateur Radio Society (CHARS) suggested that § 97.36(c) be clarified to state that the annual certification requirement applies only to those who collect fees from examinees. CHARS believes that if VEC's collect all the fee and then divide it with the VE's, it is only the VEC's that must keep records and make the annual certification to the Commission. We believe that this is too narrow a reading of the statute. Regardless of who actually collects the fee, the VEC's or the VE's, whoever is reimbursed must keep records and complete an annual certification. This is the case even in CHARS' example where the VEC's collect the fee and then distribute a portion of the amount collected to VE's. For administrative convenience, we will require the VE's to send their annual certifications to their VEC's so that we will receive them in a single package from the VEC's. The statute requires that VEC's and VE's submit an annual certification to the Commission. Therefore, VE's who do not submit the certification will be disaccredited by the VEC's. VEC's who fail to submit the certification will be terminated by the Commission.

12. With the modifications discussed herein, we adopt the rules that were proposed in our Notice of Proposed Rule Making.

13. It is ordered, That Part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. It is further ordered, That these rule amendments shall become effective August 31, 1984.

14. Is is further ordered, That the Secretary shall cause a copy of this Report and Order to be published in the **Federal Register.**

15. It is further ordered, That this proceeding is terminated.

16. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632–4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

* * * * *

1. Section 97.31(c) is revised to read as follows:

§ 97.31 Volunteer examiner requirements.

* * * * *

(c) Volunteer examiners may not be compensated for services. They may be reimbursed for out-of-pocket expenses, except for Novice class examinations (see § 97.36).

* * * * *

2. Section 97.33 is revised to read as follows:

§ 97.33 Volunteer examiner conduct.

No volunteer examiner shall give or certify any examination by fraudulent means or for monetary or other consideration. Violation of this provision may result in the revocation of the amateur radio station license and the suspension of the amateur radio operator license of the volunteer examiner. This does not preclude a volunteer examiner from accepting reimbursement for out-of-pocket expenses under § 97.36. Reimbursement in any amount in excess of that permitted may result in the sanctions specified herein.

3. New § 97.36 is added as follows:

§97.36 Reimbursement for expenses.

(a) Each volunteer examiner coordinator and each volunteer examiner may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing or administering examinations for amateur station operator licenses above the Novice class. The volunteer examiner coordinator or the volunteer examiners must collect the reimbursement fee, if any, from the examinees. No reimbursement may be accepted for preparing, processing or administering Novice class examinations.

(b) The maximum amount of reimbursement is $4.00 for 1984 and will be adjusted annually each January 1 thereafter for changes in the Department of Labor Consumer Price Index. Changes in the maximum amount of reimbursement will be announced by

the Commission in a Public Notice. The amount of such reimbursement fee from any examinee for any one examination at a particular session regardless of the number or examination elements taken must not exceed the published maximum.

(c) Each volunteer examiner coordinator and each volunteer examiner who accepts reimbursement must maintain records of out-of-pocket expenses and reimbursements for each examination session. They must certify on or before January 31 of each year to the Commission's office in Gettysburg, PA 17325 that all expenses for the period from January 1 to December 31 of the preceding year for which reimbursement was obtained were necessarily and prudently incurred.

(d) The expense and reimbursement records must be retained by each volunteer examiner coordinator and each volunteer examiner for 3 years and made available to the FCC upon request.

(e) Each volunteer examiner must forward on or before January 15 of each year the certification concerning expenses to the volunteer examiner coordinator who coordinated the efforts of the volunteer examiner and for which reimbursement was received. The volunteer examiner coordinator must forward all such certifications and its own certification concerning expenses to the FCC on or before January 31 of each year.

(f) The volunteer examiner coodinator must disaccredit any volunteer examiner who fails to provide the annual certification. The volunteer examiner coordinator must advise the FCC on January 31 of each year of the volunteer examiners that it has disaccredited for this reason.

4. Section 97.507(e) is revised to read as follows:

§ 97.507 VEC qualifications.

* * * * *

(e) Agree not to accept any compensation from any source for its services as a VEC, except reimbursement for out-of-pocket expenses permitted by § 97.36; and

* * * * *

5. The introductory text preceding paragraph (a) in § 97.515 is revised to read as follows:

§ 97.515 Coordinating volunteer examiners.

A VEC will accredit amateur radio operators licensed by the Federal Communications Commission as volunteer examiners (see § 97.30). A VEC will seek to recruit a broad representation of amateur radio operators to be volunteer examiners. A VEC may not discriminate in accrediting volunteer examiners on the basis of race, sex, religion or national origin. A VEC may not refuse to accredit volunteer examiners on the basis of membership (or lack thereof) in an amateur radio organization. A VEC may not discriminate in accrediting volunteer examiners based upon their accepting or declining to accept reimbursement. A VEC must not accredit an amateur radio operator volunteering to be an examiner if:

* * * * *

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Proposed Rules

Federal Register
Vol. 49, No. 148
Tuesday, July 31, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 84-312]

Khapra Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the khapra beetle regulations by designating as restricted articles: (1) Plant gums shipped as bulk cargo (in an unpackaged state) if from Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, or Upper Volta ("khapra beetle infested countries"), (2) used jute or burlap bagging from a khapra beetle infested country that contains cargo, and the cargo in such bagging, and (3) used jute or burlap bagging from a khapra beetle infested country that is used as packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material.

The effect of the adoption of these proposed amendments would be to require that the articles proposed to be added to the list of restricted articles meet certain restrictions as a condition of importation. These amendments appear to be necessary to protect against the introduction of khapra beetle into the United States.

DATES: Written comments concerning the proposed rule must be received on or before October 1, 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 through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles E. Miller, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8367.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the khapra beetle regulations (contained in 7 CFR 319.75 *et seq.* and referred to below as the regulations). The regulations were established to protect against the introduction into the United States of khapra beetle.

The khapra beetle (*Trogoderma granarium* Everts) is a plant pest that damages grain and cereal products, seeds, cottonseed meal, nut meats, dried fruits, and other products. The pest can cause serious damage to stored products. When infested products are left undisturbed in storage for long periods of time, total loss can be expected. This insect is a threat to billions of bushels of important stored products in the United States.

The regulations are designed to impose restrictions on those articles which are determined to present a significant risk of carrying the khapra beetle at the time of importation, and which require special restrictions in order to protect against the introduction of the khapra beetle. The articles subject to restrictions are designated as restricted articles.

The regulations provide that restricted articles are allowed to be imported only if they are imported by the Department for experimental or scientific purposes under certain conditions, or if imported in accordance with requirements concerning permits, methyl bromide treatments, marking and identity, arrival notification, costs and charges, ports of entry, and phytosanitary certificates of inspection.

Plant Gums

This document proposes to amend the regulations in § 319.75-2 by designating as a restricted article plant gums shipped as bulk cargo (in an unpackaged state) if from any of the following countries which are known to be infested with the khapra beetle: Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, or Upper Volta (referred to below as khapra beetle infested countries). A plant gum is defined as any of numerous colloidal polysaccharide substances of plant origin that are gelatinous when moist but harden on drying. Plant gums include but are not limited to acacia gum, guar gum, gum arabic, locust gum, and tragacanth gum.

Pest interception records establish that a significant number of shipments of such plant gums are infested with khapra beetle at the time of importation. When plant gums are shipped as bulk cargo it appears that inspections would not be adequate to always detect the khapra beetle when present. Therefore, it appears that it is necessary to impose restrictions on the importation of these articles from khapra beetle infested countries by designating them as restricted articles. There do not appear to be other feasible methods for preventing the introduction into the United States of khapra beetle that accompany such imported articles.

For informational purposes, this document also proposes to add a definition of "plant gum" corresponding to the definition set forth above.

Use Jute or Burlap Bagging and Cargo

The regulations in § 319.75-2 already include as restricted articles, among other things, used jute or burlap bagging not containing cargo if from a khapra beetle infested country. This document proposes to amend the regulations in § 319.75-2 by also designating as restricted articles: (1) Use jute or burlap bagging from a khapra beetle infested country that contains cargo, and the cargo in such bagging; and (2) used jute or burlap bagging from a khapra beetle infested country that is used as packing material (such as filler, wrapping, ties, lining, matting, moisture retention

material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material. Pest interception records establish that a significant amount of such used jute or burlap bagging and a wide variety of cargoes contained in or packed with the bagging are infested with khapra beetle at the time of importation. Such cargoes include beans, coffee, rice, lentils, seeds, carpets, cloth, and various other items. Further, based on experience, it appears that any cargo contained in or packed with used jute or burlap bagging presents a significant risk of being infested with khapra beetle at time of importation because of its close proximity with the used jute or burlap bagging. It appears that inspections are not adequate to always detect the khapra beetle when present. Therefore, it appears that it is necessary to impose restrictions on the importation of these articles by designating them as restricted articles. There do not appear to be other feasible methods for preventing the introduction into the United States of khapra beetle that accompanies such imported articles.

Treatments

Section 319.75–4 of the regulations provides treatments for restricted articles.

It is proposed to amend the regulations in § 319.75–4(a) to provide that plant gums shipped as bulk cargo; used jute or burlap bagging that contains cargo, and the cargo in such bagging (except for articles specified in proposed § 319.75–4(b) and (c); and used jute or burlap bagging used as a packing material, and the cargo for which the used jute or burlap bagging is used as a packing material (except for articles specified in proposed § 319.75–4(b) and (c)) shall be treated, prior to movement into the United States from the port of entry, as follows:

(1) Fumigation with methyl bromide under a tarpaulin at normal atmospheric pressure in accordance with one of the following schedules:

(i) *40 g/m³ (2½ lb/1000 ft³) for 12 hrs. at 32° C (90° F) or above.*

(20 g [oz] minimum gas concentration at 2–4 hrs.).

(15 g [oz] minimum gas concentration at 12 hrs.).

(ii) *56 g/m³ (3½ lb/1000 ft³) for 12 hrs. at 26.5°–31.5° C (80°–89° F).*

(30 g [oz] minimum gas concentration at 2–4 hrs.).

(20 g [oz] minimum gas concentration at 12 hrs.).

(iii) *72 g/m³ (4½ lb/1000 ft³) for 12 hrs. at 21°–26° C (70°–79° F).*

(40 g [oz] minimum gas concentration at 2–4 hrs.).

(25 g [oz] minimum gas concentration at 12 hrs.).

(iv) *96 g/m³ (6 lb/1000 ft³) for 12 hrs. at 15.5°–20.5° C (60°–69° F).*

(50 g [oz] minimum gas concentration at 2–4 hrs.).

(30 g [oz] minimum gas concentration at 12 hrs.).

(v) *120 g/m³ (7½ lb/1000 ft³) for 12 hrs. at 10°–15° C (50°–59° F).*

(60 g [oz] minimum gas concentration at 2–4 hrs.).

(35 g [oz] minimum gas concentration at 12 hrs.).

(vi) *144 g/m³ (9 lb/1000 ft³) for 12 hrs. at 4.5°–9.5° C (40°–49° F).*

(70 g [oz] minimum gas concentration at 2–4 hrs.).

(40 g [oz] minimum gas concentration at 12 hrs.).

(2) Fumigation with methyl bromide in a chamber at normal atmospheric pressure at one of the following schedules:

(i) *40 g/m³ (2½ lb/1000 ft³) for 12 hrs. at 32° C (90° F) or above.*

(ii) *56 g/m³ (3½ lb/1000 ft³) for 12 hrs. at 26.5°–89° F.*

(iii) *72 g/m³ (4½ lb/1000 ft³) for 12 hrs. at 21°–26° C (70°–79° F).*

(iv) *96 g/m³ (6 lb/1000 ft³) for 12 hrs. at 15.5°–20.5° C (60°–69° F).*

(v) *160 g/m³ (10 lb/1000 ft³) for 12 hrs. at 10°–15° C (50°–59° F).*

(vi) *192 g/m³ (12 lb/1000 ft³) for 12 hrs. at 4.5°–9.5° C (40°–49° F).*

(3) Fumigation with methyl bromide in a chamber at 660mm (26 inches) vacuum at one of the following schedules:

(i) *128 g/m³ (2½ lb/1000 ft³) for 3 hrs. at 15.5° C (60° F) or above.*

(ii) *144 g/m³ (9 lb/1000 ft³) for 3 hrs. at 4.5°–15° C (40°–59° F).*

(iii) *160 g/m³ (10 lb/1000 ft³) for 3 hrs. at –1°–4° C (30°–39° F).*

Note.—Maximum volume of commodity being treated under subsection (3) shall not exceed 75% of total volume of chamber.

It is also proposed to amend the regulations in § 319.75–4(b) to provide that flour or finely ground oily meals and the used jute or burlap bagging used as a container or packing material for such flour or meals shall be treated, prior to movement into the United States from the port of entry, as follows:

(1) Fumigation with methly bromide under a tarpaulin at normal atmospheric pressure at one of the following schedules:

(i) *128 g/m³ (4 lb/1000 ft³) for 24 hrs. at 32°C (90° F) or above.*

(10 g [oz] gas concentration in commodity at 4–24 hrs.).

(35 g [oz] gas concentration in space at 4–12 hrs.).

(25 g [oz] gas concentration in space at 12–24 hrs.).

(ii) *96 g/m³ (6 lb/1000 ft³) for 24 hrs. at 31.5° C (80°–89° F).*

(15 g [oz] gas concentration in commodity at 4–24 hrs.).

(50 g [oz] gas concentration in space at 4–12 hrs.).

(30 g [oz] gas concentration in space at 12–24 hrs.).

(iii) *128 g/m³ (8 lb/1000 ft³) for 24 hrs. at 21°–26° C (70°–79° F).*

(20 g [oz] gas concentration in commodity at 4–24 hrs.).

(65 g [oz] gas concentration in space at 4–12 hrs.).

(35 g [oz] gas concentration in space at 12–24 hrs.).

(iv) *192 g/m³ (12 lb/1000 ft³) for 24 hrs. at 15.5°–20.5° C (60°–69° F).*

(30 g [oz] gas concentration in commodity at 4–24 hrs.).

(95 g [oz] gas concentration in space at 4–12 hrs.).

(50 g [oz] gas concentration in space at 12–24 hrs.).

(v) *192 g/m³ (12 lb/1000 ft³) for 28 hrs. at 10°–15° C (50°–59° F).*

(30 g [oz] gas concentration in commodity at 4–28 hrs.).

(95 g [oz] gas concentration in space at 4–12 hrs.).

(50 g [oz] gas concentration in space at 12–28 hrs.).

(vi) *192 g/m³ (12 lb/1000 ft³) for 32 hrs. at 4.5°–9.5° C (40°–49° F).*

(30 g [oz] gas concentration in commodity at 4–32 hrs.).

(95 g [oz] gas concentration in space at 4–12 hrs.).

(50 g [oz] gas concentration in space at 12–32 hrs.).

(2) Fumigation with methyl bromide in a chamber at normal atmospheric pressure at one of the following schedules:

(i) *64 g/m³ (4 lb/1000 ft³) for 24 hrs. at 32° (90° F) or above.*

(ii) *96 g/m³ (6 lb/1000 ft³) for 24 hrs. at 26.5°–31.5° C (80°–89° F).*

(iii) *128 g/m³ (8 lb/1000 ft³) for 24 hrs. at 21°–26° C (70°–79° F).*

(iv) *192 g/m³ (12 lb/1000 ft³) for 24 hrs. at 15.5°–20.5° C (60°–69° F).*

(v) *192 g/m³ (12 lb/1000 ft³) for 28 hrs. at 10°–15° C (50°–59° F).*

(vi) *192 g/m³ (12 lb/1000 ft³) for 32 hrs. at 4.5°–9.5° C (40°–49° F).*

(3) Fumigation with methyl bromide in a chamber at 660mm (26 inch) vacuum at one of the following schedules:

(i) *128 g/m³ (8 lb/1000 ft³) for 3 hrs. at 15.5° C (60° F) or above.*

(ii) *144 g/m³ (9 lb/1000 ft³) for 3 hrs. at 4.5–15° C (40°–59° F).*

Note.—Maximum volume of commodity being treated under subsection (3) shall not exceed 75% of the total volume of chamber.

It is further proposed to amend the regulations to add a new § 319.75–4(c) to provide that baled cotton lint, cotton linters, cotton waste, and cotton piece goods, and the used jute or burlap bagging used as a container or packing material for one or more of such listed articles shall be treated, prior to movement into the United States from the port of entry, as follows:

(1) Fumigation with methyl bromide under a tarpaulin or in a chamber at normal atmospheric pressure at one of the following schedules:

(i) *128 g/m³ (8 lb/1000 ft³) for 24 hours at 15.5°C (60°F or above)*

(25 g (oz.) concentration in commodity 4–24 hrs.)

(65 g (oz.) concentration in space 4–12 hrs.)

(35 g (oz.) concentration in space 12–24 hrs.)

(ii) *176 g/m³ (11 lb/1000 ft³) for 24 hrs. at 4.5°–15° C (40°–59° F.*

(30 g (oz.) concentration in commodity 4–24 hrs.)

(95 g (oz.) concentration in space 4–12 hrs.)

(50 g (oz.) concentration in space 12–24 hrs.)

Note.—Maximum volume of commodity being treated under subsection (1) shall not exceed 50% of the total volume of chamber. Concentration readings may be omitted for chamber fumigations.

(2) Fumigation with methyl bromide in a chamber at 660 mm (26 inch) vacuum at one of the following schedules:

(i) *128 g/m³ (8 lb/1000 ft³) for 3 hrs. at 15.5°C (60°F) or above.*

(ii) *144 g/m³ (9 lb/1000 ft³) for 3 hrs. at 4.5°–15° C (40°–59° F.*

Note.—Maximum volume of commodity being treated under subsection (2) shall not exceed 75% of the total volume of chamber.

Based on research and field use it appears that these treatments for all of the articles proposed to be added to the list of restricted articles are adequate to destroy any life stages of the khapra beetle. Except for the importation of such articles by the Department for experimental or scientific purposes under conditions set forth in § 319.75(c) of the regulations, it appears that such treatments are the only feasible methods for destroying the khapra beetle accompanying such imported articles. Also, such treatments would be required to be conducted under the supervision of an inspector in order to assure compliance with the treatment procedures.

There is a possibility that some articles, especially live plants, could be damaged by fumigation. Therefore, a footnote would be added for informational purposes, to advise interested persons of this possibility.

Also, the regulations already contain treatment provisions in § 319.75–4(b) for certain articles already designated as restricted articles. As noted above, these provisions are proposed to be made applicable to flour and finely ground oily meals and the used jute or burlap bagging used as a container or packing material for such flour or meals. However, a note in subsection (3) of § 319.75–4(b) was inadvertently omitted from the current treatment provisions. This note advises interested persons that the commodity being treated under subsection (3) should not exceed 75% of the volume of the chamber. Therefore, such a note would be added for all articles subject to these provisions.

Inspection and Phytosanitary Certificates of Inspection

The regulations in § 319.75–9 currently contain provisions concerning inspections and phytosanitary certificates of inspection as follows:

(a) Any seeds, chilies, or peppers designated as restricted articles and grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States. Such certificate may cover more than one article and more than one container kept together during shipment and offer for importation.

(b) Any seeds, chilies, or peppers designated as restricted articles which are accompanied by a valid phytosanitary certificate of inspection are subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of injurious plant diseases, injurious insect pests, and other plant pests and whether such article is otherwise eligible to be imported into the United States.

(c) Any seeds, chilies, or peppers designated as restricted articles which are grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, or injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

It is proposed to change these provisions in (a), (b), and (c) above to make them apply to nursery stock, plants, fruit, vegetables, roots, bulbs, seeds, or other plant products that are designated as restricted articles, rather than merely to seeds, chilies, or peppers designated as restricted articles.

This would be a necessary change under the provisions of the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) if the proposal were adopted to include as restricted articles (1) used jute or burlap bagging from a khapra beetle infested country that contains cargo, and the cargo in such bagging, and (2) used jute or burlap bagging from a khapra beetle infested country that is used as a packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material. The references to "the cargo in such bagging" and "the cargo for which the used jute or burlap bagging was used as a packing material" could include any nursery stock, plants, fruit, vegetables, roots, bulbs, seeds, or other plant products. In this connection, the Plant Quarantine Act requires that any nursery stock, plants, fruit, vegetables, roots, bulbs, seeds, or other plant products from a country maintaining an official system of inspection for such articles must be accompanied at the time of importation by a phytosanitary certificate of inspection from an official of the country from which the importation is made, certifying that the article has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests. The Plant Quarantine Act also provides that these articles imported from countries where no official system of inspection is maintained may be imported under conditions and regulations as the Secretary may prescribe. The proposed provisions § 319.75–9 appear to be adequate to implement the provisions of the Plant Quarantine Act.

Also, for informational purposes the following definition of the term "nursery stock" is added to the regulations:

Nursery stock. All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

This restates the definition of nursery stock contained in the Plant Quarantine Act.

Miscellaneous

As noted above, nursery stock, plants, roots, bulbs, seeds, or other plant products are proposed to be regulated under the regulations if contained in or packed with used jute or burlap bagging and if from khapra beetle infested countries. The provisions of 7 CFR "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and other Plant Products" (contained in 7 CFR 319.37 *et seq.* and referred to below as "Subpart—Nursery Stock") regulate the importation of certain nursery stock, plants, roots, bulbs, seeds, and other plant products because of a wide variety of plant pests. If this proposal is adopted, it is intended that any nursery stock, plants, roots, bulbs, seeds, and other plant products that are subject to regulation under "Subpart—Nursery Stock" remain subject to the provisions of "Subpart—Nursery Stock" in addition to being subject to the provisions of the khapra beetle regulations. Accordingly, it is proposed that changes be made in "Subpart—Nursery Stock" to reflect this intent.

This document also proposes nonsubstantive changes for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposal is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposal, if adopted, will not have a 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 have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered in connection with this proposal. Alternatives considered were (1) to rely on inspection of the articles proposed to be designated as restricted articles for determinations as to whether they are infested with khapra beetle and to treat only those found to be infested with khapra beetle, (2) to prohibit the importation of such articles, or (3) to designate such articles as restricted articles and to thereby allow the importation of such articles only in accordance with certain restrictions as indicated above.

Alternative (1) is not proposed because it appears that inspections would not be adequate to always detect the khapra beetle when present.

Alternative (2) is not proposed because it appears to be unnecessarily restrictive.

Alternative (3) is proposed because it appears that this would be adequate to prevent a significant risk of introducing khapra beetle into the United States while still allowing such articles to be imported.

It appears that the benefits of adopting the proposal far outweigh any costs of compliance, and it appears that the proposal maximizes net benefits to society at the lowest net cost.

Almost all of the additional costs for the importation of the articles proposed to be added to the list of restricted articles would be costs associated with fumigation. Under authority of the Federal Plant Pest Act (7 U.S.C. 151 *et seq.*) these articles are already being inspected at time of importation and are required to be fumigated if found to be infested with khapra beetle. A significant portion of these articles would be required to be fumigated even if the proposal were not adopted. In addition, importers of plant gums can avoid such fumigation costs by shipping the plant gums other than as bulk cargo and by not using used jute or burlap bagging. Further, importers of other cargo proposed to be designated as restricted articles can avoid such fumigation costs by shipping with bagging made of other than used jute or burlap, such as new jute or burlap, fiber, paper, or polypropelene.

The articles proposed to be added to the list of restricted articles are imported by a large number of importers; most of which import numerous other items not proposed to be included as restricted articles. Also, a large portion of the articles proposed to be designated as restricted articles are used as ingredients in products, and the costs associated with fumigation would not significantly increase the cost of the finished products.

Further, it is anticipated that fumigation costs would not be passed on to processors or other users of used jute or burlap bagging.

Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that, under the circumstances explained above, it is anticipated that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OBM, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to T. O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The information collection provisions in this proposed rule will not become effective without OBM approval.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Nursery stock, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, under the circumstances referred to above, it is proposed to amend the "Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" regulations 7 CFR Part 319 (7 CFR 319.37 *et seq.*) and the "Khapra Beetle" regulations in 7 CFR Part 319 (7 CFR 319.75 *et seq.*) as follows:

1. The definition of the term "Restricted article" in 7 CFR 319.37–1 would be revised to read as follows:

§ 319.37–1 Definitions.

* * * * *

Restricted article. Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37–2 (a) or (b) of this subpart, excluding any articles subject to any restricted entry orders in 7 CFR Part 321 (i.e., potatoes), and excluding any articles regulated in 7 CFR 319.8 through 319.34 or 319.41 through 319.74–7.

* * * * *

§ 319.75–1 [Amended]

2. In § 319.75–1, all of the definitions would remain but the letters (a) through (j) would be removed, the definitions of "Inspector" and "Import" would be rearranged in alphabetical order, and the following terms would be added in alphabetical order:

* * * * *

Nursery stock. All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

* * * * *

Plant gum. Any of numerous colloidal polysaccharide substances of plant origin that are gelatinous when moist but harden on drying. Plant gums include but are not limited to acacia gum, guar gum, gum arabic, locust gum and tragacanth gum.

* * * * *

3. Section 319.75–2 would be revised to read as follows:

§ 319.75–2 Restricted articles.[1]

(a) The following articles from the specified localities or countries are restricted articles:

(1) Seeds of the plant family Cucurbitaceae [2] if in shipments greater than two ounces, if not for propagation, and if from a country listed in paragraph (b) of this section;

(2) Brassware and wooden screens from Bombay, India;

(3) Goatskins, lambskins, and sheepskins (excluding goatskins, lambskins, and sheepskins which are fully tanned, blue-chromed, pickled in mineral acid, or salted and moist) from Sudan or India;

(4) Plant gums shipped as bulk cargo (in an unpackaged state) if from a country listed in paragraph (b) of this section;

(5) Used jute or burlap bagging not containing cargo if from a country listed in paragraph (b) of this section; [3]

(6) Used jute or burlap bagging from a country listed in paragraph (b) of this section that contains cargo, and the cargo in such bagging; [3]

(7) Used jute or burlap bagging from a country listed in paragraph (b) of this section that is used as a packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material; [3] and

(8) Whole chilies *(Capsicum* ssp.), whole red peppers *(Capsimcum* spp.)., and cumin seeds (*Cuminum cyminum*) in new ports or burlap bags from Pakistan.

(b) Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, and Upper Volta.

4. The heading "Treatments." for § 319.75–4 would be changed to "Treatments.[6]" and a corresponding footnote would be added to read as follows: "[6] There is a possibility that some articles, especially live plants, could be damaged by fumigation."

5. Section 319.75–4 would be amended by revising the introductory text in paragraph (a), revising the introductory text in paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 319.75–4 Treatments

* * * * *

(a) Brassware; wooden screens; goatskins; lambskins; sheepskins; plant gums; seeds of the plant family cucurbitaceae; jute or burlap bagging that contains cargo, and the cargo in such bagging (except for articles specified in paragraphs (b) and (c) of this section); and jute or burlap bagging that is used as a packing material, and the cargo for which the jute or burlap bagging is used as a packing material (except for articles specified in paragraphs (b) and (c) of this section).

* * * * *

(b) Burlap bagging and jute bagging not containing cargo; and flour or finely ground oily meals, and the jute or burlap bagging used as a container or packing material for such flour or meals.

* * * * *

(c) Baled cotton lint, cotton linters, cotton waste, and cotton piece goods; and the jute or burlap bagging used as a container or packing material for such baled cotton lint, cotton linters, cotton waste, or cotton piece goods.

(1) Fumigation with methyl bromide under a tarpaulin or in a chamber at normal atmospheric pressure at one of the following schedules:

(i) *128 g/m³ (8 lb/1000 ft³) for 24 hrs. at 15.5° C 60° F or above*

(25 g (oz.) concentration in commodity 4–24 hrs.)

(65 g (oz.) concentration in space 4–12 hrs.)

(35 g (oz.) concentration in space 12–24 hrs.)

(ii) *176 g/m³ (11 lb/1000 ft³) for 24 hrs. at 4.5°–15° C (40°–59° F*

(30 g (oz.) concentration in commodity 4–24 hrs.)

(95 g (oz.) concentration in space 4–12 hrs.)

(50 g (oz.) concentration in space 12–24 hrs.)

Note.—Maximum volume of commodity being treated under subsection (1) shall not exceed 50% of the total volume of chamber. Concentration readings may be omitted for chamber fumigations.

(2) Fumigation with methyl bromide in a chamber at 660mm (26 inch) vacuum at one of the following schedules:

(i) *128 g/m³ (8 lb/1000 ft³) for 3 hrs. at 15.5° C 60° (60° F) or above.*

(ii) *144 g/m³ (9 lb/1000 ft³) for 3 hrs. at 4.5°–15° C (40°–59° F*

Note.—Maximum volume of commodity being treated under subsection (2) shall not exceed 75% of the total volume of chamber.

6. The following note would be added at the end of § 319.75–4(b)(3)(ii):

Note.—Maximum volume of commodity being treated under subsection (3) shall not exceed 75% of the total volume of chamber.

7. Section 319.75–9 would be revised to read as follows:

§ 319.75–9 Inspection and phytosanitary certificate of inspection.

(a) Any nursery stock, plant, fruit, vegetable, root, bulb, seed, or other plant product designated as a restricted article and grown in a country maintaining an official system of inspection for the purpose of determining whether such an article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States. Such certificate may cover more than one article and more than one container kept together during shipment and offer for importation.

(b) Any nursery stock, plant, fruit, vegetable, root, bulb, seed, or other plant product designated as a restricted article which is accompanied by a valid phytosanitary certificate of inspection is subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of injurious plant diseases, injurious insect pests, and other plant pests, and whether such article is otherwise eligible to be imported into the United States.

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[1] The importation of restricted articles may be subject to prohibitions or restrictions under other provisions of 7 CFR Part 319. For example, fresh whole chilies (*Capsicum* spp.) and fresh whole red peppers (*Capsicum* spp.) from Pakistan are prohibited from being imported into the Untied States under the provisions of 7 CFR 319.56 *et seq.*

[2] Seeds of the plant family Cucurbitaceae include but are not limited to: Benincasa hispida (wax gourd), Citrullus lanatus (watermelon), Cutumis melon, (muskmelon, cantaloup, honeydew), Cucumis sativius (cucumber), Curcurbita pepo (pumpkin, squashes, vegetable marrow), Lagenaria siceraria (calabash, gourd), Luffa cylindrica (dischcloth gourd), Momoridica charantia (bitter melon), and Schium edule (chayote).

[3] Such bagging may be subject to additional restrictions under the provisions in 7 CFR 319.8 *et seq.*

(c) Any nursery stock, plant, fruit, vegetable, root, bulb, seed, or other plant product designated as a restricted article and grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, or injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

(Secs. 5 and 9; 37 Stat. 316, 318; 7 U.S.C. 159, 162; secs. 105, 106, and 107; 71 Stat. 32–34; 7 U.S.C. 150dd, 150ee, 150ff; 7 CFR 2.17, 2.51, and 371.2(c))

Done at Washington, D.C., this 25th day of July 1984.

Harvey L. Ford,

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

[FR Doc. 84–20047 Filed 7–30–84; 8:45 am]

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Federal Grain Inspection Service

7 CFR Part 810

Proposed Amendment to the U.S. Standards for Triticale

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule—Regulatory review.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Triticale. Pursuant to this review, FGIS proposes to revise triticale standards to: (1) Reduce the allowable limit for castor beans in the numerical grades; (2) delete smut as a factor which would render triticale Sample grade; and (3) make other miscellaneous non-substantive changes in language, format, and references. These changes are proposed so as to update the standards and conform the standards to other grain standards.

DATE: Comments must be submitted on or before August 30, 1984.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., (address as above), telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of triticale inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Review of Standards

This review included a determination of the continued need for the standards and the potential to clarify or simplify the language of the standards; a review of changes in marketing factors and functions affecting the standards; review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential to improve the standards and their application through the incorporation of grading factors or tests which better indicate grain quality. The objective was to assure that the standards continued to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Triticale was published in the December 21, 1983 **Federal Register** (48 FR 56398). During the 60-day comment period, 6 comments were received. All comments addressed 3 primary issues.

1. Should the allowable limits for castor beans in the numerical grades (7 CFR 810.656) be tightened from 2 to 1, for example, 2 seeds would render triticale U.S. Sample grade?

Two commenters suggested that in tightening allowable limits for castor beans, FGIS should proceed further and allow no castor beans in triticale. One commenter misinterpreted the proposed change and objected to raising the limit from 0 to 1. Two castor beans are allowed in the numerical grades, and the proposal is to permit only one. Although the commenters expressed a desire to see the allowable limit further reduced, such a change is not necessary based upon present testing information regarding the presence of castor beans in triticale.

2. Should the presence of an extreme amount smut be deleted as a factor rendering triticale U.S. Sample grade (7 CFR 810.656)?

Two commenters asked that FGIS retain current limits for smut, and advised against looser limits. FGIS was not proposing to change the limits for "Light smutty" and "Smutty", but to delete the provision which renders triticale Sample grade when the quantity of smut is so great that one or more of the grade requirements cannot be accurately determined. Due to seed treatment and other improvements, the "Sample grade" provision based upon smut has not been applied for several years.

3. Should the standards be eliminated or is there sufficient need to retain them?

Four commenters stated that triticale standards must be retained to aid in their efforts to market the grain. Research results have been published on the nutritional aspects of triticale. While development of the market has been somewhat slow, these merchandisers of triticale advised that standards are needed to continue development of the market.

Two commenters suggested that test weight limits may need to be increased. When the standards for triticale were promulgated, it was understood that as more varieties were developed, and the production areas expanded, the need for adjustments in the grade-determining factors would be addressed. At this time, the number of new varieties and the expansion of acreage and production are not great enough to evaluate a need for change in the test weight requirement. One commenter stated that there was no need to retain the triticale standards; however, the commenter concurred that if the standards were retained, changes should be made on the two issues of castor beans and smut.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), upon request, such information may be orally presented in an informal manner. Also, pursuant to section 4(b) of the Act no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless

in the judgement of the administrator the public health, interest, or safety requires that they become effective sooner.

A review of available information indicates that the proposed revisions in the standards would clarify and increase the effectiveness of the standards and effect uniformity with other standards, especially the wheat and rye standards. As a result of this review FGIS is proposing the changes to the U.S. Standards for Triticale.

The allowable limit for castor beans in the numerical grades (7 CFR 810.656) would be reduced from 2 to 1, for example, 2 or more would grade Sample grade. Castor bean seeds are rarely found in any grain, but the large size of the seed and the toxicity of the ricin found within, make it prudent to permit the presence of only the minimum number of seeds in triticale, as is practicable. Accordingly, in § 810.656, it is proposed that the limit for castor bean seeds in the numerical grades be reduced from 2 to 1, i.e., when a 1,000 gram sample contains more than 1 castor bean the triticale would be graded "U.S. Sample grade."

The presence of an extreme amount of smut would be deleted as a factor rendering triticale U.S. Sample grade. Currently, when smut is evident in a sample, the special grades "Light smutty" and "Smutty" are applied (7 CFR 810.658(d) and (e)). Also, when the sample contains a quantity of smut so great that one or more grade requirements cannot be accurately determined, a Sample grade designation is applied (7 CFR 810.656(b)). Inspection data show that triticale rarely, if at all, contains so much smut that grade requirements cannot be accurately determined. The special grades appear to adequately inform the user of the condition of the triticale and make the requirement regarding extreme quantities of smut as Sample grade unnecessary. Accordingly, in § 810.656 it is proposed that the presence of an extreme amount of smut would not render the triticale U.S. Sample grade.

The revision of wording is proposed to clarify and effect uniformity between standards, including reference to FGIS handbooks. Specifically, § 810.652(d), (g), (i), and (l), § 810.658(f), and footnotes 2 would be amended to show that the Grain Inspection Manual and the Equipment Manual have been renamed as the "Grain Inspection Handbook" and the "Equipment Handbook," respectively; § 810.654 would be amended to delete as unnecessary reference to field offices, official agencies, and interested parties, and so as to conform the language in this section to identical language in other grain standards; § 810.656 would be further amended to show that the footnote indicator "1" in the column heading for total foreign material should read "2"; and § 810.657(b) would be amended to show that the footnote indicator "1" should read "4", and is amended to further show that the Grain Inspection Manual has been renamed as the Grain Inspection Handbook. Also, miscellaneous non-substantive format changes are proposed to § 810.656 for clarity.

List of Subjects in 7 CFR Part 810

Export, Grains.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, it is proposed that § 810.652(d), (g), (i), (l) and footnote 2, § 810.658(f), § 810.654, § 810.656, and § 810.657(b) and footnote 4 be revised to read as follows:

United States Standards for Triticale [1]

* * * * *

§ 810.652 Definition of other terms.

* * * * *

(d) *Dockage.* All matter other than triticale which can be readily removed from a test portion of the original sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in separating the material other than triticale and which cannot be recovered by properly rescreening or recleaning. (See also § 810.655 and § 810.657.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

* * * * *

(g) *Moisture.* Water content in triticale as determined by an approved device following procedures prescribed in the Grain Inspection Handbook [2]. For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(i) *Shrunken and broken kernels.* All matter which can be removed from a test portion of the dockage-free sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall be the 0.064 × 0.375 (3/64) inch oblong-hole sieve.[3]

* * * * *

(l) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage-free test portion of the original sample using an approved device following instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

§ 810.654 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the triticale standards are applicable to triticale produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of triticale may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.656 Grades and grade requirements for triticale.

(See also § 810.658).

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[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Request for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Federal Grin Inspection Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged kernels		Foreign material		Shrunken and broken kernels (percent)	Defects (total) [3] (percent)
		Heat damaged (percent)	Total [1] (percent)	Material other than wheat or rye (percent)	Total [2] (percent)		
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0
U.S. Sample grade [4]							

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects (total) includes damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for "defects (total)" for each numerical grade.
[4] U.S. Sample grade shall be triticale which:
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or
(b) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of triticale; or
(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(d) Is heating or otherwise of distinctly low quality.

§ 810.657 Grade designations.

* * * * *

(b) *Optional grade designations.* Triticale may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Triticale," "U.S. No. 3 or better Triticale," etc. The special grade designations and dockage, when applicable, also shall be included (under certain conditions [4]) in the certification.

Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.658 Special grades and special grade requirements.

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(f) *Weevily triticale.* Triticale which is infested with live weevils or other insects injurious to stored grain. As applied to triticale, the meaning of the term "infested" is set forth in the Grain Inspection Handbook[2].

Authority: Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

Dated: July 16, 1984.

K. A. Gilles,

Administrator.

[FR Doc. 84–20085 Filed 7–30–84; 8:45 am]

BILLING CODE 3410-EN-M

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A20]

Milk in the Chicago Regional Marketing Area; Decision on Proposed Amendment to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides the operators of certain supply plants a choice of methods by which their plants could qualify as pool plants under the Chicago Regional order. A "reserve supply plant" provision allows supply plants that meet certain criteria to be pool plants without having to regularly ship milk to distributing plants unless the market administrator determines that such shipments are needed to meet the fluid milk demands of the market. A plant that fails to meet such a "call" for shipments would lose its status as a pool reserve supply plant for one year.

The market administrator could determine that pool reserve supply plants, in one or more areas, would have to make qualifying shipments of milk if milk were needed at distributing plants in the respective call area. The shipping requirements could be at different levels within a call area or between areas that, together, would define the call area.

Alternatively, a supply plant operator could choose to pool a plant by making monthly shipments to qualifying plants. The shipments would be required each month at a rate to the marketwide Class I utilization percentage for the same month of the preceding year. Plants pooled through the latter provision would not be subject to any call to ship milk issued by the market administrator. However, each such plant would have to make the required shipments, since handlers no longer would be able to form pool units composed of more than one plant.

Another change requires each producer to ship one day's production each month to the pool that receives and reports such milk as producer milk. Such shipments now are required once a month during September through March.

This decision is based on the record of a public hearing held in May 1983, at the request of a group of dairy farmer cooperatives that represent more than one-half of the producers who supply this market. The changes herein reflect current marketing conditions and tend to facilitate stable and orderly marketing of milk supplies associated with the Chicago Regional market.

Cooperative associations supplying milk for the market will be polled to determine whether producers favor the issuance of the amended order. It must be approved by at least two-thirds of the order's producers in March 1984 to become effective.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

At the hearing, in briefs later submitted, and in their exceptions to the recommended decision, the operators of three unregulated cheese manufacturing plants alleged that the Department of Agriculture had violated certain procedural requirements in calling an emergency hearing. Specifically, it was charged that the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 had been either violated or ignored.

The Department holds that all procedural requirements of the above

statutes and regulations were met, as were the Department's own procedures for formal rulemaking proceedings. Formal rulemaking proceedings are exempt from Executive Order 12291. The exemption was clearly stated in the hearing notice along with a statement that this action is subject to sections 556 and 557 of Title 5 of the U.S. Code (the Administrative Procedure Act).

It was alleged that the Department had failed to publish an initial regulatory flexibility analysis, which the plant operators maintained is required by the Regulatory Flexibility Act, 5 U.S.C. 603. Procedurally, the initial regulatory flexibility analysis would not be published until the issuance of the recommended decision. For this proceeding, however, such an analysis is not required, and the certification regarding this is set forth above. In this regard, the Regulatory Flexibility Act, in 5 U.S.C. 605(b), provides as follows:

> Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the **Federal Register**, at the time of publication of general notice of proposed rulemaking for the rule or at the time of the publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

It should be noted that the hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Most parties subject to a milk order are considered to be a small business. Certain testimony at the hearing was directed to the impact of the proposals on small businesses.

This decision contains an economic analysis and takes into consideration the impact of the proposed changes in regulation upon the dairy industry, including, to the extent permitted, the impact on small businesses. Although not identical to a regulatory flexibility analysis, a decision based on the record evidence obtained at a public hearing serves the same basic purpose as a regulatory flexibility analysis.

Prior documents in this proceeding:

Notice of Hearing: Issued April 25, 1983; published April 29, 1983 (48 FR 19380).

Partial Decision: Issued August 4, 1983; published August 11, 1983 (48 FR 36464).

Order Amending Order: Issued August 17, 1983; published August 24, 1983 (48 FR 38448).

Recommended Decision: Issued April 9, 1984; published April 12, 1984 (49 FR 14511).

Correction to Recommended Decision: Published April 20, 1984 (49 FR 16803).

Extension of Time for Filing Exceptions: Issued May 8, 1984; published May 14, 1984 (49 FR 20303).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 900), at Madison, Wisconsin, on May 24–26, 1983. Notice of such hearing was issued on April 25, 1983 and published April 29, 1983 (48 FR 19380).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on April 9, 1984, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. *Pool reserve supply plant provisions.*":

a. Paragraphs 3 and 8 are revised.

b. Two new paragraphs are added after paragraph 99.

c. A new paragraph is added after paragraph 106.

d. Eleven new paragraphs are added after paragraph 114.

e. Two new paragraphs are added after paragraph 116.

f. Three new paragraphs are added after paragraph 119.

g. Paragraph 120 is revised.

h. Five new paragraphs are added after paragraph 122.

i. Two new paragraphs are added after paragraph 123.

j. Paragraph 131 is revised.

k. Paragraph 134 is revised and two new paragraphs are added after it.

l. Three new paragraphs are added after paragraph 146.

m. Eight new paragraphs are added after paragraph 149.

2. Under the heading "2. *Performance standards for supply plants.*":

a. One paragraph is added after paragraph 14.

b. Five new paragraphs are added after paragraph 17.

c. Paragraph 18 is revised.

d. Three new paragraphs are added after paragraph 21.

e. One paragraph is added at the end of the discussion.

3. Under the heading "3. *Producer delivery requirements.*":

a. Paragraph 10 is revised.

b. Three new paragraphs are added after paragraph 13.

4. Under the heading "5. *Need for emergency action on one or more of the above issues.*", the second paragraph is revised.

The material issues on the record of the hearing relate to:

1. Pool reserve supply plant provisions.

2. Performance standards for supply plants.

3. Producer delivery requirements.

4. Modification of the Director's discretionary authority provision.

5. Need for emergency action on one or more of the above issues.

A prior decision dealt with issues 4 and 5. Issue 5 also is considered in this decision and the remaining issues (Nos. 1, 2, and 3) of the hearing are considered in this decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background Information

The Chicago Regional order area resulted from a merger of the former Chicago, Illinois order area; and the adjacent territory of the Madison, Wisconsin; Northeastern Wisconsin; Northwestern Indiana; and Rock River Valley Federal milk order areas and some adjacent unregulated territory. The marketing area has been changed twice since the initial order became fully effective on July 1, 1968. In January 1969, the counties in northwestern Indiana were deleted from the area. In September 1970, some unregulated counties in Wisconsin that were surrounded by the marketing area were added. Neither of these area changes resulted in any substantial increases or decreases in either the amount of milk pooled or the number of producers supplying milk under the order.

Marketing conditions have changed since the Chicago Regional order was promulgated. The amount of producer milk pooled under the order nearly doubled from 7.1 billion pounds in 1969, to more than 13.1 billion pounds in 1982. The number of producers increased from an annual average of 16,639 in 1969 to 18,805 in 1982. The daily delivery of milk from each producer has increased from an annual average of 1,172 pounds in 1969 to 1,909 pounds in 1982. The sales

of Class I milk (fluid milk products) have decreased from 3.6 billion pounds in 1969 to 2.9 billion pounds in 1982. The Class I utilization percentage has dropped from 50.7 percent in 1969 to 22.4 percent in 1982.[1]

Since its promulgation, the Chicago Regional order has been amended several times in response to changed marketing conditions. The pooling requirements for supply plants have been an issue in many amendatory proceedings; the minimum performance standards for supply plants have been amended five times. In September 1972, the minimum standards were decreased five percentage points for each of the months of September, October, and November. In August 1973, the performance requirements were increased by five percentage points for September, October and November. In addition, the months of January, February, and March were included in the required shipping period. Also, shipping requirements for an individual plant within a unit of supply plants were incorporated in the order. The requirements for shipments from an individual plant were designed to remedy, in part, the problem distributing plants located in the Chicago metropolitan segment of the market were experiencing in obtaining needed milk supplies from supply plants. In August 1975, the performance requirements for supply plants were decreased ten percentage points for August and September and five percentage points for October, November and December. It was found at that time that producer milk supplies had increased substantially and unecomonic movements of milk were being made by supply plants to satisfy the pooling requirements.

In an action effective on August 1, 1977, the month of August was eliminated from the required shipping period for supply plants. Also, the shipping requirement was eliminated for an individual plant within a unit of supply plants. The plentiful supply of milk available to the market was cited as the reason for eliminating the requirement for shipments from an individual plant within a unit. The removal of the requirement allowed operators of supply plant units to minimize hauling costs in supplying milk to the market.[2] In September 1982, the minimum performance standards for supply plants were reduced by five percentage points for each of the months of September, October, November, and December. The continued plentiful supplies of milk were cited as one of the reasons why the shipping standards were being further reduced at that time.

Shipping standards for supply plants have been used in the Chicago Regional market, since its promulgation, to assure the availability of milk for distributing plants. The overall system of performance requirements for supply plants has worked well in providing adequate supplies of milk at the distributing plants and assuring appropriate identification of producers associated with the market. However, the evidence introduced at the hearing indicates that marketing conditions in the Chicago Regional area have changed from those conditions present when the order was promulgated in 1968. Current marketing conditions warrant an additional method of pooling producer milk supplies under the order. The record of the hearing demonstrates that the use of supply plants with the associated performance standards may be appropriate for some handlers regulated by the order, while a system of reserve supply plants without specified monthly shipping requirements may be equally appropriate for other handlers.

The Central Milk Sales Agency (CMSA), a group of six cooperative associations representing more than one-half of the producers supplying milk to the Chicago Regional market, proposed eliminating the monthly performance requirements for pool supply plants. CMSA proposed the adoption of a reserve supply plant provision wherein the market administrator could issue a call for milk to move from these reserve supply plants to distributing plants if these latter plants needed milk. CMSA asserted that it would satisfy the fluid needs of the Chicago Regional market under the proposed reserve supply plant provisions, even in the absence of monthly shipping requirements.

Dean Foods Company; Hawthorn Mellody, Inc.; and Borden, Inc. (Dean et al.) opposed the elimination of the performance standards for supply plants. As an alternative, Dean et al. proposed lowering the supply plant performance standards and increasing the Director's discretionary authority to temporarily revise the standards from a maximum of 10 to a maximum of 15 percentage points. The modification of the Director's discretionary authority was considered in the Partial Final Decision issued by the Assistant Secretary on August 4, 1983, and the order subsequently was amended effective August 24, 1983. At the hearing and in his post-hearing brief, the spokesman for Dean et al. modified his position and urged the Secretary to keep the current provisions with respect to supply plants located in zones 1 through 10, albeit at the proposed lower performance levels. He further urged adoption of the proposed reserve supply plant provision for plants located in zones 11 and beyond. He said that this modified solution would continue to assure a supply of milk for fluid purposes to distributing plants located in the inner zones of the market.

These proposed differences in the method by which producer milk would be identified and pooled under the Chicago Regional Federal milk order were the principal issues considered at the hearing.

1. *Pool reserve supply plant provisions.* The Chicago Regional order should be amended to provide for a reserve supply plant provision as follows:

a. A "reserve supply plant" should be defined as any plant that is located in the marketing area or that portion of the State of Wisconsin that is not included in the marketing area of any federal milk marketing order. "Reserve supply plant" also means any plant located in the Wisconsin portion of the Upper Midwest Federal milk marketing area that has been a pool plant under the Chicago Regional order for at least three consecutive months immediately prior to the effective date of this amended order, so long as it continues such pool status.

b. A reserve supply plant must physically receive at least 47,000 pounds of Grade A milk from producers at least one day each month. To be a pool plant in December, it must ship one load of at least 47,000 pounds of Grade A milk to pool distributing plants during the months of September through December each year.

c. The operator of the reserve supply plant must file a request for pool status for the plant with the market administrator at least 15 days prior to the first day of the month in which such status is desired to be effective. After a plant has qualified as a pool reserve supply plant, such status shall continue to be effective through the third month after the month in which the operator notifies the market administrator that the plant will seek qualification as a pool supply plant (with monthly shipments) for the next consecutive three months, or until one of the following occurs: (1) The operator requests nonpool status for the plant

[1] Official notice is taken of *Reporter*, Chicago Regional Marketing Area, Vol. XVI-No. 8, August 1983, a monthly publication issued by the market administrator.

[2] Official notice is taken of the Assistant Secretary's decision issued July 15, 1977 (42 FR 37388).

prior to the first day of the month for which nonpool status is requested, (2) the plant subsequently fails to meet all the conditions with respect to pool reserve supply plant status, or (3) the plant qualifies as a pool plant under another federal milk marketing order.

d. The operator of a pool reserve supply plant shall supply milk from the plant to pool distributing plants, or to certain other distributing plants, whenever the market administrator announces such shipments are needed. For the purpose of meeting a shipping requirement (or "call"), qualifying shipments may be made from any plants or producer milk supplies of the handler, either within or outside the specified call area. However, qualifying shipments from plants not subject to the call must be in addition to those already being made by the handler. Shipments already being made would include shipments from other plants of the handler and in the case of a cooperative, any milk shipped directly from member producers' farms.

e. The amount of qualifying shipments shall be the net quantities of condensed skim milk and fluid milk products received at a distributing plant from or on behalf of the pool reserve supply plant.

f. The market administrator shall determine the size of any call area, which may be comprised of two or more sub-areas, and may issue more than one call percentage within each such call area as is determined necessary to supply milk to pool distributing plants within each call area.

g. A reserve supply plant must be a pool plant during each of the months of September through March (or in six such months and be a pool plant under another order for the other month) in order to have status as a pool reserve supply plant during the following months of April through August.

h. The failure of a handler to comply with any announced shipping requirement, including making any significant change in marketing operations that the market administrator determines has the impact of forcing or evading such an announcement in the current month or any subsequent month, shall result in the immediate loss of pool status for the plant. A plant losing its status in the above manner or a plant that requests nonpool status may not again qualify as a pool reserve supply plant for a period of one year from the date on which pool status was last held.

The Central Milk Sales Agency (CMSA), a group of six cooperative associations representing more than one-half of the producers supplying milk to the Chicago Regional market, proposed eliminating the monthly performance requirements for pool supply plants. CMSA proposed the adoption of a reserve supply plant provision wherein the market administrator could issue a call for milk to move from the reserve supply plants to distributing plants, if these latter plants needed milk. The spokesman for CMSA maintained that some of the present supply plant provisions promote practices which subvert the plant qualification provisions of the order and do not promote orderly marketing conditions. He urged that the order's present supply plant provisions be replaced by provisions providing for reserve supply plants.

The CMSA witness said that the continued use of the Director's discretionary provision to temporarily revise the performance standards for supply plants indicated a more fundamental problem in the market and not the emergency type condition which the provision originally was intended to cover. He said that the provision had been used 32 times since the order was promulgated in 1968, raising the shipping requirements two times and decreasing them 30 times. He indicated that the present shipping requirements were too high and that the Director's discretionary provision would be needed again during the fall months of 1983. He indicated that overuse of the provision was one reason why shipping requirements for supply plants were no longer appropriate for this market.

The spokesman for CMSA stated that the principal objective of all supply organizations on the Chicago Regional market was to qualify the milk of producers supplying the market. He said that qualification of milk as producer milk allows it to share in the relatively higher prices obtained from the sale of fluid milk products. He said that the act of qualifying milk as producer milk has value because the handler pooling the producer milk can draw out of the marketwide pool the difference between the zoned uniform price and the Minnesota-Wisconsin manufacturing milk price, often without shipping any milk. The witness expressed CMSA's view that the present supply plant performance provisions were not promoting orderly marketing conditions and should be eliminated.

He said that three methods were used in the market to achieve producer milk qualification, namely, shipping, leasing, and/or satelliting. He described how each of the methods was being misused by proprietary handlers and cooperative associations in the Chicago Regional market. The witness alleged that most of the handlers, including cooperative associations as well as proprietary handlers, in the Chicago Regional market had abused the performance provisions by selling qualification of producer milk.

The spokesman described some of the ways that pool qualification could be sold. For example, under the shipping method, the operator of a supply plant could pay a handler operating a pool distributing plant to receive sufficient quantities of milk for fluid purposes from the supply plant to qualify the latter plant for pooling. The handler would guarantee to pool all the milk received at the supply plant. However, most of the milk would stay at the supply plant and be used to produce manufactured milk products, which tends to lower the value of the pool.

A more complicated method of selling qualifications, the witness explained, was for the regulated handler to lease the receiving room of a supply plant at a nominal contractual rate of one dollar per year. The handler would add that location to another supply plant or plants operated by him to form a unit of supply plants, as authorized by the order. The regulated handler would use the unit pooling provisions to qualify the milk received at all locations in his supply plant unit, sometimes without requiring any shipments from one or more of such leased or owned facilities. The witness explained that, as previously described, the milk not needed for fluid purposes by the handler would remain for use by the manufacturing facility associated with the leased receiving room and would not be available to other fluid handlers. According to CMSA's spokesman, the manufacturing plant operator pays a fee per hundredweight to the regulated handler to qualify the milk received at the leased facility. Thus, the regulated handler gains both the right to require shipments of milk from the leased facility and the qualification fee from the operator of the manufacturing plant. In return, the operator of the manufacturing plant is assured that the milk received at the receiving location near his plant is priced under the order. It was CMSA's opinion that these and other practices of selling qualification subvert the pool plant qualification provisions of the order and do not promote orderly marketing.

The CMSA witness also said that the practice of satelliting milk at pool supply plants undermines the pool plant qualification provisions of the order. He explained that milk pooled through the satellite procedure is Grade A producer milk that is received and manufactured at a nonpool plant, except for the one

day each month during September through March that the milk must be shipped to and received at a pool supply plant. In many instances the satellited milk is transferred back to the manufacturing facility on the same day it is shipped to the pool supply plant, according to the witness. If the pool plant is in a unit of supply plants, he explained, it could be that none of this milk is ever shipped to or used by fluid handlers. He noted that the milk is pooled and thus draws the uniform price. He maintained that the current performance provisions for supply plants promote these types of uneconomic movements of milk, and that such movements have nothing to do with servicing the fluid sector of the market.

The CMSA witness further stated that the sale of qualification of producer milk fosters inequities among handlers by affecting the uniformity of prices paid for milk among competing handlers. He pointed out that a handler who sells qualification has a money income of as much as 18 thousand dollars a month that other handlers do not have. It was the witness's opinion that one of the purposes of the federal milk marketing order system is to obtain pricing equity among milk handlers, and that obtaining income by selling qualification is not consistent with that purpose.

Another reason for the elimination of the supply plant performance requirements given by the CMSA spokesman was that the market structure has changed in the Chicago Regional marketing area since the order was promulgated. He said that few distributing plants continue to operate in the City of Chicago and those plants require few shipments of tanker milk from supply plants. He said the closing of a bottling plant in February 1983 was typical of what had been happening in the market. When the plant closed, most of its packaged fluid milk sales were shifted to another handler's plant that receives most of its milk by direct shipment from dairy farms. Thus, he expained, the need for tanker milk decreased even though the fluid milk sales had remained in the market. The witness also reviewed instances where the packaged fluid milk sales had shifted to handlers regulated by other federal milk orders. Again, fewer shipments were needed from supply plants regulated by the Chicago Regional order. The witness maintained that the closing of distributing plants in Chicago and the resulting need for fewer shipments from supply plants support CMSA's opinion that performance requirements for supply plants are no longer appropriate for the Chicago Regional order.

The CMSA witness siad the order's supply plant shipping requirements force distant milk to move while closer milk is available to the fluid market. He illustrated how the order requires supply plants or units of supply plants located in the outer zones (zones 10 through 16) to ship the minimum percentage of their milk receipts to distributing plants, even though other supply plants located in the inner zones (zones 1 through 9) have milk supplies available in excess of their required minimum shipments. As an example, the witness said that during the 1982–83 qualifying period (September through March), 62.5 million pounds of tanker milk were shipped from proprietary plants located in zone 10 and beyond, while 350 million pounds of milk were available at plants located in zones 1 through 9. The witness stated that CMSA had traditionally endorsed the requirement for all such milk to move for the purpose of pool qualification. However, due to the ever increasing costs of transporting milk, CMSA has changed its philosophy, the witness said, and now recommends that the Secretary not continue such requirements.

The CMSA spokesman proposed that the order be amended to replace the current performance standards for supply plants with provisions for pooling reserve supply plants. He said that a reserve plant provision, together with a call provision, would insure that fluid handlers would have the ability to get needed supplies of Class I milk for their operations. He said CMSA's proposed amendments were designed to identify those plants and producers whose association with the marketing area is such as to warrant their sharing in the market's higher valued Class I utilization. He said the proposed amendments were aimed at promoting efficiencies in the marketing of milk by reducing uneconomic movements merely to gain producer milk status and, hence, be pooled under the order.

The CMSA spokesman proposed that a reserve supply plant be required to satisfy the following criteria: (1) The plant must be approved by an appropriate health authority for the receipt of Grade A milk, (2) the plant must be located in the marketing area or in the currently unregulated portion of the State of Wisconsin, and (3) the plant must demonstrate at least one day each month the ability to receive at least 47,000 pounds of uncommingled Grade A milk receipts direct from producers assigned to and pooled at such plant. He also proposed that any plant located in the Upper Midwest (Order 68) marketing area and currently regulated under the Chicago Regional milk marketing order be "grandfathered-in" as a pool reserve supply plant under the Chicago Regional order, provided it maintained pool status under the Chicago Regional order.

The witness said the 47,000-pound requirement was necessary because that size is an efficient over-the-road tanker volume. If a call were issued, the reserve supply plant would need to assemble a load of milk of at least that size to economically transport it to plants in the call area. The witness said the 47,000 pounds of uncommingled Grade A milk could be delivered to the reserve supply plant by more than one smaller-sized milk pick-up truck. As long as the Grade A milk received at the plant was kept separate from any non-Grade A milk and could be transshipped to a distributing plant for Grade A fluid purposes, the witness said, that plant would demonstrate it was willing ready, and able to ship milk to the fluid market. He also said that the uncommingled requirement would demonstrate continued association with the fluid market on a monthly basis.

The CMSA spokesman proposed that once qualified as a pool reserve supply plant, the plant should not be required to ship milk unless a call were issued by the market administrator upon the request of one or more distributing plants. He said the operator of a pool reserve supply plant would agree to supply milk for Class I use to pool distributing plants, partially regulated distributing plants, or to plants of producer-handlers whenever the market administrator announced that such shipments were needed. The witness said that before making such an announcement, the order should provide for the market administrator to investigate the need for such shipments, either on his own initiative or at the request of interested persons. If the investigation showed that such shipments were needed, the market administrator would issue a notice stating that a shipping announcement was being considered and inviting data, views, and arguments with respect to the proposed shipping announcement.

At the hearing, the CMSA spokesman proposed that the order not limit the size of any call percentage that might be announced by the market administrator. In the post-hearing brief the attorney for CMSA stated that, based on the record evidence, CMSA had concluded that the call percentage should not exceed the preceding year's Class I utilization percentage of the order for the same month in which the call percentage

would be applicable. He held that such a limitation would serve to avoid disruption of manufacturing operations at pool reserve plants in the area affected by the call and to equitably apportion among such plants the manufacturing margin losses that result from supplying milk to the fluid sector.

The CMSA witness urged that the size of the call area be the smallest geographical area necessary to secure the needed milk supplies for Class I use at the distributing plants in the call area. He suggested the call area could be as small as a part of a county, and could include only one distributing plant and one reserve supply plant. The witness said that the length of the call period could be part of a month, but that he anticipated that the normal call period would be on a monthly basis.

The witness proposed that the net shipment provision of the order not be operative during the time of any call period. He expressed a view that the net shipment provision would have no function in the order. If it were retained, the witness foresaw the possibility that some milk would not be able to be qualified if a call for milk were issued and other milk moved to fill the needed requirements. The witness also urged that the order not contain any diversion limitations for pool reserve supply plants. He said that such a plant should have unlimited diversion privileges since it would be required to ship only when it was located in an announced call area and, therefore, was subject to a call.

The CMSA witness proposed that any pool reserve supply plant that failed to comply with any shipping requirement prescribed by the market administrator lose its pool status for the month in which it failed to comply. He said that any such pool reserve supply plant, which failed to comply or which elected to be a nonpool plant, should not again qualify as a pool plant for a period of a year from the date on which pool status was lost or relinquished. The witness also said that under the proposal any operator of a pool reserve supply plant would cause his plant to lose its pool status for that month if he changed his marketing operatings in a manner that would have the impact of forcing or evading any announced call. Any such plant would be prohibited for one year from holding pool status as a reserve supply plant.

The CMSA spokesman said that for the purpose of complying with the shipping requirement pursuant to any announced call, the order should provide that the qualifying shipments for milk Class I use may be made to pool distributing plants, producer-handler plants, partially regulated distributing plants and to other order distributing plants. The witness proposed that the supply plant unit concept be retained in the order so that the qualifying shipments could be made from any plant of a supply plant unit whether the shipping plant was within or outside the call area. The witness said if a plant outside of the call area made shipments on behalf of a plant within the call area, then the location adjustment credit on any such movement should be limited to the location adjustment applicable to the plant in the call area. The witness explained that the unit concept has proved to be an efficient mechanism to enable multiple plant operators to supply the fluid requirements of the market. The witness said that a multi-plant operator might wish to maintain the manufacturing schedule at a plant within any announced call area and furnish milk from another plant located in a more distant zone. The spokesman said that restricting the location adjustment, as he proposed, would allow maximum flexibility to the operator of a unit of pool reserve supply plants in meeting any shipping requirements while relieving the Chicago Regional pool producers of the cost burden of excessive location adjustment credits paid out of pool funds.

The CMSA spokesman proposed that the order continue to provide the opportunity for pooling by a supply plant whose location prohibits it from meeting the definitional requirement for a reserve supply plant's location. He said such a plant could be a pool supply plant if it made qualifying shipments of more than 50 percent of its producer milk receipts each month. He said the shipping requirement of more than 50 percent of receipts was appropriate in view of the clearly adequate, if not excessive, amount of milk associated with the Chicago Regional market. He said that such a plant should be required to ship every month to demonstrate its continued association with the market.

The CMSA witness under cross-examination acknowledged that an alternative pooling method would be to have the order provide for both types of supply plants located in the marketing area, i.e., regular supply plants with specified shipping percentages and reserve supply plants subject to a call provision. In this manner, a plant could maintain pool supply plant status by shipping the minimum percentage of its receipts to distributing plants and not be subject to a call for additional shipments of milk. He indicated that CMSA would have no objection to this modification. He indicated that CMSA believed this dual supply plant system would work, but, however, CMSA felt that more appropriate amendments to the order were to simply eliminate specified performance standards for any supply plant and provide for reserve supply plants located in the marketing area or in the federally unregulated portion of the State of Wisconsin.

The CMSA witness concluded his testimony by citing CMSA's long-term involvement with servicing the market and its dedication to continue to serve the milk handlers regulated by the Chicago Regional order. He stated that CMSA would not deny fluid handlers the milk necessary for their fluid needs and would continue to provide supplies of milk for handlers' needs at competitive prices. He said that the proposals made by CMSA should be adopted so that the industry would no longer pay for required milk shipments from distant plants when nearer plants have milk supplies available and are ready, willing, and able to ship.

A spokesman for Farmers Union Milk Marketing Cooperative (FUMMC) said that his organization supported elimination of shipping requirements for supply plants and had so testified at previous amendatory hearings for the Chicago Regional order. He maintained that access to the pool had gained economic value and that qualification of milk had been bought, sold and brokered. He said that FUMMC long had believed that inequities resulted from the sale of qualification and noted that the problems had gotten a little worse. The witness stated that FUMMC supported the overall concept of the proposed reserve supply plant provisions, but that certain modifications should be made.

The FUMMC spokesman said that requiring a pool reserve supply plant to receive at least 47,000 pounds of uncommingled Grade A milk one day each month was unnecessary in two aspects. He said the prohibition on commingling Grade A milk with Grade B milk would result in costly actions a handler would undertake to satisfy the order's requirements, but which would prove nothing. He contended that the operator of a reserve supply plant would know in advance if any of his plant's Grade A producer milk supplies were needed for fluid purposes. Accordingly, he said, the plant operator could keep sufficient supplies of Grade A producer milk needed for fluid purposes separate from any ungraded milk on those days when qualifying shipments would be made. Other days, when the plant's milk receipts would be used to produce manufactured dairy products, the plant

operator could commingle his milk supplies. The FUMMC spokesman said that to require uncommingled Grade A milk receipts one day each month would be unnecessary when the milk would not be transshipped for use in fluid milk products that day. He further held that the uncommingled requirement would lead to inefficient milk assembly routes and urged that the order not require such inefficiencies.

The FUMMC spokesman said that the receipt requirement of 47,000 pounds of milk one day each month was unnecessarily high. He proposed instead that the requirement be 25,000 pounds of Grade A milk. He said that this size truck is used to pick up milk at farms and that this volume should be used for the reserve supply plant minimal requirement. He noted in his post-hearing brief that the receipt requirement of 25,000 pounds would facilitate existing farm pickup practices and the use of the order provisions whereby milk diverted by a supply plant to a pool distributing plant counts as a qualifying shipment of milk from the supply plant (divert-transfer).

The witness proposed that the amount of any announced call be limited to a percentage of a plant's producer receipts equal to the marketwide Class I utilization percentage during the same month of the previous year. He expressed the view that a limit on the call percentage would insure that no plant in any zone, regardless of its proximity to Class I sales, would be required to ship more than its pro rata share of the market's Class I needs. In its post-hearing brief, FUMMC opposed any restriction in the size of the call area. The brief stated that the "smallest and closest" area restriction for a call area, as proposed by CMSA, could be used as justification to call more milk from a particular reserve supply plant and could cause competitive inequities among neighboring supply plants.

The spokesman for FUMMC proposed, absent adoption of the reserve supply plant provision, that the Secretary reduce the shipping performance standards for supply plants, as proposed by Dean et al. In his post-hearing brief, the spokesman stated that the supply plant shipping percentage for each month should be equal to the marketwide Class I utilization percentage for the same month of the preceding year. The spokesman said that this change would be helpful in reducing uneconomic movements of milk.

Marigold Foods, Inc. (Marigold), a proprietary handler, also supported the proposed reserve supply plant provisions with some modifications. The Marigold spokesman agreed with the FUMMC spokesman that any call percentage should be limited to the marketwide Class I utilization percentage for the same month of the previous year. He also said the requirement to receive at least 47,000 pounds of uncommingled Grade A milk one day each month was unnecessary. The Marigold witness expressed the view that once a reserve supply plant had obtained pool status, it should keep such status until it elected nonpool status or failed to satisfy any announced call by the market administrator.

The Marigold witness said that his company supported the reserve supply plant concept because Marigold wanted the practice of selling qualification of milk eliminated. The spokesman said his company had sold qualification and that he believed the practice created differences in the cost of Grade A milk paid by Marigold and other competing handlers.

The spokesman for Lakeshore Federated Dairy Cooperative (Lakeshore), a federation of three dairy cooperatives, and Woodstock Progressive Milk Producers Association, a separate cooperative organization, said that the concept of a reserve supply plant and its associated call provisions should be considered at another hearing when all provisions of the Chicago Regional order could be reviewed and updated. He also said that the location adjustments in the order were outdated and need to be increased, in particular. He said that the CMSA proposals were broader than necessary to assure the pooling of producer milk on the Chicago Regional market.

The Lakeshore witness said that his organizations favored keeping the supply plant provisions now contained in the order until a more complete review of the order could be held. He said his organizations supported a lowering of the performance standards for supply plants as an alternative to adopting the reserve supply plant provisions at this time.

The National Farmers Organization (NFO) opposed the proposed reserve supply plant provision as well as the elimination of performance standards for supply plants. In its post-hearing brief, NFO said that the Chicago Regional market was characterized by a milkshed which is almost exclusively to the north and west of Chicago. It said that the milk supply is located in rural areas, relatively far from the primary population centers and distributing plants that serve the fluid market. NFO maintained that the Chicago Regional market continues to rely on supply plants to assemble and transfer milk to distributing plants, and this known system should not be haphazardly discarded. NFO said that the consideration of a reserve supply plant provision, with an associated call provision, should be delayed until a hearing is held to review the order in its entirety, including such provisions as basing points and location differentials.

The NFO witness urged certain modifications if the Secretary decided to adopt the reserve supply plant concept. He said that the estimated marketwide Class I utilization percentage for the month should be the maximum amount that any call percentage could be. He also opposed including the words "smallest and closest" in the description of any call area. The witness opposed requiring uncommingled Grade A milk to be received one day a month by a reserve supply plant. However, he said that NFO supported the position that, once a plant was qualified as a pool reserve supply plant, it should maintain such status until the plant failed to meet a call issued by the market administrator.

A spokesman for Dean Foods Company, who also represented Hawthorn Mellody, Inc.; Borden, Inc., and four other proprietary handlers (Dean et al.), opposed the elimination of the performance standards for supply plants, as proposed by CMSA. The spokesman for Dean et al. said that the fluid milk needs of the Chicago market have been satisfied by the performance provisions for supply plants as contained in the order. He said that his group favored increasing the amount (from 10 percentage points to 15 percentage points) by which the Director of the Dairy Division could temporarily increase or decrease the supply plant shipping requirements. He contended that this proposed change was the only action necessary in this proceeding. He said that his group recommended that the shipping requirements for supply plants be reduced the full 15 percentage points during the September 1983 through March 1984 period, as contained in proposal number 4 of the hearing notice, but that the order's minimum shipping standard for each month not be reduced permanently by 15 percentage points.

The witness said that two attributes of the current supply plant system demonstrate its usefulness and the need to keep the present supply plant provisions as part of the Chicago Regional order. He said one attribute was the assurance by a supply plant that a sufficient quantity of milk would reach pool distributing plants. The witness said that such assurance was

gained through the use of the mandatory shipping percentages and the Director's discretionary authority to temporarily revise the shipping percentages. The second attribute, which the witness claimed promoted orderly marketing, was that a supply plant had to demonstrate its ability to provide pure and wholesome milk for the market. He said the milk handlers needed to know upon whom they could rely for a dependable supply each month. Without the shipping requirements, he said, handlers could not be assured of a pure and wholesome supply of milk.

The Dean et al. witness said that the group of handlers he represented opposed the reserve supply plant provision, as proposed by CMSA, because his group did not know what changes might occur in the amount handlers would be charged for tanker milk in the absence of shipping requirements for supply plants. He expressed the view that the availability of milk had helped to keep the plant charges moderate in the past. The witness expressed concern whether fluid milk handlers would be able to get sufficient milk without paying an excessive amount for plant charges, if the performance requirements for supply plants were eliminated. That concern would be even greater, he explained, if the supplies of producer milk on the Chicago Regional market decreased in response to any future changes in national dairy legislation, and if operators of milk manufacturing plants in Wisconsin wished to keep their plants operating at an efficient and economic level of operations. He said the uncertainty about future plant charges was a central issue to the group of handlers he represented.

In his post-hearing brief, the witness said performance requirements assure consumers an adequate supply of pooled milk and help to keep plant charges at realistic levels. He maintained that performance requirements are fundamental to the federal milk order regulatory system.

The witness for Dean et al. said that an appropriate modification to reflect his group's position would be to have the Chicago Regional order provide for supply plants with stated, monthly performance requirements and for reserve supply plants with the associated call provision. He said that supply plants would be located in the first 10 zones and reserve supply plants should be restricted to zones 11 and beyond. The witness said the current order's performance requirements would be appropriate under his modified supply plant system, if the Director's discretionary provision were increased as he proposed. In this manner, he claimed, the performance requirements on supply plants would assure milk supplies to handlers located in the nearby zones of the Chicago Regional market.

In his post-hearing brief, the witness said a call imposed on the closest geographic area could increase substantially the performance requirements of handlers operating reserve supply plants in the call area. He implied that he was opposed to any restriction in the size of the call area.

A spokesman for Hawthorn Mellody, Inc., testified in support of the positions taken by the Dean et al. witness at the hearing. He added that any call for milk should include the Class II milk needs as well as the Class I milk needs at distributing plants in the call area. He said that if a handler had his own system of milk supplies, such a handler should have the privilege of using his own supply for Class II purposes and call on reserve supply plants for his Class I needs. The spokesman also said that any announced call percentage should be limited to the current order's performance requirements for supply plants.

In his post-hearing brief the spokesman for Hawthorn Mellody, Inc., supported the Dean et al. brief. He also proposed that a service charge, to be paid by reserve supply plants for the benefit of qualifying without shipping any milk, be included in any reserve supply plant provision. He also supported allowing unit pooling among proprietary plant handlers and cooperative associations.

Kraft, Inc., an operator of five supply plants regulated by the order, supported a lowering of the performance standards for supply plants as contained in proposal number 4 of the hearing notice. The Kraft witness said that the order should retain performance requirements for pool supply plants to equitably allocate the burden of shipping and to maintain the responsibility for involvement in moving milk to the fluid market. He said the general problem of increasing production without increased fluid demand was the background for the proposals considered at the hearing. He said that the current order's shipping requirements were too high and that the Director's discretion to adjust the requirements was inadequate. Kraft's position was that the shipping standards should be retained but at a lower level, and that the amount of the Director's discretionary authority should be increased.

The Kraft witness said that its opposition to the reserve supply plant concept was that it would upset the existing equitable relationships between supply plants. He said eliminating required shipments except when a call would be issued, and restricting the size of the call area to the smallest and closest area possible were reasons Kraft believed the relationships would be changed. He said that with the removal of minimal performance standards, distant plants would be able to participate in the pool with no incentive whatsoever to make shipments or to arrange for another supplier to ship their pro rata share. He said that distant supply plants would disengage from the fluid market with little concern that they would be called upon to make shipments or that any required shipments would be substantial, if the call were extended to such plants. The witness said that as a result of the above disengagement of distant plants, supply plants located closer to the fluid market would be forced to ship a much greater amount of milk to prevent a call or as a result of a call.

The Kraft spokesman said another reason it opposed the proposed reserve plant concept was the potential harmful effects on plant operators who had invested in buildings and had planned business expansion based on the 15-year history of modest shipping requirements under the order. He said that an artificial demand for more milk from certain plants by force of regulation could upset the daily operations as well as the long run planning by operators of plants so affected. In its post-hearing brief, Kraft said that some supply plant operators had made considerable investments in manufacturing facilities and now rely upon a consistent and predictable quantity of milk for manufacturing purposes. This is done, he explained, in order to process efficiently the surplus Grade A milk production associated with the Chicago Regional market. Kraft said that a significant change in the volume of milk required to be shipped by such plants could result in inequities between plants, lost efficiencies, additional hauling and procurement expenses, and possible plant closings. It was Kraft's view that the adoption of the reserve supply plant system with the elimination of the stated monthly performance standards for supply plants could threaten the viability of millions of dollars in private investments.

As an alternative, the Kraft witness said that if the Secretary would provide for both types of supply plants in the Chicago Regional order, Kraft would

support such a finding. He said that a handler should qualify a plant as a pool supply plant based on the current order's performance requirements or as a pool reserve supply plant with the possibility that its milk would be subject to a call. The Kraft witness explained that either type of status would carry with it a responsibility to supply the fluid market without being required to give up a disproportionate share of a plant's milk supply.

In its post-hearing brief, Kraft repeated its support for both types of supply plants. Kraft said that if acceptable guidelines for the market administrator would be developed for him to follow in establishing a call, and if limits were encompassed in the reserve supply plant provision, it believed such a provision would enhance the orderly and efficient handling of milk in the Chicago Regional marketing area. Kraft proposed that the amount of any call announced by the market administrator not exceed the current minimum shipping requirements for supply plants regulated by the order, i.e., 25 percent of its receipts in September, 30 percent in October and November, and 20 percent in all other months.

Kraft said that the reserve supply plant provision should contain a penalty mechanism, i.e., loss of pool plant status for at least one year, for plants of handlers who make significant changes in marketing operations or who force the need for a call. Kraft said that this provision could help to assure cooperation among handlers in serving the needs of distributing plants.

Kraft opposed including in the proposed definition of a reserve supply plant that the plant assemble a tankerload of uncommingled Grade A milk. Kraft said that no function would be served by the uncommingled milk requirement without regard to the actual need for such milk by distributing plants.

Kraft, in its post-hearing brief, said that the supply plant provisions should be continued and that plants which regularly shipped milk to distributing plants during the preceding 12 months should be pooled as supply plants without being exposed to a call. Kraft modified its position taken at the hearing and said the performance requirements for such plants should equal the marketwide Class I utilization percentage for the same month of the preceding year.

Kraft also proposed at the hearing and in its post-hearing brief that the Secretary modify the standards for unit pooling to permit handlers by agreement to form a unit of supply plants. The Kraft spokesman said the order should permit proprietary handlers and cooperative associations to form supply plant units for qualifying purposes without plant lease or ownership requirements. He said that this modification would allow the market's suppliers of fluid milk maximum flexibility to select the most practical and efficient source and location of milk shipments without regulatory intervention dictating that shipments should come from a particular source or location. The spokesman said that this modification of unit pooling would meet many of the objectives of efficiency sought by CMSA without removing from handlers the opportunity to decide which plant or plants may be the most efficient and equitable source for fluid milk shipments.

In its brief, Kraft said that such units, as it proposed, currently exist between proprietary handlers as well as between proprietary and cooperative handlers on a de facto basis as a result of complex leasing arrangements. Kraft said that these leases involve token consideration and are colloquially considered to be "sham" arrangements, entered into because of the form of unit pooling currently provided in the order. It said the elimination of the acknowledged sham would not affect existing pricing, pooling and marketing arrangements between handlers who have leasing arrangements. Kraft concluded that the unit pooling modification would provide greater opportunity for all handlers to seek maximum efficiency in providing an equitable share of fluid milk to distributing plants.

A spokesman for the Trade Association of Proprietary Plants (TAPP), an organization of milk manufacturing plants in Wisconsin and Illinois, recommended that both supply plants and reserve supply plants be considered pool plants under the order. He said if the order provided operators of supply plants with a choice of pooling methods, many of the problems and issues discussed at the hearing could be resolved to most handlers' satisfaction. He identified the issues to be: (1) Providing an adequate supply of milk at reasonable handling charges, (2) eliminating qualification fees by pyramiding and leasing arrangements, (3) reduction in satelliting fees, (4) avoiding discrimination against manufacturing plants located nearest to Chicago, and (5) eliminating unnecessary and uneconomic movements of milk for qualification purposes.

The TAPP spokesman supported reducing the performance standards for supply plants and increasing the amount of the Director's discretionary authority, as proposed by Dean et al. in the notice of hearing. He also supported keeping the order's unit pooling provision for units of supply plants established by an individual proprietary handler and by multiple cooperatives. He supported Kraft's proposal to permit proprietary handlers and cooperative associations to form supply plant units on a contractual basis without plant leasing and ownership requirements.

In his post-hearing brief, the TAPP spokesman said that allowing units to be composed of cooperative-owned and/or private supply plants would have many advantages in terms of being equitable, flexible, simple, and economically sound. He maintained that allowing such units would permit more efficient movements of milk and enable supply plants (either cooperative or private) in the distant zones to fulfill their shipping responsibility by paying a fee to plants in nearer zones that are willing and able to ship the milk on their behalf. In this manner, he explained, closer-in handlers would share qualification of milk with more distant plant operators. He said that agreements to share marketing and shipping responsibility could be solved by the movement of money instead of the movement of more distant milk. He maintained that the market could organize the milk supply function in the most efficient manner if the Kraft proposal were adopted.

The TAPP spokesman offered several modifications to the proposed reserve supply plant provisions. He said that the uncommingled Grade A receipt requirement was not needed to assure milk quality or the performance ability of the plant. He agreed with the FUMMC witness that a plant operator would know when any milk was needed for fluid purposes and could, at that time, keep the Grade A milk supplies separate from ungraded milk.

The TAPP spokesman proposed that the supply plants regulated by the order as of August 31, 1983, be deemed to have satisfied all qualification standards under the order with no further shipping requirements, unless a call is issued by the market administrator. He said that any plant which was not a pool plant on August 31, 1983, should be required to ship at least 45,000 pounds of milk to a pool distributing plant to establish its association and qualification as a pool reserve supply plant under the order. By this procedure he maintained that currently unregulated plants could become eligible to be reserve supply plants under the order.

The spokesman proposed that the call percentage for a reserve supply plant

should not exceed the Class I utilization percentage for the same month of the previous year. He opposed restriction of a call area to the smallest and closest area possible to fill the need for the call, and said the maximum percentage of a plant's milk receipts that could be called by the market administrator should be specified in the order. He said his suggested maximum would spread the call over a larger area, thereby eliminating possible competitive inequity problems between reserve supply plants. He said that without spreading the size of the call area to include more plants, the normal processing and marketing of products by plants inside the call area could be disrupted by a high call percentage.

The TAPP spokesman proposed that no preestablished qualification units of reserve supply plants, operated either by multi-cooperatives or a proprietary handler, be permitted to satisfy any announced call. He said the order must place some shipping responsibility on a reserve supply plant to encourage the plant to comply with the spirit and intent of any announced call. He said an exception to not allowing units would be a multi-plant handler whose plants could be treated as a unit. If such a handler had supply and/or reserve supply plants inside and outside an announced call area, he said the handler should be permitted to fulfill a call on a plant in the call area with shipments from a plant outside the area, but that any qualifying shipments must be in addition to the shipments already being made by the plant outside the area. He supported the CMSA proposal that the amount of the location adjustment applicable to the milk movement be the lesser of the amount applicable at the plant in the call area or at the plant that made the qualifying shipment.

He said the order should provide that two handlers could combine their plants, whether supply plants or reserve supply plants, to fill their combined call shipping obligation with the prior approval of the market administrator. In this way, he explained, a reserve supply plant that was subject to a call could have additional shipments of milk made on its behalf and could comply with the intent of the call.

The TAPP spokesman opposed the elimination of the net shipment provision for qualifying shipments made by reserve supply plants in response to an announced call. He said the responsibility to have milk shipped to the market rested on the individual reserve supply plant. He said the net shipment provision was necessary to insure that distributing plants received milk for fluid use when a call was issued.

The TAPP spokesman proposed that a reserve supply plant lose its pool status for a year if the operator of that plant failed to comply with any announced call requirement on such a plant or changed its operations which had the effect of evading or forcing such an announcement. The witness said this requirement would aid in carrying out the intent of any call.

Beatrice Foods Company (Beatrice), which operates a supply plant regulated by the order, opposed the adoption of CMSA's proposals and supported the Dean et al. proposals. The Beatrice witness explained that the plant, which is located at Beloit, Wisconsin, manufactures a large variety of specialty dry milk products. Beatrice was concerned, the witness said, that because its plant was located in a nearby zone (zone 5), an issuance of a call would disrupt the supply of milk available at its plant, especially if the call required a high percentage of the plant's milk receipts to be shipped. He said that the plant's production schedules would be disrupted by such a call. Also, the witness said that Beatrice would not recover the full cost of the milk shipped in response to a call. He said Beatrice pays premium costs, high quality milk incentives, and hauling costs totalling approximately 25 cents per hundredweight over the order's minimum class prices. He maintained that these costs would not be recovered by the price Beatrice would receive for milk that was called for fluid bottling.

The Beatrice witness proposed that if the CMSA's reserve supply plant proposals were adopted, no more than five percent of a plant's receipts should be subject to a call. He said that a manufacturing plant could ship this amount of its receipts without disrupting its production process. He also proposed that an exception be created in the proposed reserve supply plant provision to exempt plants, such as Beatrice's Beloit plant, which purchase less than nine million pounds of milk each month from the requirements of any call. He said that small supply plants located "close-in" to the Chicago area would suffer the most from production disruption in the event of a call and need the above proposed exemption.

A spokesman for Berner Cheese Corporation and Pleasant View Cheese Corporation opposed the adoption of CMSA's proposals. The witness explained that each company operates a nonpool plant which manufactures Italian-type cheeses. He said the Berner plant was located near Dakota, Illinois, and the Pleasant View plant was near Rock City, Illinois. In addition to the manufacturing plant, he said Pleasant View owns a Grade A receiving station (a supply plant), which is approximately 50 feet from its manufacturing plant. He said that this supply plant is leased to a handler regulated by the order, who combines this plant, located in zone 6, with other supply plants it operates to form a unit of supply plants, as provided in the order. He said milk received at this pool plant is shipped to the handler for fluid use and diverted to the nonpool cheese plants at Dakota and Rock City, Illinois.

The Berner spokesman agreed with the Beatrice spokesman that if the proposed reserve supply plant provisions were adopted and at some future time a call for milk were issued, milk supplies would not be available to manufacturing plants located in the nearby zones. He maintained that production schedules could be disrupted, orders would be unfilled, and that capital investments his company had made would not be recovered. In addition, he said that his company would need to replace for manufacturing purposes any milk that it was required to ship in response to a call. He maintained it could not recover from the market the full cost of such milk replacement.

The Berner spokesman proposed that the maximum amount for any call on reserve supply plants be the current shipping standards for supply plants. He said that these amounts have worked in the past and the industry had accommodated itself to those levels.

A spokesman for Kent Cheese Company, which operates a nonpool Italian-style cheese manufacturing plant, opposed the adoption of CMSA's proposals and supported the Dean et al. proposals. The spokesman explained that Kent Cheese leases its Grade A receiving room as a supply plant to a handler regulated by the order. He said the handler combines this supply plant, located in zone 7, with other supply plants it operates to form a unit of supply plants, as provided by the order. He said that no milk had been shipped from this supply plant to the handler's pool distributing plant for a period of time.

The witness said that the concept of pooling supply plants had been a stabilizing factor for manufacturing plants. He said the contractual leasing arrangement, such as the one of which Kent Cheese was a part, was a protective device for proprietary milk manufacturers. He maintained that severe economic adjustments would

occur if supply plant units were eliminated.

The Kent Cheese spokesman said that adoption of the proposed reserve supply plant provisions could have significant adverse impacts on competition, employment, and capital investments. He said the proposed call provision, if implemented, could result in increased costs of milk for his company; could disrupt plant production schedules; could interrupt filling of commercial orders and could result in lost markets, lost margins, or plant closings. He alleged that the CMSA proposals were unfair and inequitable.

The Kent Cheese witness said that the Dean et al. proposals would have a minor impact on his company. He said that he would not have any problem with the rapid implementation of those proposals in an expedited manner.

Kolb-Lena Cheese Company, the operator of a supply plant regulated by the order, opposed the adoption of CMSA's proposals in two post-hearing briefs. A spokesman opposed any change in the order that would directly or indirectly affect the supply of milk for his company in the Illinois counties of Stephenson and Jo Daviess. The spokesman said that since its plant was located 120 miles west of Chicago in zone 7, the removal of any milk from its area would be discriminatory and could force his business into financial difficulties. He said that the company recently had started operating a new 3 million dollar cheese factory and needed adequate supplies of milk to keep the plant operating efficiently. He maintained that his company produced and marketed cheese which was equally important to the consumer as was bottled milk.

The Wisconsin Cheese Makers Association (WCMA) in a post-hearing brief opposed the adoption of CMSA's proposals and supported the Dean et al. proposals. WCMA said it believed Federal milk orders had two purposes. The first was to provide equity to all farmers choosing to meet fluid standards and participate in the pool. The second was to insure that an adequate supply of milk is available for fluid needs at a reasonable cost to bottlers and consumers. WCMA said it opposed CMSA's proposals because it believed the proposals would not reduce inefficient and uneconomic movements of milk, nor treat equitably all producers or plants. WCMA said the Dean et al. proposals would reduce uneconomic movements of milk and would keep the responsibility to supply the fluid markets on all supply plants.

WCMA supported the Kraft proposal that the order provide for supply plant units to be established by multiple proprietary handlers and cooperative associations without plant leasing or ownership requirements. He maintained that the above proposal would allow all of the market's suppliers of fluid milk the maximum flexibility to select the most practical and efficient source of milk to meet the market's needs.

Oberweis Dairy, Inc., a regulated handler under the order, opposed the elimination or any reduction of the qualification provisions of the order. The Oberweis spokesman said that the present requirements were an incentive for sales of milk to his company. He alleged that the removal of shipping requirements would increase the amount of handling charges he would have to pay to have milk delivered to his plant.

The underlying issues of this proceeding concern finding an efficient means to pool large quantities of Grade A milk, insuring that the fluid needs of the market are satisfied, and reducing any uneconomic shipments of milk. Manufacturing plant operators that have Grade A milk supplies which are surplus to the fluid needs of the market want to pool these supplies of milk in order to share in the higher valued returns generated by the sale of fluid milk products. Such plant operators want this source of money to help them pay producers a competitive price for milk. Without this source of funds, these handlers would be forced to pay a competitive price for milk from their operating margins or run the risk of losing their Grade A milk supplies. Moreover, keen competition exists among manufacturing plant operators for supplies of Grade A milk for manufacturing uses in the Chicago area.

The statements of proponents and others describe a market situation where plants are leased and operated for the primary purpose of pooling milk. Plants are leased for as little as one dollar per year in some instances. In other cases, one or two days' production of milk of a producer is hauled to a pool plant to qualify the milk for pooling. The rest of the producer's production during the month is delivered to a manufacturing plant that is the usual market outlet for that milk. Most of these arrangements result in manufacturing plant operators paying a per hundredweight fee to a pool plant operator to receive sufficient milk from the unit of manufacturing plants or from the individual plants so that all the milk supplies normally associated with the manufacturing plants can be pooled. Many, if not all, of these arrangements exist because the order requires supply plants to ship milk to pool distributing plants in order to qualify as pool plants.

The Chicago Regional order, like most federal milk orders, provides for a marketwide pool. Thus, the total classified use value of all the milk pooled is divided by the hundredweights of milk pooled to establish the minimum uniform price to producers. Handlers that use a greater proportion of their milk in the higher valued uses pay into a producer equalization fund. Handlers that use a greater proportion of their milk in the lower valued uses (manufacturing uses) draw monies from the equalization fund in order to pay their producers the minimum order uniform price. Thus, manufacturing plant operators that can pool their milk supplies can receive from the pool the difference between the order's zoned uniform price and the Class III price for all of the Grade A milk that they can attach to the pool. Through this means, such operators are able to obtain milk for manufacturing use at the Class III price while paying the producers of the milk the higher blend price. For this reason, manufacturing plant operators are willing to pay for the assurance that their milk supplies will participate in the pool. Distributing plant operators in many cases are able to sell pool qualification for use by the manufacturing plant operators.

In order to assure that the market's fluid milk needs are met, the current order requires supply plants to ship milk during certain months of the year. However, as supplies have increased and Class I needs have stayed relatively stable or declined, the proportions of the total milk supplies that need to be shipped have declined. This has resulted in greater pressure to pool milk without having to ship it to a distributing plant. Moreover, increases in the costs of transporting milk have made it even more imperative that milk not move to the fluid market unless it is needed. Nevertheless, the order has required shipments by supply plants to distributing plants. Cooperative associations have been able to achieve some economies through the unit pooling provisions that permit milk to move from only certain supply plants, rather than from each supply plant operated by cooperatives.

Manufacturing plants want to pool their milk supplies and are willing to pay for pool qualification. Some distributing plant operators have qualification to sell, and they do. Much of this occurs because the order requires supply plants to ship milk to distributing plants; yet much of the milk at supply plants does not move to distributing plants. Many of the market practices that have developed because of this

situation are contrary to the basic purpose of supply plant performance requirements.

These requirements were developed to get milk to the fluid outlets and to help identify the milk that is to be priced and pooled under the order. Supply plants, which are assembly points for milk, have served to associate milk with the fluid market. Shipments from these plants to distributing plants have identified the milk as part of the market's fluid supply. Milk was pooled and priced at these plant locations as a result of the assembly and shipping functions occurring at the plants.

The record demonstrates that the marketing conditions have changed in the Chicago Regional order. Fewer bottling plants remain in the City of Chicago. A substantial portion of the processing and packaging capacity of fluid milk products in the city area has moved to locations nearer the supply areas. In addition, larger quantities of milk are received on a direct-shipped basis from farms at distributing plants. There now is less need for the order to require all supply plants to satisfy the performance standards to accomplish the association and identification functions.

The problem of selling pool qualification manifests itself in the many ways that handlers have devised over the years to assure the pool status of larger supplies of milk, some of which have been accommodated by amendments to the order. Nevertheless, certain abuses have been identified. The order should be changed so that the market can operate without the need for such devices, which should improve the overall marketing efficiency.

It is clear that current order provisions at times do result in shipments of milk being made from distant supply plants, even when milk is available at supply plants closer to the distributing plants that need it. If such shipments were not made, some milk would be unable to pool. Yet it is obvious that there is a benefit to pooling, as described earlier, that offsets the additional costs of milk hauling and handling involved to get the milk pooled.

It was alleged at the hearing that deriving income from selling pool qualification is contrary to the uniform pricing requirements of the Agricultural Marketing Agreement Act. Regardless of any impact on uniform pricing that results, it is possible to lessen the dependence upon such practices by making certain changes in the order's pooling provisions.

One approach suggested as a modification of other proposals would permit cooperative associations and proprietary handlers to jointly form pool supply plant units. Those favoring this approach maintained that marketing arrangements between handlers, subject to approval by the market administrator, could serve to ensure adequate supplies of milk at distributing plants without requiring uneconomic shipments of milk. Through such arrangements, the proprietary operator of a single supply plant could arrange for another plant to meet the shipping requirements, so milk could be moved from the most advantageous location among two or more supply plants. Such arrangements now are permitted for cooperative associations in order to permit improved marketing efficiencies.

The record indicates that milk shipments made in order to qualify for pool status originate from distant proprietary supply plants that may not be combined with other supply plants to form a unit. Nevertheless, the suggestion to allow proprietary and cooperative handlers to jointly form units should not be adopted. A different approach, which is set out in the following discussion, is being taken. Accordingly, no further discussion on formation of units is required.

The Chicago Regional market and some of its characteristics have previously been described, although briefly, elsewhere in this decision, as have certain previous amendment proceedings. Over the years, the order generally has been moving, through a series of amendments, towards accommodating the pooling of all available Grade A milk supplies with less and less demonstration of association with the Class I needs of the market. This has been done in response to industry desires to pool more milk and do it more efficiently, particularly during the last 10 or so years. During most of that period, milk supplies were increasing, the number of bottling plants was decreasing, and the costs of moving milk were increasing sharply, due in large part to higher energy prices.

The market as it exists today has fewer bottling plants, more milk, and therefore, less need for supply plant milk. Moreover, the supply areas for the principal population centers in the marketing area contain both supply plants and manufacturing plants. Some of the latter, if not most, utilize Grade A milk. The record shows that there are manufacturing plants that pool Grade A milk but which seldom, if ever, ship milk to distributing plants for fluid uses. In some cases, such plants arrange to pool their milk supplies through one of the various pooling devices described earlier. Such plants in some cases represent substantial investments in manufacturing capabilities designed to operate most efficiently at or near full capacity. Some manufacturing plants produce specialty products and operate on a regular production schedule in order to meet customer orders in a timely fashion. These plants depend on regular deliveries of milk, rather than depending on supplies of milk that are available only on days that bottling plants do not need the milk. Many of these plants are intermingled among other plants that exist primarily to assemble milk for the fluid market. The benefits of pooling, linked with the type of plants in this market, have led to the development of some of the practices that are of concern in this proceeding, and which occur within a market environment where only about one-fourth or less of the market's Grade A milk supplies are utilized as Class I milk. It also appears that much of the milk supply could be delivered directly from farms to plants without going through other plants. Handlers and cooperatives should consider using the direct-delivery method wherever it is feasible.

In view of the above, and recognizing that the industry seeks improved marketing efficiencies along with the elimination of certain questionable marketing practices, it is concluded that the order should provide that a plant operator may, if a plant meets certain basic requirements, choose to pool a plant as a supply plant, or as a reserve supply plant. Either choice will carry with it certain benefits and responsibilities. Thus, a handler should be able to evaluate the benefits and risks in deciding which pooling method is better suited to the handler's particular situation. This should give handlers greater operating flexibility and provide a way to assure that milk will be available for fluid uses at distributing plants. At the same time, the provisions adopted offer an opportunity for the market to operate more efficiently. Producer milk should move in response to the needs of the market. It is anticipated that milk produced in the outer zones will remain at plants located in the outer zones and be utilized in manufactured dairy products at those locations. Similarly, it is anticipated that sufficient milk supplies, which are located in zones closer to the population centers of the market, will be made available to distributing plants for fluid uses.

In their exceptions to the recommended decision, spokesmen for Dean Foods Company; Hawthorn Mellody, Inc.; Cedarburg Dairy, Inc.; Verifine Dairy Products Corporation of

Sheboygan, Inc.; Lakeshore Federated Dairy Cooperative and Woodstock Progressive Milk Producers Association stated their opposition to amending the order to provide for a reserve supply concept. They requested that the Secretary reconsider the findings of the recommended decision, reopen the hearing to receive additional views on the proposed order as contained in the recommended decision and to review the overall class prices of milk and the location adjustments contained in the order. Oberweis Dairy, Inc., in its exceptions, stated its opposition to all of the proposed amendments and said that a lower Class I price differential would solve the pool qualification problems on the Chicago market.

The hearing record of this proceeding should not be reopened. The principal issue contained in the notice of hearing and considered at the hearing was how producer milk would be identified and pooled under the order. The Class I pricing issue and the review of the location adjustments were not contained in the hearing notice. Moreover, the exceptions do not indicate what new evidence would be provided in a reopened hearing. Additionally, it is recognized that if this proceeding were reopened, the implementation of the proposed order, as amended, would be delayed beyond September 1, 1984. In their exceptions, Beatrice Foods Company and the Central Milk Sales Agency urged the order be amended as soon as possible so that the effective date for the revised order could be September 1, 1984. The requests to reopen this proceeding are hereby denied.

Although the order would continue to contain a supply plant provision, it would be changed from the current supply plant provision. A discussion of those changes is presented in issue number two of this decision. The remaining discussion of this issue is directed to the new provisions for reserve supply plants and a call provision.

Berner Cheese Co., which operates an unregulated cheese manufacturing plant, in its post-hearing brief maintained that the Agricultural Marketing Agreement Act of 1937, as amended, does not authorize a "call" provision as proposed by CMSA.

This argument is rejected. Section 608c(7)(D) of the Act provides that an order may contain terms and conditions incidental to, and not inconsistent with, other provisions of the Act if such terms and conditions are necessary to effectuate the other provisions of the order.

One of the underlying purposes of the Act is to establish orderly marketing conditions for dairy farmers. The Act authorizes a number of specific means for achieving this, including the pooling of milk on a marketwide basis. Through this pooling procedure, all producers in the market share equitably in both the market's high-valued fluid sales and the reserve milk supplies that necessarily must be available in the fluid market but which return only the lower manufacturing value. History has demonstrated that in the absence of marketwide pooling the burden of the lower-valued reserve supplies falls unevenly on various groups of producers. This tends to result in various disorderly conditions in the market that are harmful not only to producers but to handlers and consumers as well.

The provisions adopted herein for defining a reserve supply plant, along with a mechanism for assuring that the milk supplies at those plants will be available to the fluid market if needed, are consistent with the concept of marketwide pooling. The basic purpose of these provisions is to pool milk that is part of the identified reserve milk supplies for this market in a way that contributes to the maintenance of stable and orderly marketing conditions. This would be accomplished by providing that milk will only have to be shipped by reserve supply plants if there is a demonstrated need for additional milk for Class I use. Thus, market efficiency should be enhanced because milk will no longer need to be shipped merely to qualify for pool status. The reserve supply plant and all provisions adopted herein, although incidental to other terms of the order, certainly are consistent with other provisions of the order and are necessary to fully effectuate the other provisions of the order that serve to promote stable and orderly marketing conditions.

It was suggested at the hearing that supply plants in zones 1 through 10 should be required to ship milk to distributing plants and those in zones 11 through 16 would be recognized as reserve supply plants. Such a division of the market into two areas subject to different pooling standards probably would alleviate most of the concerns that are the subject of this proceeding. There obviously is more than enough milk produced in zones 1 through 10 to meet the total Class I needs of the market.

However, such a division at best would be somewhat arbitrary. Moreover, it would also be inflexible; i.e., handlers would not have any choice of pooling provisions. Although it is uncertain how many plants will choose to be supply plants and how many will pool as reserve supply plants, the industry should be given an opportunity to supply the market's Class I needs through whatever means that appear to be most feasible. Accordingly, the suggestion to require shipments by supply plants in the nearer zones and adopt a call provision for more distant plants is not adopted.

In their exceptions to the recommended decision, proponents of the above proposed division of the marketing area reiterated their positions taken at the hearing and in their post-hearing briefs. Exceptions from other handlers also were received on this issue. However, no additional arguments were presented to support the proposed division of the marketing area. Therefore, the exceptions to divide the marketing area into zones with supply plants and zones with reserve supply plants are denied.

At the outset, it must be noted that CMSA's proposal for including reserve supply plant provisions in the order did not state specific language to implement the proposal. The proponents indicated that the reserve supply plant provisions of the Upper Midwest order should serve as a basic model for the language in this order. This suggestion has been followed, but certain portions of that language were unsuited to the provisions being adopted herein on the basis of this proceeding and as related to the marketing conditions in the Chicago market.

Reserve supply plant

A reserve supply plant would be a plant (as plant is defined in the order) that is located in the marketing area or in the unregulated portion of Wisconsin. It also would be a plant located in the Wisconsin portion of the Upper Midwest marketing area that had been a pool plant under the Chicago order for at least three months at the time an amended order incorporating this provision becomes effective. This latter point differs somewhat from CMSA's proposal as stated in testimony and its post-hearing brief, but it is, however, consistent with CMSA's intent.

CMSA proposed that the reserve supply provision initially include those plants that were pool plants under the Chicago order at the time of the hearing and that were located anywhere in the Upper Midwest marketing area. As a practical matter, those plants are located in the Wisconsin portion of the Upper Midwest marketing area. The

order language adopted reflects that fact.

The opportunity to choose pool reserve supply plant status, however, should not be limited to just those plants that were Order 30 pool plants at the time of the hearing. If the reserve supply plant provisions had been adopted on an expedited basis as proposed, the proposed reference to pool status at the time of the hearing may have been appropriate. Since that was not the case, a reasonable approach under the circumstances would be to provide that plants located in the Wisconsin portion of the Upper Midwest marketing area may elect reserve supply plant status at such time when those provisions become effective, if the plants have been Order 30 pool plants for at least three months prior to that effective date. If such plants lose pool status as reserve supply plants for any reason, they would not be eligible for such status again. Such a plant could, however, qualify as a pool supply plant in any month that it met the shipping requirements for supply plants. As adopted, this provision may accommodate the continued pooling of milk regularly associated with the Chicago order, but which may be qualified through a different plant or plants under the revised order. This assumes some arrangements to pool leased facilities and to pool milk through satellites will change after the order is amended.

The operator of a reserve supply plant would be required to file a request for pool status at least 15 days before the first day of the month that pool status is desired. This would provide the market administrator an opportunity to inspect the plant and facilities and determine the plant's ability to meet the reqyirements for pool plant status.

A pool reserve supply plant must demonstrate its continued ability to perform if a call for shipments is issued by the market administrator. Thus, the order should require that each such plant must receive at least 47,000 pounds of Grade A milk from dairy farmers at least one day each month. Such milk need not be received in a single load, nor must it uncommingled. Meeting this requirement will provide a reasonable indication that the plant has sufficient supplies of Grade A milk available to ship at least one tanker of milk each day, which it could be called upon to do. CMSA proposed the 47,000-pound requirement and also proposed that the milk must be received uncommingled with non-Grade A milk.

The 47,000-pound figure represents an economical size of load to move between plants. If a plant can assemble that much milk, then it can ship that much milk. Other interested parties suggested a 25,000-pound daily receipt requirement, or indicated that no such requirement could be justified on the basis that compliance with such rules is costly and accomplishes nothing. These arguments are rejected. The principal factor in granting pool status to a reserve supply plant should be that the plant is able to ship if it is needed, and to ship a load large enough to represent efficient hauling. A plant should not be pooled regularly only to discover, when a call is issued, that it cannot assemble enough Grade A milk to ship to another plant or plants. Thus, the 47,000-pound figure is a minimal requirement to specify and to meet so that a plant and its producers may obtain the benefits of pool participation.

It is not necessary in meeting the 47,000-pound requirement to also require that such milk be received in uncommingled form. In the event a call is issued, handlers would have some lead time to arrange for haulers to pick up loads of Grade A milk to be received and subsequently moved to distributing plants in compliance with a call. If such arrangements cannot be made, then the plant would be unable to meet the call, in which case it would lose its status as a pool plant for the month, and it would lose its ability to be a pool reserve supply plant for one year. The potential loss of pool status should provide an incentive for handlers to be prepared to meet a call.

In its exceptions, the Central Milk Sales Agency said that a reserve supply plant should be required additionally to have storage capacity of at least 47,000 pounds. CMSA said this additional requirement was necessary to insure the availability of a tanker load of Grade A milk, if a call for milk were issued. Other exceptors also said that a reserve supply plant should have the same storage requirement as a supply plant. They said a reserve supply plant should have storage capacity sufficient to hold the largest quantity of fluid milk product either received in the plant or shipped from the plant as a single load during the month. These exceptors said as an alternative that the minimum storage capacity should be set equal to 47,000 pounds because a reserve supply plant would be required to assemble that load size of Grade A milk, if a call were announced.

No minimum storage capacity should be required at reserve supply plants. The record in this proceeding does not support such a requirement and no significant basis was provided in these exceptions to warrant such a requirement. Any requirement for a minimum storage capacity at a reserve supply plant is denied.

In addition the exceptors are mistaken that a reserve supply plant must ship at least 47,000 pounds if a call were issued by the market administrator. The operator of a reserve supply plant must receive and physically unload at least 47,000 pounds of Grade A milk from producers into the plant at least one day each month. If a call is issued by the market administrator, the operator of a reserve supply plant must ship a percentage of the plant's monthly producer milk receipts (including producer milk diverted pursuant to § 1030.13) at least equal to the call percentage announced by the market administrator. The monthly receipt requirement of at least 47,000 pounds represents an economical size load to move between plants, but the order does not require shipments of 47,000 pounds in the event a call is issued by the market administrator. The reserve supply plant that is subject to a call must ship (or have shipped on its behalf from the producer milk supplies of the handler operating the plant) an amount of Grade A milk that satisfies the requirements of any such call. That amount of milk that would satisfy any call would need to be shipped, not necessarily an amount of 47,000 pounds. The 47,000 pounds represents an economical size load but not the amount to be shipped.

In its exceptions to the recommended decision, Kraft said that the operator of a reload facility without storage capacity would have the option to qualify the facility as a reserve supply plant or to allow the facility to be without status as a plant or pricing point. Kraft endorsed such an option and urged that the option be retained or be provided by the Final Decision of the Secretary.

The definition of a supply plant includes a reload facility, as defined in § 1030.4(a), at which no storage capacity is required. Therefore, a reload facility without storage capacity could qualify as either a supply plant or a reserve supply plant, at the option of the handler operating such facility. Such a reload facility could be a pool plant regulated by the order and, therefore, would be a pricing point. If such a facility failed to satisfy the requirements of § 1030.4(a), such facility could be, as Kraft observed, a reserve supply plant or without status as a plant under the order.

CMSA, in its exceptions, also stated that a reserve supply plant should be required to ship one load of Grade A milk a month to a fluid handler during the months of September through

December. CMSA said such a requirement would constitute evidence of a continuing association of the reserve supply plant with the market and would encourage the plant operator to maintain the Grade A quality of the plant's supply. CMSA said in the case of a multiplant operator that the monthly, one load shipping requirement could be satisfied by a shipment from any plant of the multiplant handler.

In their exceptions, the Dean Foods Company and Hawthorn Mellody, Inc., said that each reserve supply plant should be required to make one shipment a month to a pool distributing plant during each month of September through March. Several operators of pool distributing plants and four cooperative associations supported the above exception. The exceptors stated that the fluid market should have some assurance of the quality of milk at reserve supply plants. They said that a plant becomes more aware of the quality of its milk when such plant has to move milk to the fluid market.

A modification of the above exceptions should be adopted. Each reserve supply plant should be required to ship one load of at least 47,000 pounds of Grade A milk to a pool distributing plant each year during the months of September through December, to be a pool plant during the month of December of that year.

The record reveals that during the months of September through December the amount of fluid milk products needed by the market generally increases while available milk supplies generally decrease. It is appropriate that during this four month period each year that each reserve supply plant ship at least one load of at least 47,000 pounds of Grade A milk to pool distributing plants. Such a shipment from each reserve supply plant each year would constitute evidence of the continuing association of the plant with the fluid market. By requiring each reserve supply plant to have made this shipment in order to be a pool plant in December, the operator of a pool reserve supply plant will be reminded at least annually of the plant's association with the Chicago Regional market. The shipment also would encourage each plant operator to maintain the Grade A quality of the plant's milk supply. In addition, the operator of a reserve supply plant would further demonstrate the plant's ability to provide pure and wholesome milk for the market.

The months of January through March should not be included in the above period. Since only one shipment a year is being required, unless a call is issued, milk should move in one of the four fall months when the market's need for fluid milk is normally the greatest.

The proposal that a multiplant handler be required to ship only one load of Grade A milk from any plant it operates should not be adopted. Each reserve supply plant should be required to meet this minimal annual requirement to demonstrate the plant's continual association with the market. In the event of a call, each plant shall have demonstrated that ability. Therefore, the exception is denied.

Another provision adopted would preclude a plant from switching back and forth between pool status as a supply plant and as a reserve supply plant. When the operator of a plant requests and qualifies for pool reserve supply plant status, that status would continue until the plant becomes a pool plant under another order, the operator requests nonpool status, the plant fails to meet any "call" for shipments announced by the market administrator, or the plant operator decides to qualify the plant as a supply plant. In the latter case, the operator would inform the market administrator that the plant will qualify as a supply plant for three consecutive months, beginning after the end of the third month following the month in which such notice was given. Once the switch to supply plant status is made, the plant would not be able to change to pool reserve supply plant status until it had been pooled as a supply plant for three months. Thus, a plant operator will have to make a commitment to pool on one basis or the other for a minimum period of three months. If the plant subsequently failed to qualify as a supply plant during the months such status had been indicated, except due to conditions beyond the handler's control, the plant would lose its pool status and would not be eligible for pool status as a reserve supply plant for one year. However, the plant could qualify as a pool supply plant in any other month that it made the shipments required for such status.

If the operator of a pool reserve supply plant fails to meet a call, or requests nonpool status for such plant, that plant would not be able to pool under the reserve supply plant provision for one year. However, it is noted that if a reserve supply plant qualified as a pool plant under another order, it could revert to pool reserve supply plant status the following month. If the provision to preclude switching status were not included, a reserve supply plant could simply avoid compliance with a call by notifying the market administrator that the plant would meet the supply plant shipping requirements for that month. Also, if this were allowed, it would be meaningless to announce a call percentage greater than the shipping requirement for supply plants. A commitment to serve the market in one or the other supply plant capacities should help maintain regular deliveries to distributing plants for fluid use.

Kraft, in its exceptions, said that the limitation on a plant switching from reserve supply plant status to supply plant status may have an unintended result. Kraft maintained that if the plant during the three month lock-in requirement as a supply plant became regulated under another order, that the plant would lose its eligibility to be a reserve supply plant under this order for one year. Kraft urged that the words "the next consecutive" be deleted from § 1030.7(c)(2) in the proposed order. Kraft said at a minimum the section of the order should be revised so a plant could regain its eligibility to be a reserve supply plant if it performed as a pool supply plant for any three consecutive months.

This modification should not be adopted. The operator of a pool reserve supply plant must carefully evaluate any possible consequence if the operator decides to change the pool status of a reserve supply plant. The fluid milk needs of the Chicago Regional order were a primary consideration in establishing the lock-in provision. The arguments to change this evaluation are not persuasive and the exception, therefore, is denied.

TAPP, in its post-hearing brief, suggested that a regular supply plant should lose its pool status for one year if the plant operator made any significant change in marketing operations that the market administrator determines has the effect of evading or forcing a call on reserve plants. TAPP also urged that this same penalty be applied to reserve supply plants if the same determination could be made.

Such a provision is included for reserve supply plants. It is appropriate that if the operator of a reserve supply plant changes operations in such a way as to either evade or force a call, such plant should not be eligible for pool status as a reserve supply plant for one year. The one year depooling penalty should be extended to include any reserve supply plant involved in actions that aid or abet the evasion or forcing of a call by another reserve supply plant. This is consistent with the concept that the privilege of pool participation carries with it a responsibility to ship milk for fluid use, if needed. It is not appropriate, however, to attempt to apply such a penalty to regular supply plants, since

such plants must qualify each month by making shipments of milk for fluid uses.

It must be recognized that once the market administrator announces a call, it may not be possible for each reserve supply plant in the call area to find a pool distributing plant outlet to receive the required milk shipments. Accordingly, shipments to pool distributing plants, other order plants, producer-handler plants, and partially regulated distributing plants should, within certain limitations, be treated as qualifying shipments. Credit for shipments to partially regulated distributing plants should be limited to the amount of milk that receives a Class I classification at the transferee plant. Similarly, credits for shipments to plants fully regulated under other Federal orders should be limited to a quantity equal to the quantity of milk shipped to pool distributing plants during the month, and should not include any milk shipped for agreed Class II or Class III uses. Such flexibility in complying with a call was requested by CMSA and comports with provisions now applicable to supply plants. Such flexibility, however, makes it feasible to leave intact the order's net-shipments provisions and to make them applicable to shipments by pool reserve supply plants.

CMSA, in its exceptions, opposed allowing qualifying shipments from a reserve supply plant to a plant regulated by another Federal milk order. CMSA said that upon consideration of the entire proposed order provisions, it had changed its position so that qualifying shipments in response to a call should be limited to shipments to pool distributing plants. It said that the need for a call should arise only when an Order 30 distributing plant is unable to obtain sufficient milk for fluid use. If shipments are made to plants regulated by other orders when a call was issued, then CMSA concluded that it was questionable whether the call was needed to be issued initially.

This modification should not be adopted. The hearing record is clear that the operator of a reserve supply plant should receive credit, up to the limit contained in the order, for qualifying shipments of milk for fluid milk purposes to plants regulated by other Federal milk orders. In order to receive any credit for shipments to plants outside of any proposed call area, the operator of a reserve supply plant must notify the market administrator of the amount of any commitment to ship milk to such plants prior to the issuance of a call announcement. This provision assures the integrity of the call provision to actually provide the needed supplies of milk, if a call is issued. The paragraph of the proposed order (§ 1030.7(c)(3)) has been revised to clarify that the operator of a reserve supply plant may supply condensed skim milk only to plants described in § 1030.7(d)(1) and receive credit for those shipments as qualifying shipments pursuant to § 1030.7(d).

Kraft, in its exceptions, said the net shipment provision should be eliminated as it applies to shipments by pool reserve supply plants. The comments made by Kraft were similar to the views expressed at the hearing by CMSA. These views were considered in evaluating the provisions to be included in the proposed amendments to the order. The net shipment provision is necessary to insure that distributing plants receive milk when a call is issued. No significant basis was provided in these exceptions to warrant a change in the conclusion on this matter.

For the purpose of meeting a call for shipments, qualifying shipments may be made from any plants or producer milk supplies of the handler, either within or outside the call area. Producer milk supplies of a handler would include the amount of milk that is diverted from a reserve supply plant and delivered to a pool plant which meets the requirements for a qualifying shipment as provided in § 1030.7(d) of the order. However, qualifying shipments from plants not subject to the call must be in addition to those already being made by the handler to distributing plants. Shipments already being made would include shipments from other plants of the handler and in the case of a cooperative, any milk shipped directly from producers' farms. A multiplant handler, subject to the restrictions contained in the order, could decide which of its plants would ship to meet any announced call. When a handler ships milk from a plant other than the one subject to the call, any location adjustment would be limited to whichever plant location receives the lesser location adjustment.

This does not provide fully for "unit pooling" since it does not recognize shipments already being made from one plant of the handler not subject to the call as satisfying a shipping requirement on another plant that is subject to the call. To recognize such shipments already being made from another plant could relieve a multiple plant handler from having to supply any milk in response to a call. Thus, each plant operated by a handler must qualify on its own performance; but to implement operating efficiency, qualifying shipments need not originate from the plant on which the call is made. This will allow maximum flexibility in meeting any shipping requirement on a reserve supply plant.

The provision of the order that now protects plant operators against loss of pool status for up to two months when performance standards cannot be met because of circumstances beyond the control of the handler operating the plant should be extended to apply also to pool reserve supply plants.

Several exceptors said that the guaranteed pooling provisions of the order, as it applied to reserve supply plants, should include any circumstance beyond the control of the handler that prohibited the handler from satisfying the performance requirement of any call. One exceptor said that if a reserve supply plant failed to meet a call "at no fault of its own," then the plant should be able to requalify for reserve supply plant status after being a pool supply plant for three months. Another exceptor said only one month's loss of pool status was a sufficient penalty if the plant could demonstrate that an honest effort was made to meet a call, but it had failed.

In the July 15, 1977, decision by the Assistant Secretary when the guaranteed pooling provision was included in the order, only the circumstances beyond a handler's control that caused a plant to stop operating were found qualified to permit the plant to maintain pool status for a period not to exceed two consecutive months if such plant failed to meet the performance standards of the order. If the plant continued to operate, but failed to meet any performance requirements, then the plant would not qualify for such continued pool status.

In light of the above finding, a reserve supply plant that fails to meet a call would maintain pool status for a period to not exceed two consecutive months, if the market administrator determines such failure to be due to unavoidable circumstances beyond the control of the handler which causes the reserve supply plant to stop operating. If a reserve supply plant continues to operate but does not satisfy a call issued by the market administrator, it would lose its pool status as a reserve supply plant for one year, as provided in this decision. The one year penalty should help assure the cooperation among reserve supply plants in serving the needs of distributing plants if a call is issued. The exceptions to include in the guaranteed pooling provision any failure of a reserve supply plant to satisfy the performance requirements of a call

while the plant continues to operate are denied.

The Central Milk Sales Agency, in its exceptions, said that the permanent loss of eligibility to hold pool reserve supply plant status was too harsh a penalty for a plant located in the Wisconsin portion of the Upper Midwest Federal milk marketing order, if the plant ever lost its pool status under this order. CMSA suggested that such a plant not be permanently disqualified from reserve supply plant status, if its failure to qualify as such a plant was due to some unavoidable circumstance.

Such a modification should not be adopted. The protection afforded plants described above provides adequate assurance that such a plant will continue to have pool status for a reasonable period of time. Moreover, the proponent did not offer any guidelines under which such a plant could requalify as a reserve supply plant under this order. The exception is denied.

A reserve supply plant should be granted pool status as such during the months of April through August only if the plant was a pool plant during each of the preceding months of September through March. This will preclude a reserve supply plant from seeking pool status during the spring flush production months but not during the other months when a call would be more likely.

Kraft, in its exceptions, said if a reserve supply plant was a pool plant during September through March or was a pool plant during six such months and was another Federal order plant during one such month, that the plant should be granted pool reserve supply status during the following April through August period. Kraft said that such a provision was in the current order for supply plants and should be incorporated in the proposed reserve supply plant definition. Kraft maintained that this change would permit a reserve supply plant to temporarily serve the needs of another market during the September through March period and still be eligible for reserve supply plant status under this order immediately.

This modification should be adopted. The association of a reserve supply plant with another market for one month should not preclude the plant from being primarily associated with this order. The shipments to help satisfy the short-term fluid needs of another market should not penalize unnecessarily a plant from holding reserve supply status, if it holds pool status under this order for six of the seven months of September through March. Such provision should not apply, however, to a plant that has just elected to change from a pool reserve supply plant to a pool supply plant. Such plants have a three-month commitment to meet the shipping standards for a supply plant under this order. The proposed order language has been so modified.

CMSA's proposal would not have provided for a "maximum" call percentage that would prevent calling on a reserve supply plant to ship all or most of its milk to other plants. The CMSA post-hearing brief, however, stated that any call should not exceed the market's Class I use level for the same month of the previous year. As noted earlier, several interested parties urged that a "cap" be placed on the market administrator's authority to call for milk shipments.

The provisions for a reserve supply plant adopted herein would allow a call at not more than twice the applicable shipping standard for that month for supply plants. Thus, if the supply plant shipping requirement for the month was 25 percent (based on marketwide Class I use one year earlier), then any call announced by the market administrator for the month could not exceed 50 percent of a reserve supply plant's milk supply. During 1982, the marketwide utilization of producer milk in Class I averaged about 23 percent and varied from 19 percent to 26 percent. Accordingly, the maximum call percentages would have varied from 38 percent to 52 percent.

The current supply plant pooling provisions basically require all handlers that operate supply plants to perform to the same degree in supplying milk to meet the market's needs for fluid (Class I) milk. Through the unit pooling provisions, cooperatives and multiple plant handlers have an opportunity to effect certain efficiencies in meeting the overall shipping requirements. Thus, handlers eligible to form units may, for example, choose to ship milk from the nearest available plant in their operations instead of having to ship a specified percentage of each supply plant's receipts. However, there are handlers who cannot take advantage of the unit pooling provisions because they operate only one supply plant. These plants, unless leased to another handler, generally must ship their share of the market's Class I milk needs from wherever the plant is located.

Under this arrangement, equity of supply performance between handlers is achieved to a higher degree than if pooling standards had been developed that would minimize the movements of milk needed for Class I use. However, the cost of supplying the market's Class I needs may be higher.

If the principal consideration involved in setting pooling standards is to minimize transportation costs, then the milk would have to move from those farms and/or plants located closest to the fluid milk plants that need milk. Under the marketing conditions that exist in this market, such an approach would cause serious problems for manufacturing plants located in the close-in zones. Moving the nearest milk to distributing plants for Class I use would provide efficiency in transportation, but may be less equitable in terms of performance. Some close-in plants probably would have to give up all their milk supply, while more distant plants probably would not need to give up any milk.

It is hoped that the system of pooling supply plants provided herein will facilitate the achievement of both performance equity and cost efficiency in getting the fluid segment of the market adequately supplied with milk. Nevertheless, there may be a tendency towards less performance equity under the reserve supply plant concept. Plants that choose to pool as regular supply plants will have to ship the specified percentage of receipts each month. However, reserve supply plants would be required to ship milk only when a call for shipments would be announced by the market administrator. In order to try to maintain a balance between equity of performance and handling efficiencies, the equity aspect is a consideration in allowing a call provision to be twice the level of shipments required of supply plants.

Testimony at the hearing and views expressed in briefs indicated the industry's general position that a maximum call percentage approximating the marketwide Class I use levels would be appropriate. This reflects general concern that manufacturing plants that chose to pool as reserve supply plants could have their production schedules unexpectedly disrupted, if a call was issued. Other concerns expressed were related to obtaining milk supplies to replace those that would be shipped away from the plant in response to a call. These concerns involved finding available replacement supplies and the expected higher costs in securing such supplies.

Beatrice Foods Co., as noted earlier, urged that any call should be limited to five percent of a supply plant's receipts. If such a limit were not adopted, Beatrice then urged an exemption from any call for supply plants that purchase less than 9,000,000 pounds of milk per month. In its exemptions, Beatrice increased the limit on this exception from 9,000,000 pounds to 10,000,000 pounds of milk each month. The basis

for that position is that small supply plants located close to the Chicago area would suffer most from production distruption in the event of a call.

Such an exemption is not provided. Several plant operators expressed concerns about the adverse impacts on small businesses due to disruption of production patterns and the cost of obtaining milk to replace milk shipped in response to a call. These concerns are understandable. Nevertheless, the milk being utilized by such plants is a part of the total supply of reserve milk associated with the Chicago Regional market. There is no basis for treating such supplies differently from other reserve milk supplies.

The options being afforded to handlers under the provisions adopted herein should help alleviate some of those concerns. For example, a manufacturing plant may find it more feasible to pool as a supply plant than as a reserve supply plant. As a supply plant, the operator would know how much milk had to be shipped each month. Producer milk supplies could be developed so that the plant's usual manufacturing schedule could be accommodated, while at the same time the plant could regularly supply milk to other plants for Class I uses. Under such an operating mode, the plant woud not be subject to a call, and the operator would not need to be concerned about production disruptions.

Moreover, although the maximum call percentage substantially exceeds the levels suggested, such maximum does provide assurance that no reserve supply plant will be entirely stripped of its supplies of milk, unless, of course, marketwide utilization were to increase to 50 percent Class I. Such a development is not expected in the foreseeable future.

Considerable opposition to the proposed maximum call percentage of twice the Class I utilization percentage for the same month of the previous year was expressed in exceptions by manufacturing plant operators, two trade associations of cheese plants, and two cooperative associations. While some exceptors noted that there was a need to have a different performance standard for supply plants and reserve supply plants, all exceptors claimed that twice the amount that a supply plant would ship to market was too high a possible shipping requirement for a reserve supply plant. Exceptors offered the following maximum limits for reserve supply plants: the Class I utilization percentage of the same month of the previous year, the above Class I percentage plus 5 percentage points, 125 percent and 150 percent of the above Class I percentage, 25 percent and 35 percent of a plant's total producer receipts. Two cheese plant operators contended that the recommended decision did not contain any justification for the proposed limit for reserve supply plants.

The concerns of manufacturing plant operators are understandable. If they choose to pool their plants as reserve supply plants and a call for milk is issued by the market administrator, such plant operators might be required to ship during the call period up to twice the amount of milk that a supply plant operator would have to ship from its plant. Reserve plant operators faced with such a requirement would undoubtedly face major disruptions of their production schedules. However, for the months that a call for milk was not issued, these manufacturing plant operators would not be required to ship any milk to the fluid market, whereas the supply plant operator would be required to ship the necessary amount of pounds of milk to satisfy the plant's performance standard for that month. This balance between the equity of performance and the handling efficiencies is part of what the Deputy Administrator considered in establishing the limit for reserve supply plants at twice the amount required to be shipped from supply plants. No significant basis was provided in these exceptions, however, to warrant a change in the conclusion on this matter. The exceptions to this issue are hereby denied.

These options, discussed above, presume that a plant operator will choose to pool the plant. However, a handler also could consider whether to keep the plant pooled. Nonpool status would avoid having to deal with the types of concerns mentioned above. Thus, another option always available to a handler is to depool the plant and avoid any responsibility to supply the market with milk for fluid purposes.

There are two principal determinations that must be dealt with in adopting a reserve supply plant concept. One, outlined above, is whether the order should restrict the amount of milk that such a plant may be required to "give up" in order to comply with a call and thus retain its pool status. The other issue centers on how to define a "call area." The call area would include the distributing plants that need milk for Class I uses, and the reserve supply plants that would be required to make qualifying milk shipments in response to a call.

These two questions are interrelated. If, as CMSA proposed, the "call area" would be defined as the smallest and closest area that could provide the needed milk, then a limit on the call percentage would be inconsistent with that concept. Under such a narrow definition, it would be possible that a single plant would be called upon to ship its entire milk supply. On the other hand, limiting the call percentage could avoid calling a plant's entire milk supply, but may well result in a larger call area in order to include more plants.

The market administrator should have considerable flexibility in defining a call area and in setting a call percentage. The market administrator is expected to be knowledgeable about the supply and demand conditions for Class I milk, including which plants sell milk to other plants and which plants are potential suppliers of additional milk. The market administrator is also likely to have an understanding of contractual arrangements that may exist between the parties in the market. Thus, the market administrator is well prepared to investigate a call for milk and to decide what to require should a call appear to be warranted.

Thus, the market administrator should be free to structure a call in a fashion that reflects as many facets of the supply-demand situation as possible. He should be allowed to decide, for example, that the call area is to be a single area, or that it may be made up of more than one separate and distinct sub-areas. Also, it should be clear that the market administrator may prescribe varying call percentages within the call area, or even if feasible, within a sub-area. Flexibility such as that adopted herein should serve to secure milk for needed fluid milk uses, while at the same time avoiding overly burdensome shipping requirements for those plants that would be subject to a call. This approach should serve the desired purpose of a reserve supply plant concept without placing undue performance burdens upon those plants that choose to be pool reserve supply plants.

At the same time, it is necessary to recognize that there are certain benefits and risks associated with either approach to pooling supply plants. The operator of a plant that chooses to ship sufficient proportions of the plant's milk supplies to qualify each month as a supply plant will know about one year in advance what the shipping percentage will be. The benefit, of course, is that the producers who supply the plant with milk will participate in the pool. The plant operator can plan a specific level of operations well in advance and be reasonably assured of attaining that level of operations.

The operator of a plant that is pooled as a reserve supply plant, on the other hand, would have less assurance that all of its supplies will be regularly available for use in the plant. However, there would be no disruption of normal operations due to a call in any month that a call was not announced. In such a case, the plant operator would have the benefits of pool participation without having to give up any supplies of milk.

It is assumed, however, that the market mostly will be adequately supplied with milk without frequent announcement of a call. Thus, it would be expected that reserve supply plants, particularly those with manufacturing capabilities, would generally be able to retain their milk supplies, and would not regularly be performing the service of supplying milk for the fluid market. The market administrator should be able to call on such plants, as needed, to ship milk at a greater rate than is required of supply plants that ship milk each month. If a reserve supply plant operator is unwilling to operate under such terms, the option to pool instead as a supply plant after a three-month delay would be available. Moreover, the plant would have to be committed to pooling as a supply plant for at least three months.

Such a provision is necessary to ensure that plants do not switch back and forth from pool reserve supply plant to pool supply plant status. Handlers should make a commitment to serve the market as a reserve supplier, and then be held to that choice, but with a reasonable opportunity to change that decision.

To provide the market administrator some guidelines for administration of the call provision, it may be helpful to discuss a few examples that anticipate certain operating concerns. These examples are merely illustrative and are not intended to be exhaustive or exclusionary as guidelines.

The operator of a reserve supply plant must make qualifying shipments of milk whenever the market administrator announces that such shipments are needed. To this end, it is provided that the market administrator may announce a shipping requirement any time it is found that milk pooled at reserve plants is needed for Class I use in the market. If the market administrator has reason to believe a shipping requirement is needed, a notice shall be issued stating that a shipping requirement is being considered and inviting data, views, and arguments with respect to the proposed announcement of a shipping requirement.

It is presumed that such a notice will be issued because the operator(s) of one or more pool distributing plants have asked the market administrator to issue a call for milk shipments on the basis that adequate supplies for Class I use are not otherwise available. In conducting an investigation to determine whether such shipments might be appropriate, the market administrator would be expected to check with the market's suppliers to establish the availability of milk for Class I use.

Kraft, in its exceptions, said that the bulk sales of fluid milk by a pool distributing plant to other plants for Class I purposes should not be part of the pool plant's Class I requirements. Kraft felt that such a pool distributing plant should be deemed a supplier of milk in competition with reserve supply plants and supply plants. Kraft concluded that any bulk milk sales made by a pool distributing plant should not be included in the Class I needs of such plant.

Two situations could occur. The bulk milk sales could be made to plants regulated or not regulated by the Chicago Regional order. If the bulk sales were made to pool (regulated) plants and part of these bulk sales would be for fluid milk purposes, then the plant supplying the bulk milk should be able to count the Class I portion of these sales as its own Class I needs. These sales would be servicing the fluid milk needs of the Chicago Regional market.

If the bulk sales are to plants not regulated by the order, then the pool distributing plant is servicing the milk needs outside the order. These needs should not be considered part of the pool distributing plant's requirements. The Class I portion of these bulk sales should not be added to the Class I needs of the pool distributing plant.

A call should not be considered on behalf of any handler who operates a pool distributing plant(s) in the suggested call area and who has sufficient milk available to cover the expected Class I use at such distributing plant(s). Handlers should not be allowed to use milk from their own sources for Class II or Class III purposes and then expect the market administrators to issue a call for reserve supply plants operated by other handlers to ship milk. This is because the Class I needs of the market must command the highest priority of demand on available milk supplies. To provide otherwise could result in a call being issued to move milk from a manufacturing plant (reserve supply plant) to a distributing plant for Class II use.

A handler's milk supplies should be directed first to Class I uses. If additional milk is needed for Class II or III uses, such supplies should be obtained from another Class II or III source.

Nevertheless, in evaluating a request for a call, the market administrator should recognize that more milk will be needed than just the projected level of Class I use, due to shrinkage, separation of milkfat, and other factors. The record provides no direct guidance regarding what an appropriate level of allowance may be. However, the plant location adjustment credits provided on milk transferred between pool plants suggest that an allowance of 10 percent would be consistent. Accordingly, the market administrator should take such an allowance into account when evaluating a call request.

Considerable opposition to the proposed call mechanism was expressed by handlers in their exceptions. Cooperative associations also took exception to the proposed findings and said the guidelines for issuing a call were impractical. Exceptors also wanted clarification on how long a call period would be and whether the market administrator had authority to alter or to terminate a call announcement before the period expired within which the expected call shipments would be made. Some exceptors also said that the proposed call provision mechanism gave too much discretionary authority to the market administrator.

Handlers took exception to the guidelines set forth in the recommended decision that only the Class I needs of a handler would be considered by the market administrator in evaluating whether a call for milk would be issued. They said that if the producer milk supplies available to the handler exceeded the handler's needs for Class I use, then the handler could not request a call for milk from the market administrator. Handlers contended that Class II products such as packaged cream, sour cream and dips, cottage cheese, ice cream, yogurt and other similar products were an integral part of the milk needs of a fluid milk handler operating in the Chicago Regional market. The handlers maintained that the Assistant Secretary's decision on July 15, 1977, had permitted qualification on bulk milk shipments that were used to manufacture Class II products at distributing plants. In their exceptions handlers urged that the same consideration be given these products in this decision. The handlers' also commented that the proposed findings do not take into consideration the fluctuations of Class I inventory or the variation of days of receipts of supply plant milk and the resulting bottling compared to the later days of sale of

such fluid milk products. In their exceptions handlers urged that the market administrator should consider a proposed call request from any handler whose combined Class I and Class II utilization percentage exceeded 75 percent of the producer milk supplies available to such handler.

We cannot agree with the exceptors' views about the impact of the Assistant Secretary's decision of July 15, 1977. The decision provided for a unit of distributing plants composed of at least one distributing plant and one or more additional plants of the handler at which milk is processed and packaged or manufactured. Thus, a unit of such plants is considered as one plant for the purpose of meeting the requirements to be a pool distributing plant under the Chicago Regional order. The decision permitted "* * * the inclusion of any plant in a unit at which Grade A milk is processed and packaged or manufactured; Provided, that the total and in-area route disposition from all plants in the unit is sufficient to meet the minimum requirements for the entire unit." (42 FR 37389)

The exceptors erroneously conclude that the Assistant Secretary found the second plant to be part of the first plant's operation and allowed qualification on the bulk shipments into the second plant. The Assistant Secretary did consider the different plants as one plant for pool qualification purposes. However, the qualification on bulk milk shipments into the second plant was based on the Class I sales of the first, or distributing plant, and not on the use made of the milk at the second, or manufacturing plant. Moreover, an underlying issue in that decision was equity among competing handlers. One of the impacts of the Assistant Secretary's decision was to promote a more equitable and competitive basis between a handler with Class I and Class II products produced in one plant and a handler with these same products produced in separate specialized plants.

CMSA, in its exceptions on the call mechanism, said that the location adjustment credit allowance of 110 percent of a pool handler's Class I utilization was an inappropriate standard for evaluating a distributing plant handler's need for milk supplies. CMSA maintained, contrary to its position at the hearing, that the practical considerations relating to the economics of flud milk plant operations require that recognition be given to the array of Class II products that are associated with the operation of virtually all fluid milk plants. At the hearing, CMSA proposed that only the Class I needs of a fluid handler should be considered by the market administrator if the handler requested a call for milk. Nevertheless, in its exceptions, CMSA said that in evaluating a handler's call request, the market adminstrator should consider the call request of any handler whose Class I utilization percentage of its total producer milk supplies exceeded 75 percent.

The call mechanism and how it would operate was one of the principal concerns of many parties who participated in the hearing. Handlers clearly wanted both Class I and Class II uses for milk to be considered in any proposed call for milk. CMSA, as the proponent for the reserve supply plant system, wanted only the Class I use of a handler to be considered in evaluating whether a call for milk from reserve supply plants would be issued. The issue of whether to consider the Class II use by a handler in considering a call request by such handler was fully considered in formulating the recommended decision and was rejected. No additional arguments were presented in the exceptions. As stated in the recommended decision, milk used for Class I purposes yields a higher-valued return to producers than milk used for Class II purposes. Milk for Class I use should have the highest priority on available supplies of milk relative to the lower-valued uses. The inclusion of Class II uses of milk for consideration in any call request is hereby denied.

As stated in the recommended decision, the record provides no direct guidance regarding how much allowance above the projected level of Class I use of a handler the market administrator should consider in evaluating a request for a call by a handler. The exceptions did not provide any other basis for the market administrator to consider. Thus, no change is warranted in the guidance to the market administrator in this matter.

The length of a call period likely would be an entire month or the period could be several months. Since the market information regularly received by the market administrator is in terms of monthly totals, the estimated projections for any proposed call or shipping requirement would be in monthly amounts. The market administrator, however, should have complete flexibility to structure any call announcement to reflect the changing needs of the market. The market administrator should be permitted to issue a shipping requirement on reserve supply plants for whatever length of time additional supplies of milk are needed from reserve supply plants.

It is clear from the record that there has existed for some time in the Chicago Regional market an over-order service charge structure. Such a structure is neither mandated nor precluded by the statute that authorizes the Secretary to implement Federal milk marketing orders. The question that arises in this discussion is how such over-order service charges relate to the issuance of a call for shipments by the market administrator.

Two situations should be considered. First, assume the market administrator finds market suppliers willing to ship milk at the current market level of over-order charges to the plant(s) that requested a call. In such a case, any handler's unwillingness to pay the current level of service charges should not be considered by the market administrator as a justifiable reason for issuing a notice that a call for shipments is being considered. On the other hand, the market administrator should consider such a notice if he finds that suppliers are willing to ship milk to the requesting handler(s) only at an over-order charge in excess of the amount prevailing in the marketplace. The purpose of this discussion is to indicate that the call provision will operate with consideration of the effective level of service charges in the market. Over-order charges will be considered by the market administrator, but the order provisions will not be used to either undergird or undercut a particular level of charges for services.

It also should be noted that the issuance of a call will not serve to guarantee any particular plant(s) a supply of milk for Class I use. Although it is anticipated that the plants needing milk would get it when a call is issued, the market administrator lacks the authority to direct any reserve supply plant to ship milk to any particular distributing plant. Nevertheless, the "call area" and the "call percentage" announced by the market administrator reasonably would define an area such that shipments from reserve supply plants in the area would likely move to distributing plants in the area. If the operation of these order provisions fails to secure adequate supplies for Class I use, then it may be necessary to consider further changes to the order in the future.

These pooling provisions should provide handlers a useful set of alternatives. The benefits and disadvantages of each method of pooling supply plants can be weighed. In addition, these provisions should make

it possible to assure adequate supplies to meet the fluid milk (Class I) needs of the market without at the same time requiring distant milk to move when nearer supplies are available.

There no longer should be a need for the provision of the order whereby a cooperative association may request pool status for a plant on the basis that at least 50 percent of the milk of the association's members is delivered to other handlers' pool distributing plants. The reserve supply plant provisions adopted herein provides essentially the same opportunity for cooperatives to pool plants without being required to regularly ship milk to pool distributing plants. It is noted, moreover, that the pool plant provisions of the Upper Midwest order do not contain the provision in question here. Thus, action to delete the provision for pooling cooperatives association plants is consistent with the Upper Midwest order provisions that were suggested as model language for the reserve supply plant provisions in the Chicago Regional order.

2. *Performance standards for supply plants.* The minimum shipping standard for each pool supply plant for each month should be the marketwide Class I utilization percentage during the same month of the previous year. The current order provisions for unit pooling of supply plants and for the authority of the Director of the Dairy Division to revise the shipping requirements and/or diversion allowances for supply plants for a temporary period would no longer be necessary and therefore are removed.

The present minimum shipping percentages for pool supply plants are 25 percent for September, 30 percent for October and November, and 20 percent for all other months. Also, a supply plant that meets the shipping requirements for pool plant status during each of the months of September through March may continue to be a pool plant without shipments to pool distributing plants during the following months of April through August. Basically, the percentages represent the amount of a supply plant's receipts from producers that must be delivered to pool distributing plants.

The present order provides that two or more supply plants may be considered a unit for meeting the performance standards of the order, if certain requirements are satisfied. The plants included in the unit must be located in the marketing area or in Wisconsin, and must be owned or fully leased and operated by the handler establishing the unit. Also, two or more cooperative associations are permitted to establish a unit of supply plants, composed of plants operated by such cooperatives, by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives. Finally, the handler or cooperatives establishing a unit must inform the market administrator prior to September 1 each year of those pool plants that will compose the unit for the period of September through August of the following year.

The present order provides also that the Director of the Dairy Division may increase or decrease, on a temporary basis, the supply plant shipping percentages by up to 15 percentage points for any of the months of September through March. A temporary revision may be made if, after investigation, it is found that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments of milk to distributing plants. Similarly, the Director has the authority to make temporary adjustments in the order's diversion allowances. Such allowances represent the amount of milk from producers that may be delivered directly from farms to nonpool plants and still be pooled and priced under the order. Milk that is so diverted from pool plants normally is being disposed of in surplus uses. This provision (§ 1030.7(b)(5)) is referred to herein as the Director's discretionary authority.

The positions taken by the different participants at the hearing have been stated at length under the discussion concerning the pool reserve supply plant provisions. The germane proposals relating to performance standards for supply plants are reiterated here in summarized form for convenience.

CMSA proposed eliminating all performance requirements for supply plants located in the marketing area. For a supply plant outside the area, CMSA proposed that each plant would have to ship more than 50 percent of its producer milk receipts each month to pool distributing plants to be a pool plant. CMSA proposed eliminating the Director's discretionary authority, since its proposed call provision would be executed by the market administrator.

Dean et al. submitted proposals included in the hearing notice to keep the minimum shipping percentage for supply plants and reduce it by 15 percentage points for each of the months of September through March. The spokesman for Dean et al., however, stated that the proposed reduction of 15 percentage points was for September 1983 through March 1984 only and was not intended to be a permanent reduction. He urged that the current provisions be maintained with respect to supply plants located in zones 1 through 10.

Several other witnesses supported a permanent change in the shipping standards for supply plants. Some supported a reduction of 15 percentage points, while others proposed establishing the minimum shipping percentage to be equal to the marketwide Class I utilization percentage for the same month of the previous year.

One handler opposed any change in the minimum performance standards for supply plants.

All participants who supported retaining performance standards for supply plants also, by inference, supported retention of the Director's discretionary authority. The issue of whether to modify the amount of the Director's discretionary authority from 10 percentage points to 15 percentage points was considered in the Partial Final Decision issued by the Assistant Secretary on August 4, 1983. The issue of whether to retain the Director's discretionary authority is considered herein.

The present supply plant system was promulgated as part of the Chicago Regional order in 1968. Shipping standards for supply plants have been used in the market to assure the availability of milk for distributing plants. Performance standards, based on association of pooled milk supplies with fluid milk outlets in the market, have been needed in the past to assure that milk is made available to such outlets. The record of the hearing demonstrates that the use of supply plants with the associated performance standards may be appropriate for some handlers regulated by the order, while a system of reserve supply plants without specified monthly shipping requirements may be equally appropriate for other handlers.

Under the pooling system adopted herein, it is not possible to determine what level of shipments to require in order to assure fluid milk handlers that they will have adequate supplies. Given this situation, the most feasible approach appears to be to specify shipments from supply plants at a level that approximates the market's Class I uses of milk, which vary seasonally. If such a standard is too low to attract enough milk, the market administrator could issue a call for milk to be shipped by reserve supply plants. If, on the other hand, experience shows that too much milk is being shipped, it may be necessary for some plants to switch from supply plant to reserve supply plant status.

It is desirable to have seasonal variation in the pooling standards, since production varies seasonally while fluid demand is relatively stable throughout the year. The provision adopted herein ties the performance standard for supply plants to the Class I utilization of the market and, accordingly, provides a variable pooling standard reflecting seasonality of production. The monthly Class I utilization percentage for the market in a given month likely would not differ appreciably from the utilization percentage of the corresponding month of the previous year.

The present order provides that a supply plant that satisfies the pooling requirements during each of the months of September through March shall be a pool plant during each of the following months of April through August. Under the pooling system adopted herein, a supply plant would have to satisfy the minimum performance requirement each month of the year. Thus, milk should be made available for fluid purposes on a continuous basis from supply plants. Requiring supply plants to meet a shipping requirement each month also is consistent with CMSA's suggested model language (the Upper Midwest order provisions) for adopting reserve supply plant provisions.

Several exceptors to the recommended decision said the minimum storage capacity for supply plants should be modified or eliminated completely. Although the issue of whether to provide for supply plants was considered at the hearing, the record provides no basis to change the storage capacity requirements for supply plants. Accordingly, the exceptions must be denied.

To coincide with the changes in the pooling standards for supply plants, conforming changes should be made in the limits on the amount of milk that may be diverted from pool supply plants to nonpool plants. The current provisions limit diversions by handlers to nonpool plants to not more than 70 percent during the months of September, October and November, and 80 percent during the months of December through March, of the total quantity of producer milk of each handler.

Several witnesses testified that with a change in the supply plant shipping percentages, a corresponding change in the diversion limits would be appropriate.

The maximum percentage diversion limit each month for a pool plant should equal the combined Class II and III utilization percentage in the same month of the preceding year. This system will provide built-in flexibility, automatically providing for seasonal changes in supply and demand. Establishing a maximum diversion allowance for each month is consistent with requiring supply plants to meet a shipping requirement each month. From a practical standpoint, this provision will affect only supply plants and reserve supply plants since, in effect, pool distributing plants are subject to different pooling standards.

Cooperative associations in their exceptions to the recommended decision reiterated their views that no limit should exist on the diversion allowance of milk each month from reserve supply plants. One exceptor said the decision should be modified at a minimum so that unlimited diversion privileges would exist for a reserve supply plant during the months of April through August, as provided now by the order. Another exceptor suggested that no limit should exist on the diversion allowance for a handler. This exceptor maintained that as long as all of the performance requirements of the order are satisfied, there is no justifiable basis for a limit on the diversion allowances of producer milk for a handler.

A handler who operates several manufacturing plants, in his exceptions, said that a limit on the diversion allowance on reserve supply plants might impose unintended and unnecessary burdens. He said that a reserve supply plant which is separate from an affiliated manufacturing facility would need to receive and physically unload between 20 to 30 percent of the plant's milk supply and then reload and transfer the same milk to another facility each month. If the maximum diversion allowance for a reserve supply plant could not exceed the combined Class II and Class III utilization percentage for the same month of the previous year, the milk would need to be delivered to another pool plant when the amount of milk diverted to nonpool plants had reached the maximum permitted amount. The handler urged that the Secretary reconsider the propriety of diversion limits for reserve supply plants. A similar concern was expressed about both the touch-base requirement and the diversion limits by a cooperative that does not operate any manufacturing plants.

Upon the basis of the exceptions, the limit of the diversion allowance for a reserve supply plant should be eliminated for each of the months of April through August. The limit on the diversion allowance should remain for each of the other months of the year.

This additional flexibility for reserve supply plants is consistent with the hearing record. Evidence received at the hearing demonstrates that the market typically has adequate supplies of milk for fluid purposes during the spring and summer months. Eliminating the limit on diversion allowances for reserve supply plants during these months will permit operators of such plants to move milk directly from the producers' farms to nonpool plants on all but one day each month. Keeping the limit in other months will assure that milk is available at the reserve supply plant to be shipped to pool plants. The operator of a reserve supply plant, whether it is or is not separate from an affiliated manufacturing facility, could use the divert-transfer provision of the order in all months to alleviate the receiving and physical unloading requirements for these plants. In the event a call is issued, the operator of a reserve supply plant could use the divert-transfer provision to assist in meeting its shipping requirements of any call.

The order should continue the limit on the diversion allowance for cooperative associations and handlers operating pool plants other than reserve supply plants. The record and the exceptions do not provide any basis to change this conclusion. The exception is denied.

It is not expected—with such a large market—that the utilization will change appreciably from one year to the next. Thus, use of data for the same month of the preceding year should be appropriate as a measure of the market's Class I needs and also a measure of its needs to divert milk.

The proposal that a supply plant located outside the marketing area be required to ship more than 50 percent of its producer receipts each month to maintain pool status should not be adopted. The witness for CMSA who proposed the above requirement said that the order was more than adequately supplied with milk for Class I purposes. He maintained that any plant outside the marketing area needed to perform monthly at a high level to demonstrate its association with the Chicago Regional market. There is no persuasive evidence in the record that a supply plant located outside the marketing area should be required to ship a greater percentage of its producer receipts than a supply plant located in the marketing area. Thus, the proposal is denied.

The provisions providing for a handler to form a supply plant unit or for cooperatives by contractual agreement to form a supply plant unit should be deleated from the order. The supply plant unit concept was adopted to realize savings in hauling costs by enabling multi-plant operators to supply the market from the plants located closest to the bottling plants. Also, it

was adopted to gain greater returns for producers by using reserve supplies in the more remunerative products processed by certain plants while shipping milk from plants that otherwise would be processing milk into less remunerative products.

Under the pooling system adopted herein, the operator of each milk plant will choose the pooling option that better represents the operator's interests at a particular time. If the choice is to pool the plant as a supply plant, the operator assumes responsibility for shipping milk from that plant to the fluid market each month of the year, or at least each month that such plant is pooled as a regular supply plant. If reserve supply plant status is chosen, the operator accepts the responsibility to ship milk in the event a call is announced, but not before that time. Milk will move to the fluid sector according to the decisions made by the operators of supply plants and reserve supply plants. Thus, under the pooling system herein adopted the unit pooling concept, although still valid, is no longer essential to maintain orderly marketing.

One exception from operators of three cheese plants contended that the recommended decision would abolish the lease-unit ability for supply plants to combine together for the purpose of qualifying milk as producer milk. The exception said that the elimination of the lease-unit concept was not based on substantial nor adequate evidence.

We cannot agree that the ability to lease a plant has been abolished. The order continues to provide for the leasing of plants in the definition of a plant: " 'Plant' means a building * * * whether owned *or operated* (italics added) by one or more persons, constituting a single operating unit or establishment * * *." Thus the leasing of plants may continue under the order.

Moreover, as a practical matter, a handler with several plants may continue to operate as if the plants were a unit, under specified conditions for supply plants and reserve supply plants. Methods are provided in the amended order whereby supply plants and reserve supply plants owned or operated by a handler may ship milk on behalf of reserve supply plants upon which a shipping requirement has been placed.

Similarly, the Director's discretionary authority to revise for a temporary period the shipping percentages and/or diversion allowances for supply plants is no longer necessary and should be dropped. A supply plant operator will know approximately ten and one-half months in advance the minimum percentage of its plant's receipts that will need to be shipped in order to satisfy the pooling requirements for a supply plant. As stated earlier, if too little milk is supplied for fluid use, the market administrator may issue a call for milk from reserve supply plants. No additional milk would need to be shipped by supply plants that have already satisfied the minimum performance requirement for that month. Thus, the provisons providing for the Director's discretionary authority should be removed from the order.

Border, in its exceptions to the recommended decision, opposed the entire decision and propose that any change to the Chicago Regional order be limited to granting the market administrator temporary authority to adjust the minimum performance standards for all supply plants. This issue was not considered at the hearing and no basis exists in the record to adopt it. The proposal is hereby denied.

3. *Producer delivery requirements.* The order should be changed to require that each producer must deliver at least one day's production each month to the pool plant that reports such milk as producer milk as a means of establishing eligibility for diversion. The current order requires that during September through March, at least one day's production must be physically received during each month at the pool plant from which diverted.

CMSA proposed adoption of such a change in conjunction with the other proposals to amend the basic pooling provisions for supply plants. The CMSA spokesman testified that, in CMSA's view, requiring the entire production of a 24–hour period to be received and physically unloaded into the pool plant that reports tht milk as producer milk would identify those producers on the market who are ready, willing, and able to respond to the fluid market in the event of a call. He held that such a requirement is minimal and that to supply anything less from the individual dairy farm would represent less than "true market association." Moreover, he stated that the proposed "touch-base" requirement would serve to preclude artificial association with the market by distant producers who could not be relied upon to serve the fluid needs of the market if their milk were needed.

The spokesmen for Dean Foods Company and Hawthorn-Mellody gave qualified support for this proposal. The Dean spokesman stated that, if the reserve supply plant and call provisions were adopted, then the proposed producer delivery requiremens would be appropriate to establish the minimum level of performance necessary to participate in the marketwide pool.

Witnesses for several handlers strongly opposed adoption of the proposed change in touch-base requirements. Most expressed the view that such provisions would result in uneconomic and unnecessary shipments of milk. It also was maintained that such requirements do not relate to actual shipments of milk to fill Class I needs of the market and, moreover, are unrelated at all to the marketing of milk for fluid use. One witness pointed out that the Upper Midwest order has no touch-base provisions and expressed the view that such provisions are not needed in this market. Another witness maintained that the producer touch-base proposal would be detrimental to a small business because it would require uneconomic movements of milk, and it would impose extra handling costs and unnecessary administrative effort.

Kraft, Inc.'s post-hearing brief urged that the touch-base proposal be rejected. The brief stated Kraft's view that in the Chicago market "* * * an abundance of Grade A milk production that far exceeds fluid demand * * *" argues against the adoption of such provisions. Kraft also argued that in these circumstances, touch-base provisions are "token regulatory requirements" unrelated to fluid need, which would burden the market administrator with additional auditing and verification tasks.

The Farmers Union Milk Marketing Cooperative's brief urged that the touch-base proposal be modified to require physical receipt of each producer's milk at the facility where it is reported as producer milk once, rather than once each month. The brief maintained that the record demonstrates that some handlers would have to uneconomically alter their routes one day each month in order to meet the proposed requirement.

A brief filed by the Wisconsin Cheesemakers Association stated that organization's views in opposition to the one-day-a-month touch-base proposal. The Association argued that, "What is important is that the producer's farm maintain its Grade A permit, not that once a month their milk is received where it is pooled."

TAPP's brief expressed the view that it is not necessary to show association with the market and that a touch-base requirement wastes time, money, and effort, and reduces the quality of milk by unnecessary handling. The brief further maintained that the only purpose of such a proposal would be to create a hardship, a qualification obstacle, and additional costs for reserve plants that do not regularly ship fluid milk to market because such milk may seldom,

or never, be needed by the market. The brief also stated that "All producers have a right to participate and have a market for Grade A milk."

The CMSA proposal differs from the current provision in two aspects. First, the one-day-a-month requirement would apply to each producer each month, rather than just during each month of September through March as now required. Second, the delivery of one day's production each month would be required to be made to the plant where that milk is reported as a receipt of producer milk for which the plant operator is the handler responsible under the order for paying producers.

The changes proposed by CMSA should be adopted. Other provisions also being recommended for adoption will further serve to accommodate the pooling of milk associated with the market. For example, shipping requirements for supply plants will still be provided, but a handler could choose whether to pool a plant as a supply plant or as a reserve supply plant. If a handler elects to pool a plant as a reserve supply plant, there are no regular shipping requirements. Such a plant may choose not to ship any milk unless the market administrator issues a call. Thus, some reserve supply plants, particularly those located in the outer zones, may regularly be pool plants without having to ship any milk to the fluid market unless a call for milk is issued. Such plants, nevertheless, would be required to demonstrate an ability to respond to a call by receiving a specified quantity of Grade A milk one day each month, and by shipping one load of at least 47,000 pounds of Grade A milk each year, thereby establishing an association with the market.

Individual producers likewise should demonstrate their association with a pool plant. Requiring one day's production from each producer to be received and physically unloaded at the plant where such milk is reported as a receipt of producer milk will serve the purpose of identifying which producers are associated with which plants. It also will serve to demonstrate the marketability of their milk each month.

It is recognized that such a requirement probably will result in some minimal movements of milk that otherwise would not take place. It also is recognized that certain benefits are to be obtained from participation in the marketwide pool by plants and producers. If the cost or inconvenience of such minimal requirements outweigh such benefits, then those plants and producers so affected may choose not to pool their milk.

A major purpose of an order is to ensure an adequate supply of milk for the fluid market. It is consistent with that purpose to assure the availability of those supplies through mimimal performance standards for individual producers. Moreover, the appropriateness of such standards under the conditions existing in this market is not dependent upon the Class I utilization percentage. Whether supplies are large or small compared to fluid use is not a major consideration in this case. What is more important is that when a call is issued, the milk needed to meet that call will be available. The provisions adopted herein are intended to help provide that assurance of availability.

Exceptions were received opposing the monthly touch-base requirement. In general, the exceptions argued that the requirement was inappropriate and not needed to assure producer identification with the market. Exceptors held that the requirement would result in substantial and regular uneconomic and unnecessary shipments of milk for purposes of pool qualification. In addition, exceptors contend that a lower quality of milk would be the result of the extra and unnecessary handling. One exceptor urged that the requirement apply only for the months of September through March, as the order now provides.

Several exceptors commented that the one-day-a-month delivery requirement should be modified to a "once and done" delivery requirement, as contained in the Upper Midwest Federal milk order. Under such a procedure, each producer would be required to deliver one day's production of milk to the pool plant at which the milk would be reported as producer milk under the order. Once the producer has satisfied the above requirement, no further deliveries of milk from the producer to the pool plant would be required. Exceptors said that this procedure would properly identify those producers and plants that are associated under the order without imposing uneconomic and unnecessary requirements on producers or the plants.

The monthly touch-base requirement for a producer should be maintained for the purpose of identifying which producers are associated with which plants each month. All of the arguments made by the exceptors were considered in reaching the recommended decision. Any change to the monthly touch-base requirement by producers is denied.

It should be noted, too, that the presence, absence, or differences from similar provisions in any other order is not a factor in deciding what provisions should be adopted for this order. It is not the provisions of the other orders that are before the Secretary in this proceeding.

In its post-hearing brief, CMSA modified its position on what should be required to comply with the touch-base requirement. Instead of specifying the entire production of a 24-hour period, the brief stated that one delivery, at least one day each month, should be sufficient to demonstrate true market association for a dairy farmer whose milk is picked up at the farm more frequently than once each day.

This suggested modification of the proposal should not be adopted. The record in this proceeding provides no basis for concluding that producers whose milk is picked up more frequently should be able to establish market and plant association with a lesser proportion of their production than those producers whose milk is picked up less frequently.

5. *Need for emergency action on one or more of the above issues.* Emergency action, i.e., omitting a recommended decision, is not warranted with respect to proposals one, two and three. An earlier partial decision on issue four was issued on an emergency basis so that, if needed, uneconomic shipments of milk could be avoided during the fall and winter months of 1983–84. The order subsequently was amended to provide the Director with greater discretionary authority to temporarily revise the supply plant shipping standards.

The proposals by CMSA, along with modifications suggested by other interested parties, would, if adopted, significantly change the method of pooling milk under the Chicago Regional order. As the foregoing sections of this decision disclose, far-reaching changes are being adopted. The order provisions to implement these actions are complex, interrelated, and rather lengthy. In view of the foregoing, the recommended decision was not omitted with respect to proposals one, two, and three.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach

such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Chicago Regional marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this desision.

Determination of Producer Approval and Representative Period

March 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Chicago Regional marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on: July 25, 1984.

C. W. McMillan

Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Order, Regulating the Handling of Milk in the Chicago Regional Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on April 9, 1984 and published in the **Federal Register** on April 12, 1984 (49 FR 14511), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to the following modifications:

1. In § 1030.7, paragraphs (c) and (d) are revised.

2. In § 1030.13, paragraph (d)(3) is revised.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.6 is revised to read as follows:

§ 1030.6 Supply plant and reserve supply plant.

Except as provided in paragraph (c) of this section, "supply plant" and "reserve supply plant" are defined as follows:

(a) "Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant. Such supply plant shall be equipped with storage capacity sufficient to hold the largest

quantity of fluid milk product either received in the plant or shipped from the plant as a single load during the month, except that no storage capacity shall be maintained in a plant described in § 1030.4(a).

(b) "Reserve supply plant" means a plant that is located in the marketing area or in that portion of the State of Wisconsin that is not included in the marketing area of any federal milk marketing order. This definition shall include any plant located in the Wisconsin portion of the Upper Midwest federal milk order marketing area that was a pool plant for at least three consecutive months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status.

(c) Any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant or a reserve supply plant unless it is located in a building that is entirely separate from the distributing plant.

2. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraphs (d) and (f) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants and pool reserve supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8) (i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped or transshipped and received and physically unloaded into plants described in paragraph (d) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant as route disposition, is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the conditions set forth in paragraph (d) of this section.

(c) A reserve supply plant, subject to the following conditions:

(1) At least 47,000 pounds of Grade A milk from producers are received and physically unloaded into the plant at least one day each month. To be a pool plant for December each year, each reserve supply plant must ship during any month of September through December of the same year, at least one tank truck load (not less than 47,000 pounds) of Grade A fluid milk products to a pool distributing plant pursuant to paragraphs (a) or (e) of this section;

(2) The operator of the plant has filed a request with the market administrator for pool plant status at least 15 days prior to the first day of the month in which such status is desired to be effective. Upon becoming qualified as a pool plant pursuant to this paragraph, such status shall continue to be effective through the third month following the month in which the operator notifies the market administrator that the plant will seek qualification as a pool plant pursuant to paragraph (b) of this section for the next consecutive three months, unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all the conditions of this paragraph, or the plant qualifies as a pool plant under another order.

(3) Subject to the conditions set forth in paragraph (d) of this section, the operator of the reserve supply plant supplies fluid milk products (except filled milk) and/or condensed skim milk to plants described in § 1030.7(d)(1) or supplies fluid milk products (except filled milk) to plants described in paragraphs (d)(2), (d)(3), and (d)(4) of this section that are located within an area(s) designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level(s) of shipments, as further provided below:

(i) The market administrator may require such supplies of milk products from operator(s) of any pool reserve supply plant(s) within the call area whenever he finds that milk supplies for Class I use at one or more pool distributing plants within the call area are needed from one or more plants qualifying under this paragraph. Such requirement(s) shall be expressed as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, but such percent shall not exceed twice the percentage shipping requirement for a pool plant pursuant to paragraph (b) of this section. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement; and

(ii) Failure of a handler to comply with any announced shipping requirement, including making any significant change in his marketing operations that the market administrator determines has the impact of forcing or evading such an announcement, shall result in immediate loss of pool status for the plant pursuant to this paragraph. Such loss of pool status also shall apply to any other reserve supply plant that the market administrator determines was utilized by any handler to aid or abet the forcing or evading of such announcement. A plant losing pool status in this manner, or a plant that requests nonpool status, or that elects to qualify as a pool supply plant for three consecutive months and fails to so qualify during any of such months, may not again qualify as a pool plant pursuant to this paragraph for a period of one year from the date on which pool status was last held.

(4) To be a pool plant under this paragraph during April through August, a plant must meet the following conditions:

(i) The plant must have been a pool plant under this order during each of the preceding months of September through March; or

(ii) The plant must have been a pool plant under this order during any six months of the preceding September through March and an other order plant during one such month, except that this provision shall not apply during the first three months that a plant has changed status from a pool reserve supply plant to a pool supply plant.

(d) Qualifying shipments pursuant to the requirement of paragraph (b) of this section and pursuant to any notice issued under paragraph (c)(3)(i) of this section may be made to the following plants, except that shipments from a reserve supply plant to plants described in (d)(1), (d)(2), (d)(3), or (d)(4) of this section that are outside the call area may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to such notice:

(1) Pool plants described in paragraph (a) of this section, subject to the following conditions:

(i) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants and reserve supply plants to each distributing plant that is a pool plant pursuant to paragraphs (a) or (e) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants and reserve supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants and reserve supply plants the following:

(*a*) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants and/or pool reserve supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(*1*) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(*2*) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant or a reserve supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(*b*) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant or the reserve supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(ii) Qualifying shipments from reserve supply plants to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler. The computation of location adjustments pursuant to § 1030.52(c) (8), (9), and (10) shall be based on the location of the plant subject to the call or the location of the plant(s) from which shipments are actually made in compliance with the call, whichever results in the lesser location adjustment on such shipments;

(iii) Shipments from sources other than the reserve supply plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1030.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(iv) The operator of a supply plant or a reserve supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(2) Plants of producer-handlers;

(3) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of milk which receives a Class I classification at the transferee plant; and

(4) Distributing plants fully regulated under other Federal orders, except that credit for such shipments from such plant shall be limited to the quantity of milk shipped to pool distributing plants during the month. Credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization.

(e) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraphs (b) or (c) of this section that is unable to meet such performance standards because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(f) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b), (c), or (e) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

3. In § 1030.13, paragraphs (d)(1), (d)(2), (d)(3), and (d)(6) are revised to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(1) Milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion until at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(3) Milk diverted to a nonpool plant(s) for the account of the operator of a pool plant, or a handler described in § 1030.9(b), shall not exceed the market's combined Class II or Class III utilization percentage for the same month of the preceding year of the total quantity of producer milk for which it is the handler (or, in the case of a cooperative the producer milk that the cooperative association causes to be delivered to or diverted from pool plants), except that the percentage specified herein shall not apply to the operator of a pool reserve supply plant during the months of April through August;

* * * * *

(6) Any milk diverted in excess of the limits prescribed in paragraph (d)(3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which dairy farmer's milk should not be producer milk; and

* * * * *

4. In § 1030.30, the introductory text of paragraphs (a) and (a)(3) are revised to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants (except that if a handler so requests and the request is approved by the market administrator, a single report for supply plants and/or reserve supply plants and a single report for distributing plants may be filed), shall report the quantities of skim milk and butterfat contained in or represented by:

* * * * *

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant and/or from each reserve supply plant, computed pursuant to § 1030.7(d)(1)(i);

* * * * *

5. In § 1030.41, the introductory text of paragraph (a) is revised to read as follows:

§ 1030.41 Shrinkage.

* * * * *

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of a handler's supply plants and/or reserve supply plants combined or at all of a handler's distributing plants combined if such reports are filed pursuant to § 1030.30) to the respective quantities of skim milk and butterfat:

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Chicago Regional Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86, all inclusive, of the order regulating the handling of milk in the Chicago Regional marketing area (7 CFR Part 900) which is annexed hereto; and

II. The following provisions:

§ 1030.87 Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of March 1984, hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1030.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature _____
By (Name) _____
(Title) _____
(Address) _____
Attest _____
Date _____

[FR Doc. 84-20090 Filed 7-30-84; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 101

[Notice 1984-12]

Payments Received for Testing the Waters Activities

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests commments on proposed revisions to its regulations governing "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3. These regulations permit an individual to receive and expend funds to test the feasibility of a campaign for Federal office without becoming a candidate under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act"). The proposed revisions would amend §§ 100.7(b)(1) and 100.8(b)(1) to include factors that the Commission would consider in determining whether an individual is conducting permissible "testing the waters" activities. The proposed regulations would also revise §§ 100.7(b)(1), 100.8(b)(1), and 101.3 to prohibit the use of funds in excess of the contribution limits or from prohibited sources under the Act for "testing the waters" activities. Finally, the proposed rules would make clarifying amendments to §§ 100.7(b)(1) and 100.8(b)(1) in two areas. Further information on the proposed revisions and other issues on which comment is sought is provided in the supplementary information below.

DATE: Comments must be received on or before October 1, 1984.

ADDRESSES: Comments should be directed to: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW,

Washington, D.C. 20463, (202) 523–4143 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On February 17, 1984, The Commission published an Advanced Notice of Proposed Rulemaking (49 FR 1995) to solicit public comment on its regulations which permit an individual to receive and expend funds to test the feasibility of a campaign for Federal office—"testing the waters"—without triggering candidate status under the Act. 11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3. The notice also sought comment on two areas in which revisions ot these regulations were being considered: (1) The scope of permissible activities under the "testing the waters" exemption and (2) the applicability of the contribution limitations and prohibitions to receipts and disbursements for "testing the waters" activities.

The Commission now seeks comments on proposed revisions to its regulations governing "testing the waters" activities. The proposed rules being published today would revise §§ 100.7(b)(1), 100.8(b)(1), and 101.3 in three respects. First, the proposed rules would amend §§ 100.7(b)(1) and 100.8(b)(1) to clarify that the"testing the waters" exemptions do not apply to campaign activities undertaken once an individual has decided to become a candidate. The current "testing the waters" regulations are explicitly limited "solely" to activities designed to assist in making a determination of whether to run for Federal office. Examples of permissible activities included in the present regulations are expenses for conducting a poll, telephone calls, and travel, to determine whether an individual should become a candidate. The Commission has distinguished such activities from those that amount to the establishment of a campaign organization. *See* Advisory Opinions ("AO") 1979–26, 1981–32, 1982–3, and 1982–19.

Despite the Commission's attempts to limit the scope of the "testing the water" exceptions, concerns have been raised that the exemptions have been expanded to include activities beyond those they were originally intended to encompass. *See* dissents to AOs 1981–32 and 1982–19. The Commission realizes, moreover, that activities, such as polling and travel, may be legitimate "testing the waters" activities or campaigning depending upon the surrounding circumstances. Therefore, the proposed revisions would amend §§ 100.7(b)(1) and 100.8(b)(1) to include factors that the Commission could consider on a case-by-case basis in determining whether particular activities are permissible under the "testing the water" exemptions. Sections 100.7(b)(1) and 100.8(B)(1) would also be revised to include examples of activities that, dependent upon the circumstances, may be considered to indicate that an individual is no longer "testing the waters." The Commission welcomes suggestions of the factors that could be included in its regulations.

The second change in the proposed revisions would prohibit the use of funds in excess of the contribution limits or from sources prohibited under the Act to be used for "testing the waters" activities. Sections 100.7(b)(1, 100.8(b)(1), and 101.3 currently provide that funds received or expended for "testing the waters" become reportable contributions and expenditures if the individual becomes a candidate. However, the regulations do not expressly state whether the contribution limitations and prohibitions apply to receipts and disbursements during the "testing the waters" period.

In AO 1982–19, the Commission determined that the prohibitions, limitations, and requirements of the Act become applicable only when an individual becomes a candidate. The Commission thus concluded in that opinion that an individual could accept funds in excess of the contribution limits of 2 U.S.C. 441a(a) and funds from prohibited sources, such as corporations and labor organizations, for "testing the waters" activities. However, pursuant to section 101.3, the Commission required in AO 1982–19 that the individual repay or refund any excessive or prohibited contributions received during the "testing the waters" period within 10 days after becoming a candidate.

Concerns have been raised that the Commission's interpretation of the regulations in AO 1982–19 has increased the potential for circumvention of the prohibitions and limitations of the Act. the Commission's decision in AO 1982–19 has also resulted in the ironic situation that funds which are permissible when donated subsequently become illegal and must be refunded when the individual becomes a candidate. Therefore, the proposed rules would revise §§ 100.7(b)(1), 100.8(b)(1) and 101.3 to permit only funds permissible under the Act to be used for "testing the waters" activities.

The rules proposed today would also make two minor amendments to §§ 100.7(b)(1) and 100.8(b)(1). The proposed regulations would revise these sections to include a cross reference to the recordkeeping and reporting requirements of § 101.3. The proposed revisions would also clarify that each section provides an exemption solely to the definition of either "contribution" or "expenditure" under the Act.

In addition to comments on the proposed regulations, the Commission encourages comments on alternative ways to address the issues raised in this rulemaking and on whether the "testing the waters" concept should be retained in the regulations. For instance, the Commission is considering whether the objectives of the "testing the waters" exemptions would be better served by incorporating the candidate status threshold under 2 U.S.C. 431(2) and establishing a $5,000 limitation on funds received and payments made for "testing the waters" activities. Another alternative the Commission is considering is whether to regard receipts and disbursements for "testing the waters" to be contributions and expenditures subject to the requirements of the Act, but not to require reporting of such funds until the individual decided to become a candidate.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) Regulatory Flexibility Act

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the primary purpose of the regulation is to determine when an entity's reporting obligations begin. This does not impose any significant economic burden since the entities affected are already required to comply with the Act's recordkeeping requirements.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting requirements, Elections.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. It is proposed to revise 11 CFR 100.7(b)(1) to read as follows:

§ 100.7 Contributions (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(1)(i) Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone

calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(ii) This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. The following are factors that the Commission may consider in determining whether an individual's activities qualify under this exemption:

(A) The type of activities conducted by the individual;

(B) The extent to which the individual conducts the activities;

(C) the length of time over which the activities are conducted;

(D) The timing of the activities in relation to their proximity to the election or the individual's announcement of his or her candidacy; and

(E) The amount of money raised or spent for the activities.

(iii) Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

* * * * *

2. It is proposed to revise 11 CFR 100.8(b)(1) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(1)(i) Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(ii) This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. The following are factors that the Commission may consider in determining whether an individual's activities qualify under this exemption:

(A) The type of activities conducted by the individual;

(B) The extent to which the individual conducts the activities;

(C) The length of time over which the activities are conducted;

(D) The timing of the activities in relation to their proximity to the election or the individual's announcement of his or her candidacy; and

(E) The amount of money raised or spent for the activities.

(iii) Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to compaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

3. It is proposed to revise 11 CFR 101.3 to read as follows:

§ 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

When an individual becomes a candidate, all funds received or payments made in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or the individual's campaign prior to becoming a candidate.

Authority: 2 U.S.C. 431(8), 431(9), 432(e)(2), and 437d(8).

Dated: July 26, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84-20146 Filed 7-30-84; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Proposed Trade Regulation Rule Concerning Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Commission has conducted several comment and rebuttal periods as a part of the review proceeding ordered by the U.S. Court of Appeals for the Second Circuit in *Miller Motor Car* v. *FTC*, No. 81-4144 (2d Cir. 1983). After considering the rulemaking record, including comments submitted during the recent comment and rebuttal periods, the Commission has decided tentatively to adopt the Used Car Rule set out in Section C below. The proposed rule would require dealers to post a window sticker ("Buyers Guide") on used motor vehicles that they offer for sale to consumers.

The Commission also placed on the rulemaking record the results of a survey, conducted under contract to the Bureau of Consumer Protection, that gathered data concerning the experiences of buyers of used cars. The survey allows comparisons of the

experiences of buyers in Wisconsin, which requires dealers to inspect all cars and disclose the results, with buyers in states lacking such a requirement. A staff memorandum discussing the study, was also placed on the rulemaking record. The Federal Trade Commission is requesting technical comments on the Used Car Rule as tentatively adopted by the Commission,[1] and substantive comments on a survey of used car buyers and the implications of those data for the Commission's decision.

DATES: Comments will be accepted through August 30, 1984.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580. Submissions should be labeled "Sale of Used Motor Vehicles." Send requests for copies of the report to: "A Report on A National Survey of Private Buyers and Sellers of Used Automobiles", Public Reference, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 523-3911.

SUPPLEMENTARY INFORMATION:

Section A—Invitation to Comment

The Commission believes that the recent comment and rebuttal periods have provided interested persons a full opportunity to make submissions and presentations on all issues relevant to the tentatively adopted rule (48 FR 36098; 49 FR 1911, 7835 and 17517 dated Dec. 16, 1983; Jan. 16; Mar. 2 and Apr. 24, 1984 respectively). However, the Commission has decided, in its discretion, and pursuant to § 1.14(a) of its Rules of Practice, that it would benefit from additional written comments on technical issues concerning the tentatively adopted rule, and substantive comments on the implications of the Baseline Study for the rule.

Comments are sought on the format, wording, and readability of the window sticker. Comments identifying drafting errors are also sought. The Commission does not intend to seek rebuttal submissions on these issues. Comments on issues other than these technical and drafting issues will not be considered.

The window sticker would include the following components:

1. A warning that spoken promises are difficult to enforce, coupled with a suggestion to get all promises in writing and a statement advising the purchaser to keep the window sticker for reference after sale.

2. A prominent statement explaining what is meant by the term "as is".

3. A listing by the dealer of the warranties provided (if any), together with their terms.

4. Information respecting the availability and terms of any service contracts.

5. A suggestion that the consumer ask whether the car may be inspected by an independent mechanic.

6. An identification of the major mechanical and safety systems of the vehicle, including a list of some major defects that may occur in used motor vehicles.

The rule eliminates provisions requiring that dealers disclose known defects. In addition, the wording and prominence of the disclosures on the window sticker has been changed.

The Commission also seeks substantive comments concerning a 1982 report on the used car market, based on data that was developed from responses to a national telephone survey of private buyers and sellers of used automobiles. That survey was performed by a private contractor, the Bureau of Social Science Research, pursuant to a 1978 contract with the FTC's Bureau of Consumer Protection. The data for the survey was collected from October 1979 to February 1980. The survey was undertaken to provide baseline data that could be used, following promulgation of a rule, to evaluate the impact of the rule on the market for used motor vehicles. The survey allows comparisons of the experiences of buyers in Wisconsin, which requires dealers to inspect all cars and disclose the results, with buyers in states lacking such a requirement. A final report on the survey entitled "A Report on a National Survey of Private Buyers and Sellers of Used Automobiles" ("Baseline Study"), was submitted to the Bureau of Consumer Protection in September 1982, and was placed on the Commission's public record in December 1982. The Commission placed the study on the used car rulemaking record on July 9, 1984. A staff memorandum discussing the Baseline Study has also been placed on the rulemaking record.

The Commission seeks the public's views on the methodology of the Baseline Study and on the possible implications of the survey data for the rule. Written comments on technical issues concerning the proposed rule, and written comments concerning the Baseline Study will be accepted through August 30, 1984.

Following the close of the comment period, the Commission will determine whether further changes should be made in the proposed rule, including the window sticker.

Section B—Questions

Although the proposed rule (including the window sticker) is drafted in specific language, the Commission retains its authority to promulgate a final Rule incorporating alternative language, including alternatives suggested by the responses to these questions, consistent with the rulemaking record. Interested persons are urged to submit comments on the following questions.

Question 1: Does the proposed "Buyers Guide" provide information to consumers in a useful and understandable manner? What specific revisions in format or wording would improve its ability to do so?

Question 2: Are the dealer's obligations under the rule easy to understand? What specific revisions in format or wording would make the rule easier for dealers to understand?

Question 3: Are there any technical errors in the wording of the rule or "Buyers Guide"?

Question 4: Is the methodology of the Baseline Study sound?

Question 5: How do the data in the Baseline Study relate to the rule, as modified?

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

Section C

It is proposed to amend 16 CFR by adding a new Part 455—Used Motor Vehicle Trade Regulation Rule to read as follows:

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec.

455.1 General duties of a used vehicle dealer; definitions.
455.2 Consumer sales—window form.
455.3 Window form.
455.4 Contrary statements.
455.5 Spanish language sales.
455.6 State exemptions.
455.7 Severability.

Authority: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

§ 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when the dealer sells or offers for sale a used vehicle in or affecting commerce as

[1] Commissioners Pertschuk and Bailey dissenting.

"commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To fail to disclose, prior to sale, any material defect in the mechanical condition of the used vehicle known to the dealer;

(3) To represent that a used vehicle, or any component thereof, is free from material defects in mechanical condition at the time of sale unless the dealer has a reasonable basis for such representation at the time it is made;

(4) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle;

(5) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle;

(6) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty;

(7) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty.

(b) The Commission has adopted this Rule in order to prevent the deceptive acts or practices defined in paragraph (a) of this section. It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 445.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 445.2 through 455.5 of this part, the dealer does not violate this Rule.

(c) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Implied warranty" means an implied warranty arising under state law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that such contract is not regulated in your state as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by Section 455.2(a).

§ 445.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Buyers Guide" as required by this Rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Buyers Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 12 inches high by 7¼ inches wide in the type styles, sizes and format indicated.

BILLING CODE 6750-01-M

BUYERS GUIDE

28 pt Triumvirate Bold caps

2 pt Rule

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

10/12 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

VEHICLE MAKE _____ MODEL _____ YEAR _____ ID NUMBER _____

10 pt Baseline Rule

6 pt Triumvirate Bold caps

WARRANTIES FOR THIS VEHICLE:

10 pt Triumvirate Bold caps

2 pt Rule

☐ AS IS - NO WARRANTY

54 pt Box
42 pt Triumvirate Bold caps

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for repairs regardless of any oral statements about mechanical condition.

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

1 pt Rule

☐ WARRANTY

54 pt Box
42 pt Triumvirate Bold caps

☐ **FULL** ☐ **LIMITED WARRANTY. The dealer will pay _____% of the total repair bill for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

10/10 Triumvirate Bold c & lc 4½ picas indent on 2nd line

SYSTEMS COVERED: **DURATION:**

10 pt Triumvirate Bold caps

10 pt Baseline Rule

SERVICE CONTRACT. A service contract is available from _____ for $_____ extra. This service contract adds to the dealer's responsibilities under any warranty. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

10/10 Triumvirate Bold c & lc maximum line 42 picas

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

10/10 Triumvirate Bold caps flush left ragged right maximum line 42 picas

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

12 pt Triumvirate Bold lc
flush left ragged right
maximum line 42 picas

Below is a list of some major defects that may occur in used motor vehicles.

2 pt Rule

8/9 Triumvirate Bold c & lc
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluded normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

2 pt Rule

DEALER

10 pt Baseline Rule

6 pt Triumvirate Bold caps

ADDRESS

SEE FOR COMPLAINTS

2 pt Rule

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

10/12 Triumvirate Bold c & lc
maximum line 42 picas

BILLING CODE 6750-01-C

When filling out the form, follow the directions in paragraphs (b) through (f) of this section and Section 455.4 of this section.

(b) *Warranties*—(1) *No Implied Warranty—"As Is" /No Warranty.* (i) If you offer the vehicle without any implied warranty, *i.e.*, "as is," mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle "as is" or with implied warranties only but then sell it with a warranty, cross out the "As Is—No Warranty" or "Implied Warranties Only" disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your state law limits or prohibits "as is" sales of vehicles, that state law overrides this part and this rule does not give you the right to sell "as is." In such states, the heading "As Is—No Warranty" and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in states that permit "as is" sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of "As Is—No Warranty": [1]

Implied Warranties Only

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is "Full" or "Limited." [2] Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, "engine, transmission, differential"). You cannot use shorthand, such as "drive train" or "power train" for covered systems.

(iii) The duration (for example, "30 days or 1,000 miles, whichever occurs first").

(iv) The percentage of the repair cost paid by you (for example, "The dealer will pay 100% of the total repair bill" or "The dealer will pay 60% of the total repair bill").

(v) If the warranty does not cover parts and labor equally, you must disclose this. Delete the line from the form which reads "The dealer will pay ——% of the total repair bill." and substitute "The dealer will pay ——% of the labor and ——% of the parts." Fill in the percentage of the cost of parts and labor you will pay under the warranty.

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the "As Is—No Warranty" box or the "Implied Warranties Only" box, as appropriate.

(3) *Service Contracts.* If you make a service contract (other than a contract that is regulated in your state as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the "Full/Limited Warranty" disclosure and fill it in as applicable: [3]

Service Contract

A service contract is available from (contractor's name) for $—— extra. This service contract adds to the dealer's responsibilities under any warranty. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

(c) *Name and Address.* Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(d) *Make, Model, Model Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year, and Vehicle Identification Number (VIN) in the spaces provided.

(e) *Complaints.* In the space provided, put the name and telephone number of the person who should be contacted if any compliants arise after sale.

§ 455.3 Window form.

(a) *From Given to Buyer.* Give the buyer of a used vehicle sold by you the window form displayed under Section 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) *Incorporated into Contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales: [4]

[1] See § 455.5 for the Spanish version of this disclosure.

[2] A "Full" warranty is defined by the Federal Minimum Standards for Warranty set forth in section 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304 (1975). the Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate "Full" or "Limited" for such cars, cross out both designations, leaving only "Warranty."

[3] See § 455.5 for the Spanish version of this disclosure.

[4] Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1):

Garantías implícitas solamente

Este término significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparación cuando usted compra el vehículo o despues del momento de la venta. Pero, las "garantías implícitas" de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no fueron evidentes cuando usted compró el vehículo.

Use the following language for the "Service Contract" disclosure required by § 455.2(b)(3):

Contrato De Servicio. Puede obtenerse un contrato de servicio de——por la suma adicional de US $——. Este contrato de servicio aumenta las responsabilidades del vendedor en virtud de cualquier garantía. Si adquiere usted un contrato de servicio dentro del plazo de 90 días a partir del momento de la venta, las "garantías implícitas" de la ley estatal pueden darle derechos adicionales.

BILLING CODE 6750-01-M

GUIA DEL COMPRADOR

28 pt Triumvirate Bold caps

2 pt Rule

IMPORTANTE: Las promeses verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promeses por escrito. Conserve este formulario.

10/12 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

MARCA DEL VEHICULO | MODELO | AÑO | NUMERO DE IDENTIFICACION

10 pt Baseline Rule

6 pt Triumvirate Bold caps

GARANTIAS PARA ESTE VEHICULO:

10 pt Triumvirate Bold caps

2 pt Rule

☐ COMO ESTA - SIN GARANTIA

36 pt Box
32 pt Triumvirate Bold caps

USTED PAGARA TODOS LOS GASTOS DE CUALQUIER REPARACION QUE SEA NECESARIA. El vendedor no asume ninguna responsabiiidad por las reparaciones, sean cuales sean las declaraciones verbales que haya hecho acerca de las condiciones mecanicas del vehículo.

10/10 Triumvirate Bold c & lc maximum line 42 picas

1 pt Rule

☐ GARANTIA

36 pt Box
32 pt Triumvirate Bold caps

☐COMPLETA ☐LIMITADA. El vendedor pagará ____ % de la factura total de reparar los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pida al vendedo una copja del documento de garantía donde se explican detalladamente la cobertura de le garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

10/10 Triumvirate Bold c & lc 6½ picas indent on 2nd line

SISTEMAS CUBIERTOS POR LA GARANTIA: | **DURACION:**

10 pt Triumvirate Bold caps

10 pt Baseline Rule

CONTRATO DE SERVICIO. Puede obtenerse un contrato de servico de por la suma adicional de US $_____. Este contrato de servicio aumenta las responsabilidades del vendedor en virtud de cualquier garantía. Si adquiere usted un contracto de servicio dentro del plazo de 90 dias a partir del momento de la venta, las "garantías implícitas" de la ley estatal pueden darle derechos adicionales.

10/10 Triumvirate Bold c & lc maximum line 42 picas

INSPECCION PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECANICO PARA QUE INSPECCIONE EL AUTOMOVIL O LLEVAR EL AUTOMOVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

10/10 Triumvirate Bold caps maximum line 42 picas

VEASE EL DORSE DE ESTE FORMULARIO donde se proporciona información adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

12 pt Triumvirate Bold lc flush left ragged right maximum line 42 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehiculos usados.

2 pt Rule

8/9 Triumvirate Bold c & lc flush left ragged right maximum line 20 picas 1 em indent on 2nd line

Chasis y carrocería
Chasis-grietas, soldaduras correctivas u oxidado
Chasis dobiado o torcido

Motor
Fuga de aceite, excluyendo el escape normal
Bloque o tapa de recamara agrietados
Correas que faltan o no funcionan
Fallo o pistoneo
Emision excesiva de humo por el sistema de escape

Transmisión y eje de cardan
Nivel di liquido inadecuado o fuga, excluyendo filtración normal
Cubierta agrietada o dañada visible
Vibración o ruido anormal ocasion do por una transmisión o eje de cardan defectuoso
Cambio de marchas o funcionmiento inadecuado en cualquier marcha
Embrague manual patina o vibra

Diferencial
Nivel de liquido inadecuado o fuga excluyendo filtración normal
Cubierta agnetada o dañada visible
Ruido o vibración anormal ocasionado por diferencial defectuoso

Sistema de refrigeración
Fuga, incluido el radiador
Bomba de agua defectuosa

Sistema electrico
Fuga en las baterías
Alternador, generador, batería, o motor de arranque defectuosos

Sistema de combustible
Escape visible de combustible

Accesorios averiados
Indicadores o medidores del cuadro de instrumentos
Acondicionador de aire
Calefactor y descarchador

Sistema de frenos
Luz de advertencia de falla dañada
Pedal no firma bajo presión (Especif. del Dpto de Transp.)
Juego insuficiente en el pedal (Especif. del Dpto de Transp.)
No detiene el vehiculo en linea recta (Especif. del Dpto de Transp.)
Conductos dañados
Tambor o disco muy delgados (Especif. del fabricante)
Grosor de las bandas de los frenos menor de 1/32 de pulgada
Sistema de servofreno dañado o con escape
Partes estructurales o mecánicas danadas

Sistema de dirección
Juego excesivo en el volante (Especif. Dpto. de Transp.)
Juego en el varillaje en exceso de 1/4 pulgada
Engranaje del volante de dirección se agarrota
Ruedas delanteras mal alineadas (Especif. del Dpto. de Transp.)
Correas del sistema de servodirección agrietadas o flojas
Nival del liquido del sistema de serviodirección inadecuado

Sistema de suspensión
Sellos de conexión de rodamientos defectuosos
Piezas estructurales dobiadas o dañadas
Barra de estabilización desconectada
Resorte roto
Montura del amortiguador floja
Bujes de goma dañadas o ausentes
Estabilizador para curvas dañadas o ausente
Amortiguador tiene fuga o funciona defectuosamente

Llantas
Profundidad de la banda de rodamiento menor de 2/32 de pulgada
Diferentes tamanos de llanta
Danos visibles

Ruedas
Grietas visibles, danos o reparaciones
Pernos de montaje sueltos o ausentes

Sistema de Escape
Fuga

2 pt Rule

10 pt Baseline Rule

6 pt Triumvirate Bold caps

VENDEDOR

DIRECCION

VEASE PARA RECLAMACIONES

2 pt Rule

10/12 Triumvirate Bold c & lc maximum line 42 picas

IMPORTANTE: La informacion contenida en este formulario forma parte de todo contrato de compra de este vehiculo. Constituye una contravencion de la ley federal (16 C.F.R. 455) quitar este rotulo antes de la compra del vehiculo por el consumidor (salvo para conducir el automovil en calidad de prueba).

BILLING CODE 6750-01-C

§ 455.6 State exemptions.

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

(b) Applications for exemption under paragraph (a) of this section should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

§ 455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Issued: July 20, 1984.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-20145 Filed 7-30-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM83-41-000]

Rules of Discovery for Trial-Type Proceedings

Issued: July 26, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: In keeping with its overall goal to codify procedural regulations, the Federal Energy Regulatory Commission (Commission) proposes to add twelve rules to its Rules of Practice and Procedure to govern discovery in trial-type proceedings. The proposed rules would replace the Commission's four existing provisions with a comprehensive statement of discovery practice, including the scope of discovery, the methods for obtaining discovery, the procedures for limiting discovery, and the sanctions that may be imposed for failure to engage in discovery in good faith. By providing guidance on discovery, the proposed rules should help to expedite the Commission's trial-type proceedings.

DATE: Written comments on the proposed rule must be received by 4:30 p.m. on or before October 1, 1984.

ADDRESS: Written comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM83-41-000. An original and fourteen copies must be filed.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

The Federal Energy Regulatory Commission (Commission) proposes to amend its Rules of Practice and Procedure (18 CFR Part 385) to provide specific rules governing the conduct of discovery in trial-type proceedings. The proposed rules would address the scope of discovery, the types of discovery methods available, the procedures for obtaining or limiting discovery, and the sanctions that may be imposed for failure to participate in discovery.

The Commission's objective in proposing these rules is timely resolution of trial-type proceedings. Discovery that is conducted in an orderly and expeditious manner is essential to that goal. By facilitating hearing preparation, rules that encourage liberal discovery and the exchange of information among participants in regulatory proceedings will serve the public interest.

I. Background

In 1982, in response to the need to expedite proceedings and make procedural rules more understandable, the Commission updated major portions of its Rules of Practice and Procedure for trial-type Commission proceedings.[1]

[1] Revision of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Docket No. RM78-22-000, 47 FR 19014 (May 3, 1982) (Order No. 225).

At that time, the Commission reserved for discovery rules Subpart D of Part 385, the part of its regulations set aside for procedures governing trial-type proceedings.

The discovery process has developed as an active area in Commission litigation, even though discovery procedures are not fully set forth in the Commission's regulations. The need for adoption of comprehensive rules on discovery is nevertheless recognized by the Commission and commentators.[2] The Commission is one of the few agencies involved in trial-type proceedings without fully detailed discovery provisions.[3] While Part 385 does contain four provisions on discovery,[4] most of what occurs during the discovery phase of a proceeding is not set out in the Commission's rules. This illustrates both the informal nature of discovery in Commission proceedings and the discretion to guide and control the discovery process that presiding officers have historically exercised.

In the absence of rules governing the conduct of discovery, participants have generally based their requests for disclosure of data on Rules 26 through 37, the discovery rules in the Federal Rules of Civil Procedure ("federal rules"). Presiding officers in Commission proceedings, moreover, have issued rulings that largely reflect the spirit of these rules.

The Commission believes that its discovery rules should continue to reflect the spirit of the federal rules and should be drafted in light of actual Commission practice and experience. When appropriate, therefore, the proposed rules are patterned after Rules 26 through 37 of the federal rules. The proposed rules, however, are drafted to reflect deviations from the federal rules that are necessary to reflect the Commission's experience. In some cases, the draft rules codify established Commission procedures that have no counterpart in the federal rules.

By proposing general discovery rules, the commission intends to resolve issues that have resulted in disputes, thereby enabling participants in Commission proceedings to refer to the Commission's rules rather than federal court case precedent, which occasionally fails to afford precise guidance. The Commission, nevertheless, acknowledges the significant body of case law that has developed under the federal rules. The Commission believes that those precedents may be useful in resolving discovery disputes at the Commission, especially in the absence of Commission precedent. The rules it proposes here are not designed to anticipate and resolve every contingency; indeed, such rules would prove too rigid and complex.

II. General Approach of the Proposed Rule

These proposed rules would provide a comprehensive structure for discovery procedures in Subpart D of Part 385 of the Commission's regulations. Thorough discovery by all participants will help define, clarify, and narrow issues for trial. The proposed rules primarily seek to provide the procedural context within which the participants in any trial-type proceeding may exercise their right to obtain information from one another. The proposed rules are not designed to address every discovery situation that may conceivably arise. For claims of privilege, for example, the Commission would still expect that, under the rules as proposed, participants and decision-makers would look to federal case law for guidance in the absence of controlling Commission precedent. The Commission nevertheless proposes more specific procedures for those matters that have frequently presented themselves or for those matters that have posed particular difficulties and have required resolution by the Commission.

In general, the proposed rules presuppose that participants will engage in discovery among themselves, without resort to the presiding officer. Informal discovery has been the hallmark of discovery practice at the Commission, and the Commission sees no reason to change this practice. The proposed rules reserve to presiding officers authority to modify procedures and to prevent abuses of the discovery process. In this regard, the Commission considered providing for the appointment of a discovery judge to rule on discovery motions and to resolve discovery disputes. The proposed rules do not include such a provision. Specific comment is invited on whether a discovery judge would help expedite Commission proceedings.

The proposed rules attempt to treat all participants, including Commission staff, equally. The proposed rules would distinguish between staff and other participants only in three respects. First, a presiding officer would be required to

[2] Kissell and Roscher, *Availability and Use of Discovery at the Federal Energy Regulatory Commission: The Need for Modernization*, 2 Energy L. J. 79 (1981).

[3] *See, e.g.* 15 CFR Part 3, Subpart D (FTC); 47 CFR 1.311–§ 1.340 (FCC); 49 CFR Part 1114; Subpart B (ICC) (1983).

[4] Rule 504(b)(5) (duties and powers of presiding officers concerning discovery), Rule 604 (refusal to make admissions or stipulations), Rule 1905 (subpoenas), and Rule 1906 (depositions)

certify to the Commission an interlocutory appeal of any order that overrules a claim of privilege asserted by the Commission staff. This provision would ensure that the Commission, as the entity on whose behalf staff asserts privilege, will have an opportunity to determine whether it wishes to assert privilege before that privilege is waived through the release of material pursuant to the order of a presiding officer. Second, studies requested pursuant to the Commission's statutory authority, *i.e.*, Section 10 of the Natural Gas Act or Section 304 of the Federal Power Act, may only be sought by Commission staff and not by other participants. Third, Commission staff would not be liable for expenses or attorney's fees resulting from a failure to admit under proposed Rule 411.

III. Summary and Rationale of the Proposed Discovery Rules

The proposed rules and this discussion use a number of terms, such as "participant" and "presiding officer," which are defined in § 385.102 (Definitions). Those definitions apply here. Additionally, the proposed rules and this discussion adopt the convention in § 385.103 of referring to the rules by rule number.

A. Rule 401—Applicability

Rule 401 describes when the rules in Subpart D apply. The rules are intended to govern general prehearing discovery, in contrast to initial information-gathering associated with the submittal of various applications.

FOIA requests would be excepted from the rules because the Commission has separate regulations, in 18 CFR Part 388, that are applicable to these requests. Preliminary data requests would be excepted because their purpose is unrelated to discovery. These requests are made generally to ensure the adequacy of, or to cure deficiencies in, a rate, tariff, certificate, or license application or to enable the Commission staff to complete preliminary analyses on which the Commission will make a decision whether to set a matter for hearing.

B. Rule 403—Scope of Discovery

This proposed scope rule is modeled on Rule 26(b) of the federal rules and would permit liberal discovery of information in Commission proceedings. The free exchange of information narrows and defines issues and thereby helps to expedite litigation. The Commision believes that its decisions on matters affecting the public interest require a full and complete record. This kind of record can only be compiled in a proceeding if discovery is as unfettered as is consistent with fairness. A matter may generally be discovered if it is relevant to a proceeding or might reasonably be calculated to lead to the discovery of admissible evidence. The exception for privileged matter reflects the Commission's appreciation that certain information, however relevant, may not be discovered. Privileges are discussed in greater detail below.

C. Rule 404—General Provisions

The provisions in Rule 404 would reflect Rules 26 (d) through (g) of the federal rules with some exceptions.

Paragraph (a) lists two discovery methods, data requests and requests by Commission trial staff for performance of a study by a jurisdictional entity, that are used at the Commission to fulfill the special requirements of Commission business. The rules proposed in Subpart D both expressly authorize these practices and codify the procedures to govern them.

Discovery conferences under paragraph (b) are routinely called by presiding officers. The Commission has for some time believed that proceedings are likely to be more timely and focused if the participants and the presiding officer meet before a hearing to identify discovery issues, schedule discovery and attempt to anticipate and resolve disputes that might otherwise arise.

Paragraph (c) requires that those preparing responses to discovery identify themselves and certify that their responses are true and accurate. This will aid in the preparation of followup requests and emphasizes the Commission's determination that persons responding to discovery be fully aware of their responsibility to supply true and accurate information.

The proposed rule that would govern supplementation of discovery responses is written affirmatively, unlike Rule 26(e) of the federal rules, in order to stress that participants have an obligation to provide new or additional information.

D. Rule 405—Depositions

Rules 405 through 407 are intended to be a comprehensive statement of the Commission's deposition practice. Proposed Rule 405 discusses the general procedures involved in taking depositions.

The proposed rule does not require participants to apply to the presiding officer in order to take depositions. Under Proposed Rule 413, a person who does not intend to comply with discovery, such as a noticed deposition, may so notify the requesting participant.

The participant seeking discovery must then seek an order compelling discovery from the presiding officer. This process will give all participants a full and fair opportunity to be heard, should they object to a proposed deposition.

E. Rule 406—Use of Depositions

Rule 406(a) tracks Rule 32(b) of the federal rules in providing that objection to the receipt in evidence of a deposition or part thereof may be made on any ground that could be raised against the live testimony of the deponent. The Commission does not intend for depositions to become part of the record in proceedings unless an appropriate evidentiary basis for admitting them is established.

F. Rule 407—Depositions Before a Matter Is Set for Hearing or Pending Appeal

Under current Commission procedures, if any person, including the Commission staff, desires to perpetuate testimony, that person must obtain an order to do so from the Commission. The proposed rule, which is modeled on Rule 27 of the federal rules, would expressly recognize that depositions may, in unusual cases, be taken other than after a hearing has been ordered. Rule 407 would provide procedures that must be followed in order to obtain permission to depose someone in these instances. The rule would utilize the Motions Commissioner, designated under Rule 715, to rule on any application to take the deposition, and would specify what the application must contain. The proposed rule would authorize the Motions Commissioner to refer the matter to the Chief Administrative Law Judge if the taking of a deposition appears warranted.

G. Rule 408—Data Requests, Production of Documents or Things, Interrogatories and Performance of Studies

This rule would establish several of the procedural avenues by which a participant may obtain discovery: data requests, production of documents or things, interrogatores and the performance of studies.

Two methods, data requests and special studies, are unique to the Commission; the others are modeled on Rules 33 (interrogatories) and 34 (production of documents or things) of the federal rules. These forms of discovery are frequency used during the discovery phase of Commission proceedings. Under this rule, as in current practice, data requests could take the form of requests for information, including answers to questions, copies of documents, or compilations of information.

Special studies, which may be requested from jurisdictional entities with the prior approval of the presiding officer, can be requested only by the Commission or its staff. These studies may requre new information to be prepared solely to respond to the request.

While discovery requests would be served on all participants, under proposed Rule 408(b) responses would need to be served only on the requesting participant, unless otherwise ordered by the presiding officer.

H. Rule 409—Inspection of Documents and Other Property

The proposed rule would permit participants to move the presiding officer for orders requiring other participants to produce and permit inspection, copying, testing, or sampling of documents and tangible things or to permit entry upon designated property to inspect, measure, survey, or photograph the property or activity conducted thereon. The presiding officer could limit, restrict, or deny access if necessary to protect recognized privileges.

I. Rule 411—Admissions

Rule 411 would authorize a participant to serve on any other participant a written request to admit the truth of any matter within the scope of discovery, including the genuineness of any document. The rule conforms to Rule 36 of the federal rules and would replace Rule 604 in Part 385. That rule deals only with the consequences of refusing to admit.

This revision differs in several ways from Rule 604. First, Rule 604 now limits admissions to the genuineness of any document or the truth of a matter of fact. Proposed Rule 411 would expand the scope of admissions to encompass the truth of any opinion or fact or the application of law to the facts.

Second, Rule 604 contains no deadline by which a response to a request for admission must be made. The proposed rule would require an answer to a request in 20 days.

Third, the proposed rule would address a participant's failure to admit or deny. In this instance, a participant would not be permitted to base failure to admit or deny on the ground that the issue is one for hearing or that the participant lacks information, unless the participant demonstrates why available information is insufficient to allow a response. The current rule has no comparable provision.

Fourth, the rule would address the effect of an admission. An admission would establish a matter as true only for the proceeding in which the admission is sought.

Finally, the rule would allow the presiding officer to require a participant who has refused to make an admission to pay the reasonable expenses incurred by the participant that requested the admission in proving the truth of the matter. Under this rule such costs would not be imposed on the Commission or its staff.

The Commission believes that the proposed rule will encourage participants to admit the genuineness of documents and make admissions concerning uncontested matters, thus expediting the hearing process.

J. Rule 412—Subpoenas

Rule 412 would authorize the issuance of subpoenas to appear and testify and subpoenas to appear and produce documents.

The proposed rule would set out the procedures for service and return of service and would authorize the payment of fees for witnesses who are required to appear and testify or produce documents at a hearing.

The proposed rule on subpoenas would replace Rule 1905, which currently governs their issuance. The current rule contains no comparable list of acceptable methods of service. The proposed rule is designed to be clearer and more specific, as a means of minimizing the chance of defective and time-consuming procedures.

K. Rule 413—Objections to Discovery, Motions To Compel and Protective Orders

As proposed, this rule generally conforms to the procedures that presiding officers have developed to facilitate resolution of discovery disputes, and contains additional procedures designed to streamline discovery.

Under paragraph (a) of the proposed rule, a participant that does not intend to comply with a discovery request would be required to provide notice of this intent to the participant requesting discovery. The rule would require that the notice be accompanied by a schedule of items withheld, a statement of the character and subject matter of each item, and the specific grounds for withholding each item. This requirement would enable a participant seeking discovery to file a motion to compel discovery promptly, if the participant wishes to pursue the request further.

The Commission believes that requiring participants to give specific reasons for not responding to requests for discovery will serve three objectives. First, this requirement would force participants that do not comply with a request to examine their rationale for objecting to discovery, thereby discouraging unjustified failures to make discovery. Second, the requirement would assist the requesting participant in preparing a motion to compel that would include information sufficient for an informed decision by the presiding officer. Third, the requirement would prevent unnecessary delay in the proceeding. These objectives are consonant with the purpose of discovery generally and with the purpose of the Commission's procedural rules to expedite trial-type proceedings.

The presiding officer has the discretion under paragraph (b) of the proposed rule to issue an order denying or limiting discovery to prevent undue annoyance or oppression, undue delay, or to preserve the privilege of any participant. This would comport with the federal rules and ensure both that participants are protected from unduly burdensome discovery and that the privileges of all participants are protected.

Paragraph (c) of the proposed rule relies on the general proposition that, in the absence of controlling Commission precedent, questions of privilege should be decided by reference to federal law, with due regard for the Commission's need to obtain information to perform its regulatory responsibilities.

Paragraph (d)(3) would establish a procedure for dealing with privileges of the Commission. It would require that the presiding officer certify to the Commission any decision to deny a claim of privilege asserted on behalf of the Commission by its staff, thus giving the Commission final authority to review decisions that may affect or impede its own operations or regulatory responsibilities.

L. Rule 414—Sanctions

Proposed Rule 414 outlines the sanctions that presiding officers or the Commission may impose on a participant that fails to follow the discovery rules or an order compelling discovery. These sanctions include dismissal of the proceeding, preclusion of the disobedient participant from the proceeding, or the institution of court action to compel compliance. Presiding officers could order that one or more matters be taken as established, preclude participants from supporting or opposing the introduction of evidence on an issue, strike all or any part of a pleading or stay a proceeding. These sanctions are modeled on those found in the federal rules.

IV. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR 1320.12 (1983), require that OMB approve certain information collection requirements imposed by an agency. These proposed rules to govern discovery in trial-type proceedings are not information collection requirements within the meaning of the PRA and OMB's regulations and are not, therefore, subject to OMB review or approval.

V. Regulatory Flexibility Act Statement

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 551–557, to publish a notice of proposed rulemaking, it is also required by section 3 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies pursuant to section 3 of the RFA, 5 U.S.C. 605(b), that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect regulated small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities subject to agency rules.

The Commission believes that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities for several reasons. First, although the rulemaking proposes to add twelve rules to the Commission's procedural regulations in Part 385 to govern discovery in trial-type proceedings, these rules, in large part, codify the procedures currently followed by all participants, large and small, in Commission proceedings. The rules, therefore, impose no new compliance burden on small entities.

Second, the rules are drafted to afford presiding officers ample flexibility to adjust discovery procedures to prevent the undue burden or expense that might otherwise discourage participation by a small entity. Third, the Commission believes that one set of rules to govern all participants will promote fairness and open discovery in its proceedings.

Accordingly, the Commission certifies pursuant to section 3 of the RFA that this rule would not, if promulgated, have a significant economic effect on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments, data, views and other information concerning the matter set out in this notice. An original and 14 copies of such comments should be filed with the Commission by 4:30 p.m. on October 1, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should reference Docket No. RM83–41–000.

All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 385

Administrative practice and procedures.

In consideration of the foregoing, the Commission proposes to amend Part 385 of Title 18, Chapter I, Code of Federal Regulations as set forth below.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 reads as follows:

Authority: Administrative Procedure Act, 5 U.S.C. 551–557; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Exec. Order No. 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 717–717z, *as amended;* Natural Gas Policy Act, 15 U.S.C. 3301–3432; Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Interstate Commerce Act, 49 U.S.C. 1, *et seq.*

2. Part 385 is amended in the Table of Contents by adding a new Subpart D, to read as follows:

* * * * *

Subpart D—Discovery, Depositions, and Subpoenas

Sec.

385.401 Applicability (Rule 401).
385.402 [Reserved]
385.403 Scope of discovery (Rule 403).
385.404 General provisions (Rule 404).
385.405 Depositions (Rule 405).
385.406 Use of depositions (Rule 406).
385.407 Depositions before a matter has been set for hearing or depending appeal (Rule 407).

Sec.

385.408 Data requests, production of documents or things, interrogatories, and performance of studies (Rule 408).
385.409 Inspection of documents and other property (Rule 409).
385.410 [Reserved]
385.411 Admissions (Rule 411).
385.412 Subpoenas (Rule 412).
385.413 Objections to discovery, motions to compel, and protective orders (Rule 413).
385.414 Sanctions (Rule 414).

* * * * *

3. Part 385 is amended by adding a new Subpart D (§§ 385.401–385.414), to read as follows:

Subpart D—Discovery, Depositions and Subpoenas

§ 385.401 Applicability (Rule 401).

(a) *General rule.* Except as provided in paragraph (b) of this section, this subpart applies to discovery in proceedings set for hearing under Subpart E of this part, depositions and subpoenas in proceedings before the Commission, and to such other proceedings as the Commission may order.

(b) *Exceptions.* Unless otherwise ordered by the Commission, this subpart does not apply to:

(1) Requests for information under the Freedom of Information Act (5 U.S.C. 552), governed by 18 CFR Part 388; or

(2) Requests by the Commission or its staff to obtain information, reports, or data under a statute which entitles the Commission to obtain information, reports, or data from a person who is subject to the Commission's regulatory jurisdiction.

§ 385.402 [Reserved]

§ 385.403 Scope of discovery (Rule 403).

Unless otherwise ordered by the presiding officer in accordance with Rule 413(b), participants may obtain discovery of any matter, not privileged, that is relevant to the merits of the proceeding or that might reasonably be calculated to lead to the discovery of admissible evidence, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having any knowledge of any discoverable matter.

§ 385.404. General provisions (Rule 404).

(a) *Discovery methods.* Participants may obtain discovery by the following methods: data requests, depositions by oral examination, requests for admission, requests for production of documents or things, written interrogatories, requests by Commission trial staff for performance of a study by a jurisdictional entity, and requests for inspection.

(b) *Discovery conferences.* The presiding officer may direct the participants in a proceeding to appear for one or more conferences, either separately or as part of another prehearing conference in the proceeding, for the purpose of scheduling discovery, identifying discovery issues, and resolving discovery disputes.

(c) *Identification and certification of preparer.* Each response to discovery under this subpart must identify the preparer and contain the preparer's signed certification that the response is true and accurate to the best of his knowledge, information, and belief formed after a reasonable inquiry.

(d) *Supplementation of responses.* A participant that has responded to a request for discovery with a response that was complete when made is under a continuing duty to supplement that response to include information later acquired.

§ 385.405 Depositions (Rule 405).

(a) *In general.* (1) Attendance of a participant for a deposition by oral examination may be secured by a notice of intent to take the participant's deposition. Attendance of a non-party for a deposition by oral examination may be secured by subpoena, in accordance with Rule 412, together with a notice of intent to take the non-party deponent's deposition.

The notice or subpoena shall:

(i) Be filed and served, with the original being served on each person whose deposition is sought;

(ii) State the time and place at which the deposition will be taken, the name and address of each person to be examined, and the subject matter of the deposition;

(iii) If known at the time that the deposition is noticed that its purpose is to preserve testimony, state that the deponent will be unable to testify at the hearing.

(2) A participant may, in a notice or subpoena, name as the deponent a public or private corporation, a partnership or association, or governmental agency, and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

(b) *Taking of deposition.* (1) Each deponent shall be sworn. All participants have the right to examine and cross-examine the deponent. The deposition shall be transcribed verbatim.

(2) All objections made during the examination shall be noted by the officer taking the deposition. After an objection is noted, the deponent shall answer the question, unless the presiding officer rules otherwise or a claim of privilege is asserted.

(c) *Submission to deponent.* The transcription of the deposition shall be submitted to the deponent for examination and shall be read by him unless examination and reading are waived by the deponent. Any changes in form or substance that the deponent desires to make shall be entered on the deposition transcript by the officer with a statement of the reasons given by the witness for making the changes. The deposition shall then be signed by the deponent, unless the participants by stipulation waive the signing or the deponent cannot or will not sign. If the deposition is not signed by the deponent within 30 days of its submission, the officer shall sign it and state on the record the fact of the waiver or non-signature by the deponent together with the reason, if any, given for a deponent's refusal to sign. The deposition may then be used as though signed unless the presiding officer, on motion, holds otherwise.

(d) *Certification and copies.* (1) The officer shall certify on the transcript of the deposition that the deponent was sworn and the deposition transcript is a true record of the testimony given by the deponent. The officer shall furnish the participant conducting the deposition with a copy of the transcript. The participant shall file with the Commission the deposition endorsed with title, date of deposition, and the docket number and marked "Deposition of [here insert name of deponent]," together with one copy.

(2) Copies of the transcript of a deposition may be purchased from the reporting service that made the transcription, subject to protections established by the presiding officer.

§ 385.406 Use of depositions (Rule 406).

(a) *In general.* A deposition, or part thereof, does not constitute a part of the record for decision in a proceeding unless it is received in evidence by the Commission or presiding officer. At the hearing, a participant may object to receipt in evidence of a deposition or

part thereof upon any ground which would warrant exclusion of the testimony of the deponent if the deponent were present and testifying.

(b) *Effect of errors and irregularities in depositions.* (1) All errors and irregularities are waived as to notice, unless written objection is promptly served on the participant giving the notice.

(2) Objection to the taking of a deposition because of disqualification of the officer before whom it is to be taken is waived, unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence.

(3) Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection might have been obviated or removed if presented at that time.

(4) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of participants, and errors of any kind that might be obviated, removed, or cured if presented at the deposition, are waived, unless objection thereto is made at the taking of the deposition.

(5) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, endorsed, filed, or otherwise dealt with by the officer are waived, unless made with reasonable promptness after the defect is, or with due diligence might have been, ascertained.

§ 385.407 Depositions before a matter is set for hearing or pending appeal (Rule 407).

Before a matter is set for hearing or pending judicial appeal, any person who desires to perpetuate testimony regarding any matter that may be cognizable by the Commission may file an application therefor with the Motions Commissioner. The applicant shall serve the application on the proposed deponent and anyone expected to be a participant. The Motions Commissioner may require service of the application by publication or otherwise. The application must show: that the applicant expects to be a participant in a proceeding before the Commission that is not presently before the Commission; the subject matter of the expected proceeding and the applicant's interest therein; the facts the applicant would seek to establish by the proposed testimony and the reasons for desiring to perpetuate it; the names and addresses of the person to be examined and the expected substance of the testimony to be elicited; and that there is reason to believe that the testimony will not otherwise be available for presentation at hearing.

§ 385.408 Data requests, production of documents or things, interrogatories, and performance of studies (Rule 408).

(a) *Availability.* Any participant may serve upon any other participant written requests to supply information, responses to interrogatories, or copies of documents. With the prior approval of the presiding officer, Commission trial staff may submit to a jurisdictional entity that is a party in the proceeding requests for the performance of a study. A copy of the requests shall be served upon the presiding officer and upon all other participants to the proceeding. The requests shall identify with specificity the information or material sought and shall specify the time within which the matter sought shall be furnished, which time shall not be more than 30 days from the date the requests are served; however, the presiding officer may for good cause modify the time as to all or any of the requests.

(b) *Procedures.* Each request shall be answered separately and fully in writing and shall be served on the requesting participants and Commission trial staff. If the matter sought is not furnished, the grounds for the failure to furnish it shall be set forth with particularity and served within the time limit specified for furnishing it. Unless the presiding officer otherwise directs, a copy of the responses need not be served upon the other participants or furnished to the presiding officer.

§ 385.409 Inspection of documents and other property (Rule 409).

(a) Availability. Upon motion by a participant, the presiding officer may order any other participant to:

(1) Produce any permit inspection and copying of any designated documents (including writings, drawings, graphs, charts, photographs, sound recordings, computer tapes or other compilations of data from which information can be obtained) that are not privileged and that are in the possession, custody, or control of the participant to whom the order is directed;

(2) Produce and permit inspection, copying or photographing, testing, or sampling of any tangible thing that is not privileged and that is in the possession, custody, or control of the participant to whom the order is directed; and

(3) Permit entry upon or into designated land, buildings, or other property in the possession, custody, or control of the participant to whom the order is directed for the purpose of inspecting, measuring, surveying, or photographing the property of any activity or operation that is not privileged and that is conducted in or upon the property.

(b) *Procedures.* A motion under paragraph (a) of this section must describe with reasonable particularity the items or premises to which access is sought. The motion must also specify a reasonable time, place, and manner of making the inspection.

§ 385.410 [Reserved]

§ 385.411 Admissions (Rule 411).

(a) *General rule.* A participant may serve upon any other participant a written request for the admission of the truth of any relevant matter set forth in the request that relates to statements or opinions of fact or the application of law to the facts, including the genuineness of any document described in the request. A legible copy of the document shall be attached to the request unless it has previously been furnished, is in the possession of the recipient of the request, or is readily available for inspection and copying. The truth of the matters specified in the request and the genuineness of the documents described therein are deemed admitted unless, within a period designated in the request, not more than 20 days after it is served, the recipient participant serves upon the requesting participant a written answer or objection addressed to the contents of the request. An objection shall state the reasons for objection with particularity. An answer shall specifically admit or deny the truth of the matters set forth in the request or set forth in detail the reasons why the answering participant cannot truthfully admit or deny some or all those matters. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a participant qualify his answer or deny only a part of the matter on which an admission is requested, the participant shall specify so much of it as is true and qualify or deny the remainder.

(b) *Effect of admission.* An admission made by a participant under this section is for the purpose of the pending proceeding only, is not an admission by that participant for any other purpose, and may not be used against that participant in any other proceeding.

(c) *Refusal to admit.* If a participant refuses to admit the truth of a matter or

the genuineness of a document under this section and the participant who requested the admission thereafter proves the truth of the matter or the genuineness of the document, the participant who requested the admission may apply to the presiding officer for an order requiring the other participant to pay the reasonable expenses, including reasonable attorneys' fees, incurred in making the proof. The presiding officer shall issue the order upon a finding that there was no good reason for the refusal to admit and that the admission sought was of substantial importance. The presiding officer's order may be immediately appealed to the Commission. If a participant refuses to comply with an order of the presiding officer under this paragraph, the Commission or the presiding officer may strike all or a part of the participant's pleadings or limit or deny further participation by the participant. In addition, the remedies provided in Rule 414 are available in case of a violation of this section. However, the rules in this paragraph do not authorize the imposition of liability for expenses or attorneys' fees upon the Commission or its staff.

§ 385.412 Subpoenas (Rule 412).

(a) *Issuance.* On motion, the presiding officer may issue a subpoena for the attendance of a witness or for the production of documents.

(b) *Service and return.* a subpoena issued under this section shall be served by personal service, substituted service, or registered mail. If personal service is made by anyone other than a United States marshal or deputy thereof, return shall be accompanied by an affidavit stating the time and manner of service.

(c) *Fees.* Fees are to be paid to subpoenaed persons in accordance with Rule 510(e).

§ 385.413 Objections to discovery, motions to compel, and protective orders (Rule 413).

(a) *Notice of objection.* (1) Any participant who does not intend to comply with a discovery request shall so notify the participant seeking discovery before the date the discovery is due. The objecting participant shall provide the participant seeking discovery with a schedule of items withheld and a statement of:

(i) The character and specific subject matter of each item; and

(ii) The specific grounds for claiming that each item should be protected.

(b) *Availability.* The presiding officer may issue an order to deny or limit discovery or restrict public disclosure of discoverable matter:

(1) To protect a participant or other person from undue annoyance or oppression;

(2) To prevent undue delay in the proceeding; or

(3) To preserve the privilege of any participant, person, or governmental agency.

(c) *Motions to compel.* A participant seeking discovery may file a motion to compel discovery.

(d) *Privilege.* (1) In the absence of controlling Commission precedent, privileges shall be determined in accordance with federal law, with due consideration accorded the needs of the Commission to obtain information necessary to discharge its regulatory responsibilities.

(2) No protective order or order to quash a subpoena on the ground of privilege shall issue absent an express finding by the presiding officer: that the claimed privilege is applicable, and, in the case of a qualified privilege, that the participant seeking discovery or enforcement of a subpoena has not established why the materials should be disclosed.

(3) Privileges of the Commission are to be governed by the following procedures:

(i) If discovery under this subpart would require the production of information, documents, or other matter that might fall within a privilege of the Commission, the Commission trial staff shall identify the matters or individuals and the privilege and so inform the presiding officer and the other parties.

(ii) If the presiding officer determines that the privilege is applicable, then the information, documents, or other matter shall not be produced. If the presiding officer determines that no privilege is applicable, the presiding officer will certify the matter to the Commission in accordance with Rule 714.

§ 385.414 Sanctions (Rule 414).

(a) *Application for relief.* A participant may apply to the presiding officer for an order compelling discovery if:

(1) A participant upon whom a data request or interrogatory has been served or made under this subpart has failed or refused to make a full, complete, and accurate response to the same;

(2) A person named in a notice of intent to take a deposition has failed or refused to appear for the deposition or an organization named has failed or refused to designate one or more persons to testify on its behalf on the matters on which examination was sought, or a deponent has failed or refused to answer fully, completely, and accurately a question propounded, or to subscribe the transcript of his testimony;

(3) A participant upon whom a request for admissions has been served has failed or refused to respond to the request in accordance with Rule 411; or

(4) A participant upon whom an order to produce or permit inspection or permit entry has been served has failed or refused to comply with that order.

(b) *Disobedience of order compelling discovery.* If a participant or any other person disobeys an order compelling discovery, the presiding officer may, after notice to the participant or person and the opportunity to be heard, take one or more of the following actions:

(1) Certify the matter to the Commission with a recommendation for dismissal or termination of the proceeding or the right of the participant to participate in the proceeding, institution of civil litigation, or any other sanction that is available to the Commission by law;

(2) Order that one or more matters to which the discovery related shall be regarded as established for the purposes of the proceeding in accordance with the position of the participant obtaining the order;

(3) Preclude the disobedient participant from supporting or opposing designated positions or introducing designated matters in evidence;

(4) Strike out all or part of a pleading by the disobedient participant or stay the proceeding or a phase of the proceeding until the order is obeyed. However, the presiding officer may not dismiss or otherwise terminate the proceeding.

(c) *Disobedience by representative of a participant.* If the person disobeying an order compelling discovery is an agent, officer, employee, attorney, partner, or director of a participant the presiding officer may impose the sanctions prescribed in paragraph (b) upon that participant.

4. In § 385.504, paragraph (b)(5) is revised to read as follows:

§ 385.504 Duties and powers of presiding officers (Rule 504).

* * * * *

(b) * * *

(5) exercise powers under Subpart D;

* * * * *

§ 385.604 [Removed]

5. Section 385.604 is removed.

§ 385.1905 [Removed]

6. Section 385.1905 is removed.

§ 385.1906 [Removed]

7. Section 385.1906 is removed.

[FR Doc. 84-20158 Filed 7-30-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Proposed Customs Regulations Amendments Relating to Reporting Requirements for Aircraft Arriving in the United States

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

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to extend to certain commercial aircraft, the reporting requirements currently applicable to private aircraft arriving from areas south of the United States. Current regulations provide specifics regarding the requirements for reporting arrival, and include a list of designated airports at various border and coastline points at which designated aircraft must land. This notice merely proposes to expand coverage of existing requirements to include certain commercial aircraft.

The proposed amendment is necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand the effectiveness of drug smuggling enforcement. Customs has found that because commercial aircraft are exempt from current reporting requirements, aircraft operators are able to claim to be on a commercial flight and thus bypass the necessity to report and land. This proposal seeks to remedy that situation.

DATE: Comments must be received before October 1, 1984.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Galen G. Garlick, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5607).

SUPPLEMENTARY INFORMATION:

Background

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the United States market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users, and the major increases in volumes of illegal drug importations in the United States are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures.

The smuggler organization has solidified a dominant position in the United States through the penetration of strategic points in the economy. Countries to the south of the United States are major sources of illegal drugs destined for the United States. Smuggling by air is the preferred mode of transportation for low-volume, high cost narcotics. A Stanford Research Institute Study indicates the magnitude of the air smuggling threat at approximately 6,700 flights, annually. Although recent air interdiction activities in the southeastern United States have resulted in many arrests and seizures, and end to the present situation of drug abuse in the United States is not in sight.

In order to address this national problem, it is necessary to take action to expand the effectiveness of smuggling enforcement. In 1975, the Customs Regulations were amended by adding a new section 6.14 (19 CFR 6.14), to provide for a notice of intended arrival for private aircraft arriving in the United States via the United States/Mexican border. Section 6.14 further provided that such private aircraft land at any one of 14 designated airports along the United States/Mexican border.

Because of the magnitude of the drug problem, and in direct response to Executive and Congressional directives, by an interim regulation published as T.D. 82-52 in the **Federal Register** on March 24, 1982 (47 FR 12620), the notice requirements were extended to private aircraft arriving in the United States via the Gulf of Mexico, Pacific and Atlantic Coasts. These interim regulations were adopted as a final rule by publication of T.D. 83-192 in the **Federal Register** on September 15, 1983 (48 FR 41381).

Because the existing regulations only apply to private aircraft and commercial aircraft are exempt from the reporting requirements, aircraft operators are able to capitalize on this technically to legally bypass the reporting requirements by claiming to be on a commercial flight. To prevent aircraft operators from avoiding the reporting and landing requirements, and thus possibly engaging in drug smuggling, it is now believed that these requirements should be made applicable to certain commercial aircraft in addition to all private aircraft.

List of Subjects in 19 CFR Part 6

Air carriers, Air transportation, Aircraft; Airports.

Proposed Regulations Amendments

It is proposed to amend Part 6, Customs Regulations (19 CFR Part 6), in the following manner.

PART 6—AIR COMMERCE REGULATIONS

It is proposed to amend section 6.14 by revising paragraph (e) to read as follows:

§ 6.14 Civil aircraft arriving from areas south of the United States.

* * * * *

(e) *Private aircraft defined.* For the purpose of this section, "private aircraft" means all aircraft except public aircraft and those aircraft operated on a regularly published schedule by carriers certified by the U.S. government as domestic air carriers, flag air carriers, and supplemental air carriers, and those air carrier aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 14 CFR Part 121).

Authority

This proposal is made under the authority of R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624; 49 U.S.C. 1509).

Comments

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

Executive Order 12291

This proposal is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

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

Drafting Information

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

William von Raab,

Commissioner of Customs.

Approved: June 8, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-20149 Filed 7-30-84 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 82N-0389]

Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending by 45 days the period for submitting comments on its proposal that would amend the regulation establishing common or usual names for diluted fruit or vegetable juice beverages. FDA is granting this extension based on requests for the extension of the comment period.

DATE: Comments by September 14, 1984.

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

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION: In the **Federal Register**, of June 1, 1984 (49 FR 22831), FDA proposed to amend the regulation establishing common or usual names for diluted fruit or vegetable juice beverages to exempt cranberry juice products from percent ingredient labeling requirements. The proposal would also allow manufacturers of other diluted high-acid juice beverages to request a similar exemption for their products. Additionally, FDA proposed to eliminate the requirement for the percentage of individual juices in diluted multiple-juice beverages. FDA said it would retain the requirement that the total percentage of juice in multiple-juice beverages be declared in the labeling.

In that same issue of the **Federal Register** FDA proposed to extend the effective date of 21 CFR 102.33 for affected products until the completion of this rulemaking (49 FR 22834). In the **Federal Register** of June 27, 1984 (49 FR 36541), FDA published a final rule extending the effective date of 21 CFR 102.33.

Requests were submitted on behalf of the Del Monte Corp. and Castle and Cooke seeking a 90-day extension for the proposed rulemaking. The Del Monte request for an extension was sought to allow the firm more time to prepare complete comments before the July 31, 1984 deadline. The Castle and Cooke requested more time to accumulate and analyze data it expects to include in its comments.

The agency believes that extending the comment period an additional 45 days will provide sufficient time for interested persons to prepare comments on this proposed rule. Therefore, interested persons may, on or before September 14, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1984

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-20233 Filed 7-27-84; 10:56 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-97-79]

Consolidated Return Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to consolidated returns. The proposed regulations reflect changes in applicable law made by various Acts and also make technical changes in existing regulations. The regulations would provide guidance to affiliated groups that file consolidated returns so that the tax liability of any group may be clearly reflected.

DATE: Written comments and requests for a public hearing must be delivered or mailed by October 1, 1984. In general, the amendments are proposed to be effective for taxable years for which the due date (without extensions) for filing returns is after [the filing date of the T.D.]———.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-97-79), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Bennett C. Steinhauer of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention CC:LR:T (202-566-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1(a) of Pub. L. 89-384 (80 Stat. 99); section 201 (a), 301(a), 301(b) and 431(b) of the Tax Reform Act of 1969 ("TRA' 69") (83 Stat. 549, 580, 585, and 619); section 1(a) of Pub. L. 91-693 (84 Stat. 2077); section 601(b) of the Revenue Act of 1971 ("Rev. Act '71") (85 Stat. 553); sections 301(a), 301(b), 302(a), and 302(b) of the Tax Reduction Act of 1975 ("TRA 175") (89 Stat. 36, 37, 40, and 43); sections 802, 806, 1052(b), 1701(b), 1703, 1901(a)(29), 1901(a)(145), and 2107(g) of the Tax Reform Act of 1976 ("TRA '76") (90 Stat. 1580, 1598, 1648, 1759, 1761,

1769, 1788, and 1904); sections 301(b)(1), 312(a), 316(b), and 703(p) of the Revenue Act of 1978 ("Rev. Act '78") (92 Stat. 2820, 2824, 2829, and 2943); and to make other technical changes. The source of each proposed change in the regulations is cited in the table at the end of this preamble. The amendments are to be issued under the authority contained in sections 1502 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 367 and 917; 26 U.S.C. 1502 and 7805).

Effective Dates

All of the proposed substantive changes would apply to taxable years for which the due date (without extensions) for filing returns is affect [the filing date of the T.D.]———. However, certain provisions that are merely declarative of existing law or that merely clarify existing regulations apply retroactively to the effective date of the statute or existing regulations.

Corporate Acquisitions

The proposed amendments contain rules that apply when one member of a group acquires the assets of another member in a transaction to which section 381(a) applies. The rules apply to carryovers of investment credits, WIN credits, and net operating and net capital losses. Under the rules, if one member acquires the assets of another member during a consolidated return year, the acquiring member's ability to carry over investment credits, etc. will not be impaired. To avoid unnecessary repetition of the indentical rules, they are fully stated only in § 1.1502–21 (relating to the consolidated net operating loss deduction). For other losses and credits, cross references are made to § 1.1502–21.

Consolidated Investment Credit

Section 1.1502–3 is amended to take into account the changes made in the investment credit by the TRA '75 and the TRA '76. The TRA '76 modified the order in which investment credit carryovers are absorbed. Prior to the Act, a taxpayer used any investment credit earned during the taxable year to offset that year's tax liability before considering any investment credit carryovers from a prior year. Effective for taxable years beginning after December 31, 1975, however, carryovers from a prior year are used before using investment credit earned in the current taxable year. The proposed regulations reflect the change. The proposed regulations also provide that the elections relating to the additional TRASOP credit and qualified progress expenditures may be made by each member separately or by the group as a whole. If, however, a member that has made the election transfers progress expenditure property to a member that has not made the election, before the property is placed in service, the proposed regulations provide for recapture of any credit claimed. The rule prevents a corporation from obtaining the benefit of the election with respect to one property without making a binding election for the future.

The proposed regulations clarify the treatment of carryovers of tax attributes in the case of an intragroup asset acquisition to which section 381(a) applies. The new rules apply to carryovers of investment credits, foreign taxes, WIN credits, and net operating and net capital losses. The rules are stated fully in § 1.1502–21 (relating to the consolidated net operating loss deduction). To avoid unnecessary repetition of the identical rules for other carryovers, cross references are made to §1.1502–21.

Consolidated WIN Credit

A new § 1.1502–8 provides rules for the WIN credit. These rules are similar to the rules of the investment credit, which are incorporated by reference to § 1.1502–3. Although the credit terminates for any amount paid or incurred in any taxable year beginning after December 31, 1981, the rules provide guidance with respect to carryovers from years prior to termination. See sections 50A(b) and 50B(a)(5).

Consolidated Net Operating Loss

Section § 1.1502–21(b)(2)(ii) provides rules for the extended carryback period for the period for the portion of a consolidated net operating loss attributable to a financial institution. Under section 172(b)(1)(F), as enacted by section 4331(b) of the Tax Reform Act of 1969, a financial institution is permitted to carry back net operating losses for 10 years instead of the 3 years generally permitted other taxpayers. The 7-year extension of the carryback period was enacted "to provide an extra margin of safety to protect against the possibility of unusually large bad-debt losses" (H.R. Rep. No. 91–413, 91st Cong., 1st Sess. 121 (1969), 1969–3 C.B. 276). The extra margin of safety was intended to alleviate some of the effect of the cutback of what Congress perceived to be the unduly generous bad debt reserve deductions previously accorded financial institutions.

The question arose as to whether the portion of a consolidated net operating loss attributable to a financial institution should be allowed to offset consolidated taxable income attributable to any member during the 7-year extension of the carryback period, or whether the income against which the loss could be used during the extended period should be limited to the income of members that were financial institutions during the consolidated return year to which the loss is carried back. The proposed regulations does not provide for any special limitation. It was concluded that the limitation would not be appropriate because the extended carryback period was enacted as a substitute for other deductions that would have been allowed in the consolidated return to which the loss is carried (*i.e.*, the liberal bad debt reserve provisions that were cut back) and which could have been used to offset consolidated taxable income generated by any member of the group in that year. In addition, the rule is consistent with the treatment, under § 1.1502–21(b)(2), of the portion of a consolidated net operating loss attributable to other types of corporations to which special carryback or carryover rules apply. Such losses may be used to offset income generated by any member in the year to which the loss is carried.

Proposed regulations relating to carryovers of net operating losses in a transaction between members of an affiliated group to which section 381 applies are also added. The regulations resolve a conflict among the commentators regarding the taxable years to which an NOL may be carried over if a member of a group is merged into another member. The regulations provide generally, that the consolidated return year in which the merger occurs will be considered as only 1 taxable year for purposes of determining the years to which an NOL may be carried. The reasons for not counting an additional year in the case in which one member acquired the assets and attributes of another member in a transaction to which section 381 applies is that the transferor's consolidated net operating loss carryovers can generally offset income of the transferee whether or not the transaction occurs. However, if absorption of the NOL would have been subject to the separate return limitation year rules or consolidated return change of ownership rules, the short taxable year of the transferor will be counted as an additional taxable year as is generally required under section 381.

In addition, new § 1.1502–21(g) is added to provide for the election to relinquish carrybacks of net operating losses under section 172(b)(3)(C). Under the proposed regulations, the group may only elect to relinquish the carryback of

the entire consolidated net operating loss regardless of whether a portion of the loss would be carried back to a separate return year of a member. It has been suggested that the election be allowed separately for a member if its portion of a consolidated net operating loss would be carried back to a separate return under § 1.1502–79(a). Such a rule, however, would contravene the statutory language requiring the election to be made for the entire carryback period. Furthermore, although the consolidated net operating loss is apportioned to individual members for purposes of carry backs to separate return years, the apportioned amounts are not separate NOLs of each member. In addition, although a separate election would have an effect upon a prior separate return year of a member, it would also affect the carryover of the consolidated net operating loss to future consolidated return years of the group. Accordingly, no exception to the rule requiring the group to make the election, as a whole, has been provided.

Transferee Becomes a Subsidiary

Section 1.1502–75(d) is amended by adding a new subparagraph (4) to clarify the application of the reverse acquisition rules to certain transactions. These transactions include cases (such as a reorganization described in section 368(a)(2)(E)) in which a subsidiary transfers substantially all of its assets to an unrelated corporation, and as a result of the transfer the corporation becomes a member. The amendment is intended to resolve any confusion as to which corporation in the transaction is the "first" or acquiring corporation and which is the "second" corporation.

Tentative Carryback Adjustments

Section 1.1502–78(a) is amended to conform the section to changes in section 6411 made by the TRA '76. That Act and subsequent acts changed section 6411 to take into account additional carrybacks, such as the new employee credit carryback provided in section 53(b). The amendments to § 1.1502–78(a) proposed by the notice are designed to reflect those changes.

Separate Return Years

The existing rule under § 1.1502–79(a)(2), which provides for the nonapportionment of a consolidated net operating loss to a separate return year for which a subsidiary was not in existence, has been clarified and restricted.

Under the current regulations, a portion of a consolidated net operating loss attributable to a member is not apportioned to a prior separate return year for which the member was not in existence, and is included in the consolidated net operating loss carrybacks to the equivalent consolidated return year, if the member was a member of the group immediately after its organization. This rule ("offspring rule") was designed to give the group the benefit of the carryback of any loss incurred by an offspring. However, if an existing corporation was acquired by the group the offspring rule is not available. Therefore, if all the stock of a nonmember is acquired by the parent (whether for cash or through a "B" reorganization), any portion of a consolidated net operating loss attributable to the new member after it joins the group will have to be carried back to the member's separate return year rather than to a prior consolidated return year. Commentators have noted, however, that the offspring rule can easily be avoided by using a subsidiary (either existing or new formed) to acquire the assets of the nonmember in certain transactions, such as described in section 381(a). The offspring rule can also be avoided by the purchase of the stock of nonmembers followed by a sale of assets by the former nonmember to the subsidiary in a deferred inter-company transaction. Accordingly, any portion of a consolidated net operating loss attributable to the subsidiary can be carried back to a prior consolidated return year.

The proposed new rules would prevent these inconsistent results if the assets acquired from the transferor constitute at least 50 percent of the fair market value of the tranferee's assets. In such a case, the portion of a consolidated net operating loss attributable to the transferee for a taxable year ending after the acquisition, which is carried back to a taxable year of the transferee ending prior to the acquisition, will be treated as if the loss was incurred in a separate return limitation year of the transferee.

Under existing § 1.1502–79(a)(2), the portion of a consolidated net operating loss attributable to a member which was not in existence may, in certain cases, be carried back to a prior equivalent consolidated return year "or, if such equivalent year is a separate return year, then to such separate return year." The regulations, however, are unclear as to which member's separate return year the loss will be carried. A solution for a simple fact pattern is provided in Rev. Rul. 74–610, 1974–2 C.B. 288. Under the notice, the loss will be carried back to a separate return year of a member, which holds stock in the corporation at the close of the year the loss is incurred, in proportion to the fair market value of that stock compared to such stock held by other members.

However, the owning member must have held that proportion of stock at the time the loss corporation was organized. Any unallocated loss must be carried back to the equivalent taxable year of the common parent unless the common parent demonstrates to the Commissioner that the loss should be carried to another member. Thus any unallocated loss may be carried back to the extent of the common parent's taxable income for the equivalent taxable year if it filed a separate return, or to the extent of a group's consolidated taxable income for that year if it was the comon parent of a group that filed a consolidated return.

Other changes have been proposed in § 1.1502–79 (b) and (c) to reflect the enactment of the capital loss carryback and new tax credits. The rules for the apportionment of the loss and credits to separate return years are consistent with the revised rules for apportionment of the consolidated net operating loss and the consolidated investment credit.

Request for Comments on Specific Question

The Service is soliciting comments on the effectiveness of the proposed new rules in preventing abuse of the offspring rule to avoid the separate return limitation year rules. In addition, the Service is soliciting comments on whether the principles of Rev. Rul. 74–610, 1974–2 C.B. 288, as would be codified in the regulations proposed in this document, should be overruled so that the offspring's losses may be carried back only to a taxable year for which a consolidated return was filed. As an alternative to the proposed changes in the offspring rule, the Service is considering eliminating the offspring rule because of the potential for abuse and the complexity inherent in any rules that are designed to limit abuse of the offspring rule.

Sources of Changes

As mentioned, these amendments are proposed to conform the consolidated return regulations to certain sections of tax legislation enacted from 1969 through 1978 and to make other technical changes. To assist taxpayers in tracing the source from which each proposed substantive amendment to the regulations is derived, the following table is provided:

Changes provision	Source
Sec.:	
1.1502-2(j)	Sec. 1901(a)(145) TRA '76.
1.1502-2(k)	Sec. 301(a) TRA '69.
1.1502-2(l)	Sec. 1(a) Pub. L. 89-384.
1.1502-2	Sec. 601(b) Rev. Act '71, 301(b)(1) Rev. Act '78, and other change.
1.1502-3(a)(1)	Sec. 802(a) TRA '76.
1.1502-3(a)(2)(i)	Sec. 301(a) and 302(a) TRA '75.
1.1502-3(a)(2) (ii) and (iii)	Sec. Other change.
1.1502-3(a)(3)(i)	Sec. 312(a) Rev. Act '78.
1.1502-3(a)(3)(ii)	Sec. 316(b) Rev. Act '78.
1.1502-3(a)(3)(iii)	Sec. 301(b) TRA '75 and 1701(b) and 1703 TRA '76.
1.1502-3(a)(4)	Sec. 301(b) TRA '69.
1.1502-3(b)(1)	Sec. 802(b)(2) TRA '76.
1.1502-3(c)(2)(ii)	Do.
1.1502-3(d)	Sec. 802(b)(2) TRA '76
1.1502-3(e)(2)	Sec. Do.
1.1502-3(f)(1)	Sec. 302(b)(2) TRA '75.
1.1502-3(f)(2)	Sec. 302(a) TRA '75 and 316(b) Rev. Act '78.
1.1502-3(g)	Other change.
1.1502-7	Expired.
1.1502-8	Sec. 601(b) Rev. Act '71.
1.1502-11(a)(6)	Sec. 1052(b) TRA '76.
1.1502-21(b)(2)(i)	Sec. 806(b)(1) TRA '76.
1.1502-21(b)(2)(ii)	Sec. 431(b) TRA '69.
1.1502-21(b)(2)(iii)	Sec. 1901(a)(29) TRA '76.
1.1502-21(b)(2)(iv)	Sec. 703(p)(1) Rev. Act. '78.
1.1502-21(b)(4)	Other change.
1.1502-21(c) (3), (4) and (5)	Other change.
1.1502-21(g)	Sec. 806(c) TRA '76.
1.1502-22(e)	Other change.
1.1502-75(d)	Sec. 1(a) Pub. L. 91-693 and other change.
1.1502-78(e)	Sec. 2107(g) TRA '76.
1.1502-79(a)	Other change.
1.1502-79(b)	Other change.
1.1502-79(c)	Sec. 601(b) Rev. Act '71 and other change.
1.1502-79(d)	Sec. 1031(a) TRA '76.
1.1502-79(e)	Sec. 201(a) TRA '69 and other change.

Tax Reform Act of 1984

This document does not reflect the Tax Reform Act of 1984.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determine that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Furthermore, the Secretary of the Treasury has certified that this rule, if issued, will not have a significant economic impact on a substantial number of small entities. The rule would affect primarily large affiliated groups of corporations and would not significantly alter the recordkeeping duties of small entities. A Regulatory Flexibility Analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submittted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Benedetta A. Kissel of the Interpretative Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.1501-1—1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

PART 1—[AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.1502-2 is amended by revising paragraph (j), and the flush text that appears just after paragraph (j), and by adding paragraphs (k) and (l). Note that the flush text now appears below paragraph (l).

§ 1.1502-2 Computation of tax liability.

* * * * *

(j) The tax imposed by section 1333 on war loss recoveries in taxable years beginning before January 1, 1977;

(k) The tax imposed by section 56;

(l) The tax imposed by section 1351(d)(1) on recoveries of foreign expropriation losses; and by allowing as a credit against these taxes the investment credit under section 38 (see § 1.1502-3), the foreign tax credit under section 33 (see § 1.1502-4), and any other credit under part IV, subchapter A, chapter 1 of the Code, computed on a consolidated basis, that is allowable against the tax imposed on corporations. For purposes of this section, the amounts in each taxable income bracket in the tax table in section 11(b) for the group (or similar amounts) for a consolidated return year is the amount allowed under section 1561(a). For increase in tax due to the application of section 47, see § 1.1502-3(f).

Par. 2. Section 1.1502-3 is amended as follows:

1. Paragraphs (a) (1) and (2) are revised.

2. Paragraphs (a)(3)(i) is revised.

3. Paragraphs (a)(3)(ii) is amended by:

a. Removing "593" from the first sentence and adding "46(e)" in its place,

b. Removing "or a cooperative organization described in section 1381(a)" from the first sentence,

c. Removing "46(d)" from the second and third sentences and adding "46(e)" in its place, and

d. Adding at the end "For taxable years of cooperative organizations described in section 1381(a) ending before November 1, 1978, see 26 CFR § 1.1502-3(a)(3)(ii) (Rev. as of April 1, 1983) and section 46(e) before the amendments made by the Revenue Act of 1978."

4. Paragraph (a)(4) is revised.

5. Paragraph (b)(1) is revised.

6. Paragraph (c)(2)(ii) is revised.

7. *Example (1)*(ii) of paragraph (d) is amended in the table by:

a. Removing

Less: Consolidated credit earned for 1966		$90,000
Consolidated unused credits attributable to years preceding 1967	0	$90,000

and adding in its place

Less: Consolidated unused credits attributable to years preceding 1976	0	
Consolidated credit earned for 1976	$90,000	$90,000

and

b. Removing "1964", "1965", "1966", "1967", and "1968" wherever they appear, and adding in their place "1974", "1975", "1976", "1977", and "1978", respectively.

8. Examples (2) and (3) of paragraph (d) are revised.

9. Paragraph (e)(2) is revised.

10. Paragraph (f)(1) is amended by removing "section 47(a) (1) or (2)" in

both places it appears and adding in its place "section 47(a)".

11. Paragraph (f)(2)(i) is amended by removing "subdivisions (ii) and (iii) of this subparagraph," and adding in its place "paragraph (f)(2)(ii), (iii) and (iv) of this section,", and by removing "section 47(a) (1) or (2)" in both places it appears and adding "section 47(a) (1), (2), or (3)".

12. Paragraph (f)(2)(iii) is amended by:

a. Removing "subdivision (ii) of this subparagraph," from the first sentence and adding in its place "paragraph (f)(2)(iii) and (iv) of this section,",

b. Removing "593 applies or a cooperative organization described in section 1381(a)" and adding "46(e) applies" in its place,

c. removing "593 applies or such cooperative organization described in section 1381(a), as the case may be" and adding "46(e) applies" in its place, and

d. Adding at the end "For taxable years of cooperative organizations described in section 1381(a) ending before November 1, 1978, see 26 CFR 1.1502–3(f)(2)(ii) (Rev. as of April 1, 1983).".

13. A new paragraph (f)(2)(iv) is added.

14. The examples in paragraph (f)(3) are amended by removing "1967", "1968", "1969", and "1971" whereever they appear, and adding in their place "1977", "1978", "1979", and "1981" respectively, and by removing "8 years" in example (1) and adding "7 years" in its place.

15. A new paragraph (g) is added.

These new and revised provisions read as follows:

§ 1.1502–3 Consolidated investment credit.

(a) *Determination of amount of consolidated credit*—(1) *In general.* The amount of the credit available under section 38 for a consolidated return year equals the sum of—

(i) The consolidated investment credit carryover carried to that year (determined under paragraph (b) of this section),

(ii) The consolidated credit earned for that year (determined under paragaph (a)(2) of this section), plus

(iii) The consolidated investment credit carrybacks carried to that year.

However, if the credit available exceeds the consolidated limitation based on amount of tax (as determined under paragraph (a) (3) and (4) of this section), the credit allowed is treated as derived from the items in the preceding sentence in the order listed. This section applies to consolidated return years beginning after December 31, 1975. For consolidated return years beginning before January 1, 1976, see 26 CFR 1.1502–3 (Rev. as of April 1, 1980) and 1.1502–80.

(2) *Determination of credit earned for year.* (i) The credit earned for the consoldiated return year equals the aggregate of each member's credit earned for that year. Each member's credit earned is determined separately by applying section 46 (a)(2) and the basis rules in paragraph (a)(2)(ii) of this setion for intercompany transactions. Thus, an election for additional TRASOP or ESOP credit, or an election under section 46 (d) for qualified progress expenditures is made by the common parent on behalf of each member separately. However, the common parent may file such elections on behalf of the group as a whole.

(ii) If a new section 38 property is acquired in an intercompany transaction (as defined in § 1.1502–13(a)(1)), the purchasing member's basis equals the selling member's basis for purposes of computing the purchasing member's qualified investment under § 1.46–3(c). Thus, the purchasing member's qualified investment for the property does not reflect any gain or loss realized by the selling member, whether or not the gain or loss is deferred under § 1.1502–13(c). (In the case of property previously place in service by the selling member see section 48(c)(1), relating to denial of "used section 38 property" treatment to the purchasing member).

(iii) The basis determined under paragraph (a)(2)(ii) of this section is also used for purposes of applying section 47. See paragraph (f) of this section.

(3) *Consolidated limitation based on amount of tax.*—(i) The consolidated limitation based on the amount of tax is—

(a) So much of the consolidated liability for tax as does not exceed $25,000, plus

(b) The percentage of the consolidated liability for tax in excess of $25,000 specified under section 46(a)(e).

The $25,000 amount is reduced by any part of that amount apportioned under section 46(a)(6) to component members of the controlled group (as defined in § 1.46–1(p)(3)) which do not join in the filing of the consolidated return.

* * * * *

(4) *Consolidated liability for tax.* For purposes of paragraph (a)(3) of this section, the consolidated liability for tax is the income tax imposed for the taxable year upon the group by chapter 1 of the Code, reduced by the consolidated foreign tax credit allowable under § 1.1502–4. However, any tax imposed by a section referred to in section 46(a)(4) or the regulations thereunder is not treated as a tax imposed by chapter 1 of the Code for purposes of computing the consolidated liability for tax.

(b) *Carrybacks and carryovers of unused credits*—(1) *Allowance of unused credit as consolidated carryback or carryover.* The consolidated investment credit carryovers and carrybacks to the taxable year consist of any consolidated unused credits of the group, plus any unused credits of members arising in separate return years, which may be carried over or back to the taxable year under the principles of section 46(b). However, the consolidated carryovers and carrybacks to a particular taxable year do not include any consolidated unused credits apportioned under § 1.1502–79(c) to a corporation for a separate return year. In addition, the consolidated carryovers and carrybacks are subject to the limitations contained in paragraphs (c) and (e) of this section. If the consolidated investment credit carryovers to a consolidated return year plus that year's consolidated credit earned exceed the consolidated limitation based on amount of tax for the year, the excess attributable to the consolidated credit earned is the consolidated unused credit for the year.

* * * * *

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years.* * * *

(2) *Computation of limitation.* * * *

(ii) The sum of (*a*) the member's unused credits arising in taxable years ending prior to the particular separate return limitation year which may be carried to the consolidated return year and (*b*) in the case of a carryback, the member's credit earned for the taxable year to which the credit is carried.

(d) *Examples.* * * *

Example (2). (i) Assume the same facts as in example (1), except that all the stock of corporation T, also a calendar year taxpayer, is acquired by P on January 1, 1978, and that P, S, and T file a consolidated return for 1978. In 1976, T had an unused credit of $10,000 which has not been absorbed and is available as an investment credit carryover to 1978. Such carryover is from a separate return limitation year. P's and S's credit earned for 1978 is $10,000 each and T's credit earned is $8,000. The consolidated credit earned for 1978 is therefore $28,000. The group's consolidated limitation based on amount of tax for 1978 is $50,000. The limitation recomputed by excluding the items of income, deduction, and foreign tax credit of T is $30,000. Thus, the portion of the consolidated limitation based on tax for 1978 attributable to T under paragraph (c)(2)(i) of this section is $20,000 (*i.e.*, $50,000 minus $30,000). Since $20,000 exceeds the amount of

T's carryover from 1976 (a separate return limitation year), paragraph (c) of this section does not limit the use of T's $10,000 investment credit carryover.

(ii) The group's consolidated investment credit carryover to 1978 is $15,000, consisting of the consolidated unused credits of the group ($5,000), plus T's separate return year unused credit ($10,000).

(iii) The group's consolidated credit earned for 1978 of $28,000 is allowable in full as a credit under section 38 since it is less than $35,000 (the excess of the consolidated limitation based on tax, $50,000, over the group's consolidated investment credit carryover to 1978, $15,000).

Example (3). Assume the same facts as in example (2), except that the amount determined under paragraph (c)(2)(i) of this section is $7,000. Therefore, the limitation on the carryover of T's unused credit is $7,000. Accordingly, the consolidated investment credit carryover is only $12,000 since the amount of T's separate return year unused credit which may be added to the group's $5,000 consolidated unused credit is $7,000. The balance of $3,000 of T's 1976 unused credit may be carried to 1979 (subject to the limitation contained in paragraph (c) of this section).

(e) *Limitations on investment credit carryovers where there has been a consolidated return change of ownership.* * * *

(2) *Computation of limitation.* The amount referred to in paragraph (e)(1) of this section is the excess of—

(i) The consolidated limitation based on the amount of tax for the taxable year, recomputed by including only the items of income, deduction, and foreign tax credit of the old members, over

(ii) The sum of the unused investment credits attributable to the old members arising in unused credit years ending prior to the particular unused credit year or years which may be carried to the consolidated return year.

(f) *Early dispositions, etc., of section 38 property.* * * *

(2) *Exception for transfer to another member.*

* * * * *

(iv) If a member disposes of progress expenditure property (as defined in section 46(d)(2)) to a member for which an election under section 46(d)(6) is not in effect, and if the property has not been placed in service prior to the time of the disposition, the transferor is treated as having disposed of the property within the meaning of section 47(a)(3).

* * * * *

(g) *Carryovers of unused investment credit in transactions to which section 381(a) or section 382 applies*—(1) *Section 381(a) transactions.* The rules and limitations provided in section 381(c)(23) and the regulations thereunder apply to the carryover of unused investment credit of the transferor under the principles of § 1,1502–21(b)(4) and (c)(3) (relating to the carryover of unused net operating losses in transactions to which section 381(a) applies).

(2) *Section 382 transactions.* As provided in section 383, the rules and limitations provided in section 382 apply to the carryover of unused investment credit of the transferor under the principles of § 1.1502–21(e) (relating to limitations on net operating loss carryovers under section 382).

(3) *Primacy of investment credit rules.* For purposes of paragraph (g)(1) and (2) of this section, the principles set forth in § 1.1502–21(b)(4), (c)(3), and (e) apply only to the extent not inconsistent with the rules for the carryover of investment credit. Thus, for example, under § 1.46–1(l), investment credit carryovers to a taxable year are applied against the tax liability limitation before credit earned for that year is applied.

(4) *Effective date.* This paragraph applies to taxable years for which the due date for filing returns is after [the filing date of the T.D.]. For prior taxable years, see § 1.1502–80.

§ 1.1502–7 [Removed]

Par. 3. Section 1.1502–7 is removed.

Par. 4. A new § 1.1502–8 is add to read as follows:

§ 1.1502–8 Consolidated work incentive program credit.

(a) *In general.* The work incentive program (WIN) credit allowed by section 40 for a group's consolidated return year is determined by applying sections 50A and 50B and the regulations thereunder ("WIN provisions") in a manner consistent with the principles of § 1.1502–3 (relating to consolidated investment credit). However, to the extent that the consolidated investment credit principles are inconsistent with the WIN provisions, the WIN provisions control. Thus—

(1) Section 50A(b) applies with respect to the order of the years from which the WIN credit and carryovers of the credit are absorbed and with respect to the years to which the credit may be carried.

(2) The sum determined under § 1.1502–3(c)(2)(ii) does not apply for purposes of computing the limitation on WIN credit carryovers and carrybacks from a separate return limitation year. Rather, the sum is—

(i) The member's WIN credit for the consolidated return year plus

(ii) The member's unused WIN credits arising in unused credit years ending prior to the particular separate return limitation year which may be carried to the consolidated return year.

(3) The sum determined under § 101502–3(e)(2)(ii) does not apply for purposes of computing the limitation on WIN carryovers from a taxable year in which a consolidated return change of ownership (as defined in § 1.1502–1(g)(1)) occurred or from an earlier year. Rather, the sum is—

(i) The aggregate WIN credit earned by the old members (as defined in § 1.1502–1(g)(3)) for the consolidated return year plus.

(ii) The aggregate unused WIN credits attributable to the old members arising in taxable years ending prior to the particular unused credit year or years which may be carried to the consolidated return year.

(4) Consolidated liability for tax (as defined in § 1.1502–3(a)(4)) is reduced by the consolidated investment credit allowable for the taxable year.

(b) *Effective date.* This section applies to taxable years for which the due date (without extensions) for filing returns is after [the filing date of the T.D.]———. For prior taxable years, see § 1.1502–80.

§ 1.1502–11 [Amended].

Par. 5. Section 1.1502–11(a)(6) is amended by adding before the semicolon ", for taxable years beginning before January 1, 1980".

Par. 6. Section 1.1502–21 is amended as follows:

1. Paragraph (b) is amended by—

(a) Revising subparagraph (2) (i) and (ii),

(b) Removing from subparagraph (2) (iii), "section 172 (k)" and adding in its place "section 172(h)",

(c) Adding a new subparagraph (2) (iv), and

(d) Adding a new subparagraph (4).

2. Paragraph (c) is amended by—

(a) Removing from subparagraph (1) "subparagraph (2) of this paragraph" and adding in its place "paragraph (c) (2) or (3) of this section".

(b) Redesignating subparagraph (3) as subparagraph (5),

(c) Adding new subparagraphs (3) and (4),

(d) Deleting from redesignated subparagraph (5) the words "this paragraph" in the five places where they appear in example (*1*) (ii) (*a*), (*b*), and (*c*), and inserting in their place the words "paragraph (c) (2) of this section", and

(e) Adding a new example (3) to redesignated subparagraph (5).

3. A new paragraph (g) is added.

These new and revised provisions read as follows:

§ 1.1502-21 Consolidated net operating loss deduction.

* * * * *

(b) *Consolidated net operating loss carryovers and carrybacks.* * * *

(2) *Rules for applying section 172(b)(1)*—(i) *Regulated transportation corporations.*—For rules applicable to the portion of a consolidated net operating loss for a taxable year ending before January 1, 1976, that is attributable (under § 1.1502-79(a)(3)) to a regulated transportation corporation (as defined in section 172(g)(1)), see 26 CFR 1.1502-21(b)(2)(i) (Rev. as of April 1, 1983).

(ii) *Financial institutions.* Any portion of a consolidated net operating loss that is attributable (under § 1.1502-79(a)(3)) to a financial institution described in section 172(b)(1)(F) is a carryback to each of the 10 taxable years preceding the consolidated return year of the loss. The portion of a consolidated net operating loss attributable to a financial institution may not be a carryover to a taxable year beyond the fifth taxable year following the year of the loss. This subdivision (ii) applies to a consolidated net operating loss sustained in a taxable year for which the due date of the return (with-out extensions) is after [the filing date of the T.D.]

* * * * *

(iv) *Trade expansion losses.* For a taxable year ending before November 7, 1978, for which a member received a certification under section 317 of the Trade Expansion Act of 1962, see 26 CFR 1.1502-21(b)(2)(ii) (Rev. as of April 1, 1983).

* * * * *

(4) *Certain transactions to which section 381(a) applies.* (i) This subparagraph (4) provides rules regarding the circumstances in which a member's short taxable year that is included in the group's consolidated return will not be counted as a taxable year for purposes of determining to which taxable years certain loss carryovers may be carried. This subparagraph (4) applies only if, during a consolidated return year for which the due date (without extensions) for filing returns is after [the filing date of the T.D.], a member of a group ("transferor") tranfers its assets to a corporation which is a member of that group immediately after the transfer ("acquiring corporation") in a transaction to which section 381(a) applies, and the short taxable year ending as a result of the transfer is included in the consolidated return of that group. Thus, this subparagraph (4) does not apply in the case of a reverse acquisition (to which § 1.1502-75(d)(3) applies) because the resulting short taxable year is not included in the consolidated return of the group that remains in existence.

(ii) For purposes of section 381(c)(1), as of the close of the day of transfer, the acquiring corporation succeeds to the portion of a consolidated net operating loss carryover for a consolidated return year which is attributable to the transferor under § 1.1502-79(a)(3) and to any net operating loss carryover of the transferor from a separate return year of the transferor. In the case of a transfer of assets from a common parent to another member to which § 1.1502-75(d)(2)(ii) applies, the transferor is considered the acquiring corporation and the acquiring corporation is considered the transferor for purposes of this subparagraph (4) and paragraph (c)(3) of this section.

(iii) There will be counted as one taxable year the period beginning on the first day (during the consolidated return year) for which the transferor's income is includible in the consolidated return and ending on the last day for which income of the acquiring corporation is includible in that return. For this purpose, the consolidated return year is the one in which the transfer occurs.

(iv) Paragraph (b)(4)(iii) of this section does not apply if the loss arose in—

(a) A separate return limitation year of the transferor (or predecessor of the transferor) or

(B) A taxable year of the transferor ending before the taxable year in which a consolidated return change of ownership occurs and the transferor was an old member (as defined in § 1.1502-1(g)(3)) and the acquiring corporation is not an old member.

(v) For rules relating to the limitation on use of carryovers of the transferor in the consolidated return year of the transaction which arose in a separate return limitation year, see paragraph (c)(3) of this section.

(vi) This subparagraph (4) may be illustrated by the following example:

Example. (a) P and its three first-tier subsidiaries S1, S2, and S3 file a consolidated return on a calendar year basis beginning with 1982. S2 was acquired by P during 1982 and filed a separate return for the short period ending immediately prior to its acquisition. For the short period, S2 incurred a net operating loss which could not be carried back to prior taxable years. In 1983, the group incurred a consolidated net operating loss, a portion of which was attributable to S2. During 1984, S2 merged into S1 in a transaction described in section 381(a)(2). Under paragraph (b)(4)(iii) of this section, the calendar year 1984 will be considered one taxable year for purposes of the carryover of the portion of the consolidated net operating loss attributable to S2 for 1983. However, under paragraph (b)(4)(iv) of this section, the calendar year 1984 will be considered two taxable years for purposes of the carryover of S2's net operating loss for its 1982 separate return limitation year.

(b) In 1985, T, an unrelated corporation, joins the group in a transaction described in section 368(a)(2)(E), in which T acquires all the assets of S3, and which is not a reverse acquisition to which § 1.1502-75(d)(3) applies. For 1983, a portion of the group's consolidated net operating loss was attributable to S3. The calendar year 1985 will be considered one taxable year for purposes of the carryover of the portion of the consolidated net operating loss attributable to S3 for 1983. However, if the transaction were a reverse acquisition, P, S1, S2, and S3 would each close its taxable year and this subparagraph would not apply.

(c) *Limitation on net operating loss carryovers and carrybacks from separate return limitation years.* * * *

(3) *Use of transferor's carryovers in the year of certain section 381(a) transactions.* (i) If paragraph (b)(4) of this section applies to a transaction, the amount of any unused net operating loss which arose in a separate return limitation year of the transferor (or predecessor of the transferor) that may be carried over to the consolidated return year in which the transaction occurs may not exceed the sum of—

(A) The transferor's remaining contribution to consolidated taxable income for that year (*i.e.*, the amount determined under paragraph (c)(2) of this section) plus

(B) The product of the acquiring corporation's remaining contribution to consolidated taxable income for the year (*i.e.*, the amount determined under paragraph (c)(2)(i) of this section (initial contribution) reduced by unused net operating losses attributable to its taxable years ending prior to the transferor's separate return limitation year), multiplied by the part-year fraction (determined under paragraph (c)(3)(ii) of this section).

(ii) The numerator of the part-year fraction is the number of days remaining in the consolidated return year, on which the acquiring corporation is a members, beginning with the day of the acquisition. The denominator is the number of days in the consolidated return year on which the acquiring corporation is a member.

(4) *Carryover basis acquisitions.* For special rules limiting the portion of a consolidated net operating loss carryback attributable to a subsidiary from a taxable year ending after a carryover basis acquisition which may be carried to a consolidated return year

ending before the acquisition, see § 1.1502–79(a)(4).

(5) *Example.* * * *

Example (3). (i) Separate calendar-year tax returns are filed by corporation S for 1982 and for corporations S, P, and T for 1983. On January 1, 1984, P purchases all the stock of S and T. Therefore, 1982 and 1983 are separate return limitation years for S and 1983 is a separate return limitation year for T. At the close of business on July 1, 1984, S acquires T's assets in a transaction to which section 381 (a) applies. The group files a consolidated return for 1984. The table below shows the dates each corporation is formed and the income (or loss) of each corporation for 1982 and 1983. For 1984, the table shows the separate taxable income of each member and the consolidated taxable income determined before taking into account the consolidated net operating loss (CNOL) deduction.

	S	P	T	Consolidated taxable income (before CNOL deduction)
Date formed:	1–1–82	1–1–83	1–1–83	
Year:				
1982	($2,000)			
1983	($10,000)	$1,000	($10,000)	
1984	$12,000	$9,500	[1]$3,500	$25,000

[1] T's short taxable year ending on the close of July 1, 1984.

(ii) Since 1982 was a separate return limitation year for S, the carryover of its $2,000 net operating loss from 1982 to 1984 is limited to the amount determined under paragraph (c)(2) of this section, *i.e.*, $12,000. Thus, the entire $2,000 from 1982 is carried over to 1984.

(iii) Since 1983 was separate return limitation year for T, the carryover of its $10,000 net operating loss from 1983 to 1984 is limited to the sum of the amounts determined under paragraph (c)(3)(i)(A) and (B) of this section. The carryover of T's 1983 net operating loss is first applied to T's contribution to consolidated taxable income for 1984 (during its short taxable year). Thus, $3,500 of T's $10,000 net operating loss carryover offsets T's contribution to consolidated taxable income from its short taxable year, and under paragraph (b)(4)(iii) of this section S succeeds to the unabsorbed portion of the carryover, $6,500 (*i.e.*, $10,000–$3,500) as of the close of July 1, 1984.

(iv) Although S and T each has a loss for its taxable year ending December 31, 1983, under section 381 (c)(1)(C), the $6,500 unabsorbed portion of T's net operating loss to which S succeeds is considered a loss for a year prior to S's net operating loss from 1983. Thus, under paragraph (b)(3)(i) of this section, the amount of T's 1983 loss which may offset S's remaining contribution to consolidated taxable income for 1984 is determined before applying S's 1983 loss against S's remaining contribution for 1984. Under paragraph (c)(3)(i)(B) of this section, the amount of T's unabsorbed net operating loss from 1983 which may be used to offset S's remaining contribution for 1984 is limited to $5,000 (*i.e.*, S's 1984 initial contribution of $12,000 to consolidated taxable income reduced by its $2,000 net operating loss from 1982, multiplied by the part-year fraction 183/366). The $1,500 T's remaining unabsorbed loss from 1983 (*i.e.*, $6,500—$5,000) may be carried over by S to offset income in taxable years after 1984, subject to the limitations on net operating loss carryovers from separate return limitation years contained in paragraph (c)(1) of this section. In addition, for purposes of determining the taxable years to which T's loss may be carried, the period beginning on January 1, 1984, and ending on December 31, 1984, is treated as two taxable years. The period is treated as two taxable years because T's loss arose in a separate return limitation year. Thus, paragraph (b)(4)(iv) of this section does not apply and § 1.381(c)(1)–1(e)(3) does apply.

(v) S's remaining contribution to consolidated taxable income for 1984, after the deduction of S's net operating loss from 1982 and T's net operating loss from 1983 is $5,000 (*i.e.*, $12,000–$2,000–$5,000). That amount is entirely offset by a portion of S's net operating loss from 1983. In addition, S has an unabsorbed net operating loss of $5,000 (*i.e*, $10,000–$5,000) from 1983 which may be carried over by S to offset income in taxable years after 1984, subject to the limitations on net operating loss carryovers from separate return limitation years contained in paragraph (c)(1) of this section. Furthermore, before the net operating loss of S from 1983 may be used, the net operating loss of T from 1983 must first be used.

* * * * *

(g) *Election to relinquish carryback.* A common parent may elect under section 172(b)(3)(C) for the group to relinquish the entire carryback period for a consolidated net operating loss for any taxable year for which the due date (without extensions) for filing return is after [the filing date of the T.D.]. The election may not be made separately for a member. Once made for any taxable year, the election is irrevocable for each member (whether or not it remains in the group) with respect to the member's portion of the consolidated net operating loss for that taxable year.

* * * * *

Par. 7. § 1.1502–22 is amended by adding a new paragraph (e). The new provision reads as follows:

§ 1.1502–22 Consolidated capital gain net income and net capital loss.

* * * * *

(e) *Carryovers of unused net capital loss in transactions to which section 381(a) or section 382 applies*—(1) *Section 381 (a) transactions.* The rules and limitations provided in section 381(c)(3) and the regulations thereunder apply to the carryover of unused net capital loss of the transfer or under the principles of § 1.1502–21(b)(4) and (c)(3) (relating to the carryover of unused net operating losses in transactions to which section 381-(a) applies).

(2) *Section 382 transactions.* As provided in section 383, the rules and limitations provided in section 382 apply to the carryover of any unused net capital loss of the transferor under the principles of § 1.1502–21(e) (relating to limitation on net operating loss carryovers under section 382).

(3) *Primacy of capital loss rules.* For purposes of paragraph (e) (1) and (2) of this section, the principles set forth in § 1.1502–21 (b)(4), (c)(3), and (e) apply only to the extent not inconsistent with the rules for the carryover of a net capital loss.

Par. 8. Section 1.1502–75(d) is amended by adding a new subparagraph (4). The new provision reads as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(d) *When group remains in existence.* * * *

(4) *Transferee becomes subsidiary.* If a member of a group transfers substantially all of its assets to a nonmember, and as part of the transaction the transferee becomes (or would become but for the application of this paragraph) a subsidiary of that group (such as in a transaction to which section 368-(a)(2)(E) applies), then for purposes of paragraph (d)(3) of this section the common parent of that group is considered the first corporation and the transferee is considered the second corporation.

* * * * *

Par. 9. Section 1.1502–78 is amended by revising paragraph (a) to read as follows:

§ 1.1502–78 Tentative carryback adjustments.

(a) *General rule.* If for a consolidated return year a group has consolidated net loss or consolidated unused credit to which section 6411 applies ("section 6411 (a) item"), any application under

that section for a tentative carryback adjustment of the taxes for a preceding consolidated return year must be made by the common parent to the extent the loss or unused credit is not apportioned to a corporation so as to be carried back to a separate return year pursuant to § 1.1502–79 (a), (b), or (c). In the case of the portion of a consolidated section 6411(a) item to which the preceding sentence does not apply, and in the case of a section 6411(a) item arising in a separate return which may be carried back to consolidated return year, the corporation or corporation to which the loss or credit is attributable shall make the application under section 6411.

* * * * *

Par. 10. Section 1.1502–79 is amended as follows:

1. Paragraph (a) is amended by—

(a) Revising the heading,

(b) Revising subparagraph (1)(i) and (2),

(c) Redesignating subparagraph (1)(ii) as subparagraph (1)(iii) and adding a new subparagraph (1)(ii),

(d) Redesignating subparagraph (4) as subparagraph (5) and by adding new examples (3), (4), (5), and (6) at the end thereof, and

(e) Adding a new subparagraph (4).

2. Paragraph (b) is amended by revising the heading and subparagraph (1).

3. Paragraph (c) is amended by—

(a) Revising the heading and subparagraph (1), and

(b) Adding a new subparagraph (3):

4. Paragraph (d) is amended by removing "904 (d)" in both places it appears in subparagraph (1), and adding "904 (c) and (e)" in its place.

5. Paragraph (e) is amended by revising the heading and subparagraph (1).

These new and revised provisions read as follows:

§ 1.1502–79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return and consolidated return years*—(1) *In general.* (i) If any portion of a consolidated net operating loss is attributable to a corporation (under paragraph (a)(3) of this section) and, in the taxable year that is equivalent to the consolidated return year to which the loss may be carried under the principles of section 172 (b) and § 1.1502–21(b) the corporation either (A) was not in existence and paragraph (a)(2) of this section does not apply or (B) was in existence but did not join in filing a consolidated return with the group, then the loss is apportioned to that corporation and is treated as a net operating loss carryover or carryback to its separate return year or years (if any) or a carryover to a separate return year of any successor to the corporation in a transaction to which section 381(a) applies. Accordingly, that portion is not included in the consolidated net operating loss carryovers or carrybacks to the equivalent consolidated return year.

See paragraph (a)(4) of this section for limitation on the carryback, to a consolidated return year ending prior to a carryover basis acquisition, of the portion of a consolidated net operating loss attributable to a member.

(ii) Taxable years are equivalent if they bear the same numerical relationship to the taxable year of the consolidated net operating loss, counting forward or backward from the year of the loss. Thus, for example, if a member filed a separate return for its third taxable year preceding a consolidated return year in which a consolidated net operating loss was sustained, any loss apportioned to the member is carried to the member's separate return year and may not be carried back by the group to its third consolidated return year preceding the consolidated return year of the loss.

* * * * *

(2) *Carryback of losses of certain members not in existence.* (i) If (A) a corporation was a member immediately after its organization, (B) it was not in existence for a taxable year that is equivalent to the consolidated return year to which the consolidated net operating loss would be carried back under the principles of section 172(b) and § 1.1502–21(b), and (C) the portion of the loss attributable to the corporation is not considered to have been sustained in a separate return limitation year under the carryover basis acquisition rule in paragraph (a)(4)(i) of this section, then this subdivision (i) applies and the portion is included in the consolidated net operating loss carryback to the group's consolidated return year.

(ii) This subdivision (ii) applies and paragraph (a)(2)(i) of this section does not apply if a member, which owns stock of the corporation referred to in that paragraph (a)(2)(i) on the last day of the current consolidated return year, filed a separate return while a member for a taxable year equivalent to the consolidated return year to which the portion of the current net operating loss attributable to the corporation may be carried under that paragraph (a)(2)(i). If this subdivision (ii) applies, then a part of that portion will be treated as a net operating loss carryback to the separate return year of the owning member. This part equals that portion multiplied by the lessor of two fractions determined (A) on the last day of the current consolidated return year and (B) immediately after the corporation's organization. The numerator of the fraction is the fair market value of the owning member's stock in the corporation, and the denominator is the fair market value of the stock in the corporation owned by all members. Any part of the portion of the loss attributable to the corporation which is not allocated by the fraction must be carried back by the common parent unless the common parent can demonstrate to the satisfaction of the Commissioner that the loss is more appropriately carried back to the equivalent taxable year of another member.

(iii) If (A) a portion of a consolidated net operating loss for the current taxable year is attributable to the common parent, (B) the common parent was not in existence for the taxable year to which the loss may be carried back, and (C) the group was in existence for that prior taxable year but its members did not join in the filing of a consolidated return for that prior year, then the portion may be carried back to the equivalent taxable year of the member or members which the common parent demonstrates is appropriate to the satisfaction of the Commissioner.

* * * * *

(4) *Carryover basis acquisition.* (i) If a subsidiary is the transferee or distributee ("transferee") in a "carryover basis acquisition", the portion of the consolidated net operating loss attributable to the transferee for a taxable year ending after the date of distribution, transfer, or acquisition will be considered to have been sustained in a separate return limitation year of the transferee for purposes of determining whether that portion may be carried to a particular consolidated return year ending on or before that date. "Date of distribution or transfer" is defined in § 1.381(b)–1(b).

(ii) A carryover basis acquisition is a "non-member section 381(a) transaction" or at "member transaction", but only if the "acquisition fraction" is at least one-half. The terms "nonmember section 381(a) transaction" and "member transaction" are defined in paragraph (a)(4)(iii) and (iv) of this section. The method of computing the acquisition fraction is prescribed in paragraphs (a)(4) (v), (vi), and (vii) of this section.

(iii) A nonmember section 381(a) transaction is a transaction to which section 381(a) applies, but only if the

distributor or transferor was not a member at any time during the 36 months preceding the transaction.

(iv) A member transaction is a transfer of assets from one member to another member, but only if the basis of the acquired assets (other than cash) in the hands of the transferee is determined by reference to the basis of assets in the hands of a corporation when that corporation (not more than 36 months before the transfer) was a nonmember. For purposes of the preceding sentence—

(A) membership is determined immediately after the transfer and

(B) the basis of assets acquired in a deferred intercompany transaction (as defined in § 1.1502–13(a)(2)) is deemed to be determined by reference to the basis of those assets in the hands of the transferor.

(v)(A) The numerator of the acquisition fraction is the fair market value of all the assets (excluding cash) acquired during any 12-month period in all nonmember section 381(a) transactions and in all member transactions.

(B) The denominator of the acquisition fraction is the sum of the fair market values of the assets included in the numerator plus the fair market value of all the other assets (excluding cash) of the transferee.

(C) Distortions to the numerator and denominator (such as those created by distributions, loans, or contributions to capital) shall be disregarded in determining the acquisition fraction.

(D) Assets valued for the numerator and denominator include intangible assets such as goodwill, going concern value, patents, and trademarks, whether or not they have a tax basis.

(E) If within a 12-month period a subsidiary is a transferee in only one transaction which is either a nonmember section 381(a) transaction or a member transaction, fair market values of assets for purposes of the acquisition fraction are determined as of the date of the distribution or transfer or the acquisition.

(vi) If within a 12-month period a subsidiary is a transferee in more than one transaction which is either a nonmember section 381(a) transaction or a member transaction, then—

(A) The date of distribution, transfer, or acquisition of each such transaction is a test date for purposes of determining if the transaction is a carryover basis acquisition.

(B) If on any test date a transaction is a carryover basis acquisition, its character as such an acquisition cannot change on a subsequent test date.

(C) Assets in the numerator of the acquisition fraction are valued as of the first test date for which they are included in the numerator.

(D) Assets not in the numerator are valued as of the date of the particular test date.

(vii) Stock in one member owned by a second member is valued at the product of the fair market value of the first member's assets (other than cash) multiplied by the percentage (by fair market value) of the first member's stock owned by the second member.

(viii) This subparagraph (4) applies to test dates occurring in taxable years for which the due date for filing returns is after [the filing date of the T.D.]. For prior taxable years, see 26 CFR 1.1502–79(a)(2) (Rev. Apr. 1, 1983).

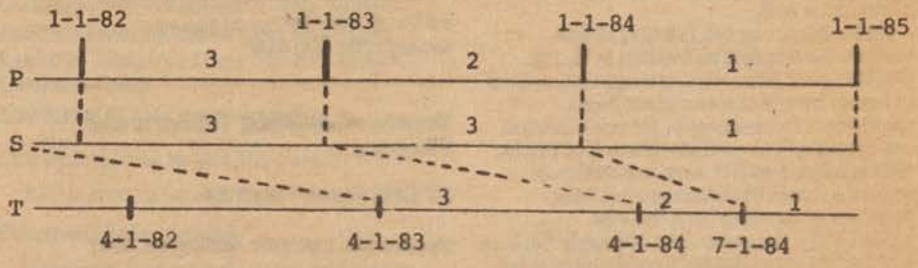
(5) *Examples.* * * *

Example (3). (a) Corporations P and S joined in filing consolidated returns for calendar years 1982 and 1983. On July 1, 1984, P acquired all the outstanding stock of T which had filed separate returns for its taxable years ending March 31, 1983, and March 31, 1984. T filed a separate return for the short period April 1, 1984, through June 30, 1984. T's operations during July 1, 1984, through December 31, 1984, were reported on the consolidated return that included the operations of P and S for all of 1984. The P, S, and T group filed a consolidated return and incurred a consolidated net operating loss for 1985, a portion of which was attributable to T.

(b) The short period April 1, 1984, through June 30, 1984, constitutes a taxable year for T under § 1.1502–76(d). Under paragraph (a)(1)(ii) of this section, the following taxable years are equivalent:

P and S	T
1984	7–1 to 12–31–84
1983	4–1 to 6–30–84
1982	4–1–83 to 3–31–84

The equivalent taxable years of P, S, and T may be illustrated by the following time lines:



Thus, the portion of the 1985 consolidated net operating loss apportioned to T will be carried back first to T's separate taxable year ending March 31, 1984 (its third presceding year), then to its separate short taxable year April 1 to June 30, 1984 (its second preceding year), and then to the 1984 consolidated return year (the first preceding year) before being carried over to subsequent years.

Example (4). (a) Corporation P and its wholly owned subsidiary S constitute an affiliated group which files a consolidated return for the calendar years 1982, 1983, and 1984. For each year, the group reports consolidated taxable income greater than zero. On April 1, 1985, P forms T1 by transferring P stock and an asset (other than cash) whose fair market value is $10 to T1 in exchange for all its outstanding stock. On May 1, 1985, T1 acquires all the assets of T in a transaction to which section 381(a)(2) applies. T was never a member of the group. Immediately after the transaction, the fair market value of T1's assets (other than cash) is $60, $50 of which is attributable to assets acquired from T. For 1985, the P, S, T1 group reports a consolidated net operating loss of $15 all of which is attributable to T1.

(b) Under paragraph (a)(4)(v) of this section, the acquisition fraction for the T acquisition is %, *i.e.*, $50/$(50+10). Therefore, since T was never a member of the group, the acquisition by T1 of T's assets is a carryover basis acquisition. Conseqently, the consolidated net operating loss attributable to T1 of $15 for 1985 is treated as if it were incurred in a separate return limitation year of T1 for purposes of carrying back the loss. Accordingly, the group may not apply the loss to offset its consolidated taxable income for 1982, 1983, or 1984.

Example (5). (a) Assume the same facts as in example (4). Assume further that, on November 1, 1985, P transfers an asset (other than cash) whose fair market value is $100 to T1 and, on February 1, 1986, T1 acquires all the assets of corporation U, which was never a member of the group, in a transaction to which section 381(a)(2) applies. The fair market value of U's assets (other than cash) is $40. For 1986, the group reports a consolidated net operating loss of $20 all of which is attributable to T1.

(b) Under paragraph (a)(4) (v) and (vi) of this acquisition is 90/200, *i.e.*, $(50+40)/

$(50+40+10+100). Therefore, although U was never a member of the group, the acquisition by T1 of the U assets is not a carryover basis acquisition since the acquisition fraction is not at least one-half. However, the acquisition by T1 of the T assets remains a carryover basis acquisition.

(c) If the $100 asset transfer to T1 is distortive, then the acquisition fraction is 90/100, *i.e.*, $(50+40)/$(50+40+10) and the acquisition by T1 of the U assets is a carryover basis acquisition.

Example (6). (a) Corporation P and its wholly owned subsidiary S constitute an affiliated group which files a consolidated return for the calendar years 1984, 1985, and 1986. For each year, the group reports consolidated taxable income greater than zero. On February 1, 1987, P purchases all the outstanding stock of corporation V for cash. On that date, V's only asset was building No. 1. On March 1, 1987, V recognizes no gain or loss under section 1031(a) on the like-kind exchange of building No. 1 for building No. 2. On December 1, 1987, V sells building No. 2 to S in a deferred intercompany transaction. Immediately after the sale, the fair market value of S's assets (other than cash) is $75, $45 of which is attributable to assets purchased from V. For the consolidated return year ending on December 31, 1987, the P, S, V group reports a consolidated net operating loss of $10, all of which is attributable to S.

(b) Under paragraph (a)(4)(v) of this section, the acquisition fraction is ⅗, *i.e.*, $45/$(45+30). Therefore, the acquisition by S of assets from V is a carryover basis acquisition. Consequently, the consolidated net operating loss attributable to S of $10 for 1987 is treated as if it were incurred in a separate return limitation year of S for purposes of carrying back the loss. Accordingly, the group may not apply the loss to offset its consolidated taxable income for 1984, 1985, or 1986.

(b) *Carryover and carryback of consolidated net capital loss to separate return and consolidated return years*—(1) *In general.* Any portion of a consolidated net capital loss which is attributable to a corporation (under paragraph (b)(2) of this section) is carried over or carried back to separate or consolidated return years under the principles of section 1212(a), § 1.1502–22(b), and paragraph (a) (1), (2), and (4) of this section.

* * * * *

(c) *Carryover and carryback of consolidated unused credits to separate return and consolidated return years*—(1) *Consolidated unused investment credit.* Any portion of a consolidated unused investment credit which is attributable to a corporation (under paragraph (c)(2) of this section), is carried over or carried back to separate or consolidated return years under the principles of section 46(b), § 1.1502–3, and paragraphs (a) (1), (2), and (4) of this section.

* * * * *

(3) *Other unused credits described in section 6411(a).* Any portion of a consolidated unused credit (that is a credit described in section 6411(a) other than investment credit) attributable to a corporation (under the principles of paragraph (c)(2) of this section) is carried over or carried back to separate or consolidated return years under the principles of the appropriate section of the Code and paragraph (a) (1), (2), and (4) of this section.

* * * * *

(e) *Carryover of consolidated excess charitable contributions to separate return and consolidated return years*—(1) *In general.* Any portion of consolidated excess charitable contributions which is attributable to a corporation (under paragraph (e)(2) of this section), is carried over to separate or consolidated return years under the principles of section 170(d)(2), § 1.1502–24(b); and paragraph (a)(1) of this section.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 84-20057 Filed 7-27-84; 9:13 am]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[Notice No. 536; Ref: Notice No. 523]

Change in Standard of Identity for Straight Whiskeys of the Same Type

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

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 523, Change in Standard of Identity for Straight Whiskeys of the Same Type, for 90 days. Notice No. 523 was published in the **Federal Register** on May 7, 1984 (49 FR 19333). The comment period is being reopened due to a request from Heublein, Inc. This industry member feels more time is needed to study the possible ramifications of the proposals in Notice No. 523. The additional comment period will allow many more interested persons the opportunity to comment.

DATE: The comment period for this notice ends on October 29, 1984.

ADDRESS: Send comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Notice No. 523).

FOR FURTHER INFORMATION CONTACT: Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226 (202) 566–7531).

SUPPLEMENTRY INFORMATION:

Background

On May 7, 1984, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking (Notice No. 523) to obtain comments on the proposal to change the standard of identity for straight whiskeys of the same type. The effect of the proposal would be to ease existing restrictions allowing straight whiskeys of the same type to be mingled and designated as straight.

Specifically, the proposal would allow straight whiskeys of the same type to be mingled and still be labeled as straight not from the same distillery or from the same proprietor. Also, the age of the whiskeys in the mixture would only need to be two years old, not four years old as is currently required.

The notice of proposed rulemaking requested comments and information concerning whether the "four year old" requirement, the "same distillery" requirement, and the "same proprietor" requirement should be eliminated from the regulations concerning the standards of identity for straight whiskey. The notice also requested comments concerning whether the standard of identity for straight whiskey should include mixtures of straight whiskeys of the same type produced in different States. The comment period for this notice ended July 6, 1984.

Reopening of Comment Period

ATF has decided to reopen the comment period on this issue for 90 days due to a request from an industry member. The industry member feels that more time is needed to study the proposal since it involves changing the traditional standards of identity. The industry member also feels that more time is needed to consult its foreign suppliers to get their views on how this proposal will impact them. Consequently, the Bureau is reopening the comment period for Notice No. 523 until October 29, 1984. The comments already received on this issue will remain a part of the record and no resubmission of comments will be necessary unless the commenter wishes to furnish additional information.

Clarification of Notice No. 523

Since the publication of Notice No. 523, several questions have been asked as to whether the proposal would allow distinctive imported products, such as Scotch whiskey, Irish whiskey, and Canadian whiskey, from different producers to be mingled in the United States and, if so, could such mingled products be labeled Scotch, Irish, or Canadian whiskey rather than being labeled blended Scotch, Irish, or Canadian whiskey. Notice No. 523 propose the easing of some restrictions on the mingled of imported spirits but this proposal did not include changing the standards of identity for distinctive imported products. Consequently, distinctive imported products, such as Scotch whiskey, from different producers must continue to be mingled in the country or origin prior to being imported into the United States if the spirits are to be labeled as a distinctive imported product. In addition, if such products are a mixture of whiskeys, the mixture must continue to be labeled as a blend, for example, "blended Scotch whiskey" (Scotch whiskey—a blend). All persons interested in commenting on this clarification of Notice No 523 are encouraged to do so.

Disclosure of Comments

ATF will not recognize any material in the comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Comments on Notice No. 523 may be inspected in the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. during normal business hours.

Drafting Information

The principal author of this document is Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This notice is issued under the authority contained in 27 U.S.C. 205 (49 Stat. 981, as amended) and in 26 U.S.C. 7805 (68A Stat. 917, as ameded).

Dated: July 25, 1984.

W.T. Drake,

Acting Director.

[FR Doc. 84-20215 Filed 7-30-84; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-711; RM-4749]

TV Broadcast Station in Troy, AL; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 64 to Troy, Alabama, as that community's first local television assignment, at the request of Troy Television, Inc.

DATES: Comments must be filed on or before September 14, 1984, and reply comments on or before October 1, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Troy, Alabama); MM Docket No. 84-711, RM-4749.

Adopted: July 11, 1984.

Released: July 24, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making, submitted by Troy Television, Inc. ("petitioner"), requesting the assignment of UHF TV Channel 64 to Troy, Alabama, as that community's first local television assignment. Petitioner has stated its intention to apply for the channel, if assigned. Channel 64 can be assigned, with a minus offset, in compliance with the Commission's minimum mileage separation and other technical requirements.

2. Troy (population 12,945),[1] the seat of Pike County (population 28,050), is located in southeastern Alabama, approximately 70 kilometers (45 miles) southeast of Montgomery, Alabama.

3. In view of the interest expressed in providing Troy with its first local televison service, the Commission

believes it appropriate to propose amending the Televison Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Troy, AL		64–

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 14, 1984, and reply comments on or before October 1, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Troy Television, Inc., P.O. Box 777, Marianna, Florida (Petitioner)
Edward M. Johnson & Associates, Inc., One Regency Square, Site 450, Knoxville, Tennessee 37915 (Consultant to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott III,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the 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 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.

[1] Population figures are taken from the 1980 U.S. Census.

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 in written comments, reply comments, or other appropriate pleadings. 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 the proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-20139 Filed 7-30-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-709; RM-4756]

TV Broadcast Station in Columbia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of VHF TV Channel 11 to Columbia, Louisiana, at the request of Larry G. Fuss, Sr. The assignment could provide Columbia with its first local television service.

DATES: Comments must be filed on or before September 14, 1984, and reply comments on or before October 1, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Columbia, Louisiana); MM Docket No. 84-709, RM-4756.

Adopted: July 12, 1984.

Released: July 24, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making submitted by Larry G. Fuss, Sr. ("petitioner") seeking the assignment of VHF TV Channel 11 to Columbia, Louisiana, as that community's first local television assignment. Petitioner has stated his intention to apply for the channel, if assigned. The channel can be assigned in compliance with the Commission's mileage separation requirements, with a site restriction of at least 9.6 miles southwest. The site restriction is necessary to avoid a short-spacing to Station KTHV, Channel 11, at Little Rock, Arkansas, and to a construction permit for Channel 11 at Houma, Louisiana.

2. Columbia (population 667[1], the seat of Caldwell Parish (population 10,761), is located in northern Louisiana, approximately 180 kilometers (110 miles) west of Jackson, Mississippi. Petitioner has submitted information concerning the demographics of Columbia to support his request for the assignment.

3. We believe it is appropriate to seek comments on the proposed assignment as it could provide the community with its first local television service. Accordingly, it is proposed to amend the Television Table of Assignments, § 73.606(b) of the Rules, for the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Columbia, LA		11+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 14, 1984, and reply comments on or before October 1, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Larry G. Fuss, Sr., 331 Bellford Court, Mars, Pennsylvania 16046-9216

[1] Population figures are taken from the 1980 U.S. Census.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 F.R. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the 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 proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84–29137 Filed 7–30–84 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83-1204; RM-4522]

TV Broadcast Station in Iron River, MI

AGENCY: Federal Communications Commission.

ACTION: Termination of Proposed Rule.

SUMMARY: Action taken herein dismisses the petition of Iron River Telecasting Company to assign UHF TV Channel 23 to Iron River, Michigan, due to a lack of interest by any party.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Iron River, Michigan); MM Docket No. 83-1204, RM-4522.

Adopted: July 12, 1984.
Released: July 23, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 52337, published November 17, 1983, seeking comments on the assignment of Channel 23 to Iron River, Michigan, as that community's first local telephone allocation. The request was originally submitted by Iron River Telecasting Company ("petitioner") as a counter proposal in MM Docket No. 83-418 concerning the assignment of Channel 44 to Green Bay, Wisconsin.

2. Neither petitioner nor any other party has submitted comments reaffirming an interest in applying for use of the channel, should it be assigned, and the Commission will not assign a frequency absent such a statement. Therefore, the channel will not be assigned.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered that the petition for rule making filed by Iron River Telecasting Company is dismissed.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott III,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-20135 Filed 7-30-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-714; RM-4760]

TV Broadcast Station Medford; OR; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein, at the request of Sainte Broadcasting Corporation, purposes the assignment of UHF TV Channel 27 to Medford, Oregon, as the community's fourth commercial television service.

DATES: Comments must be filed on or before September 17, 1984, and reply comments on or before October 1, 1984.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in CFR Part 73.

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Medford, Oregon); MM Docket No. 84-714, RM-4760.

Adopted: July 11, 1984.
Released: July 25, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed February 1, 1984, by Sainte Broadcasting Corporation ("petitioner"), requesting the assignment of UHF TV Channel 27 to Medford, Oregon, as the community's fourth commercial television facility. Petitioner has stated an intention to apply for the channel, if assigned.

2. Medford (population 39,603)[1] county seat of Jackson County (population 132,456) is located in southern Oregon, approximately 370 kilometers (225 miles) south of Portland Oregon. Medford currently has three commercial and one noncommercial educational television stations.

3. UHF Television Channel 27 can be assigned to Medford, Oregon, in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules. A site restriction of 17.4 miles north of Medford is required to avoid short spacing to noncommercial educational Channel 20 in Yreka City, California.

4. In view of the fact that Medford could receive a fourth local commercial telephone broadcast service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Medford, OR	5, *8+, 10+, and 12+	5, *8+, 10+, 12+, and 27.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 17, 1984, and reply comments on or before

[1] Population figures are taken from the 1980 U.S. Census.

October 2, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows: Sainte Broadcasting Corporation, 646 East Alisal Street, Salinas, California 93905, (Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, 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.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal (s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84–20143 Filed 7–30–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–712; RM–4768]

TV Broadcast Station in Sumter, SC; Table of Assigments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 63 to Sumter, South Carolina, as that community's first local commercial allotment, at the request of Rodney M. Sprott.

DATES: Comments must be filed on or before September 14, 1984, and reply comments on or before October 1, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations, (Sumter, South Carolina); MM Docket No. 84–712, RM–4768.

Adopted: July 11, 1984.

Released: July 24, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by Rodney M. Sprott ("petitioner") requesting the assignment of UHF TV Channel 63 to Sumter, South Carolina, as that community's first local commercial television assignment. Petitioner has stated his intention to apply for the channel, if assigned. Channel 63 can be assigned in compliance with the Commission's minimum distance separation and other technical requirements.

2. Sumter (population 24,890), [1] seat of Sumter County (population 88,243), is

[1] All population figures are derived from the 1980 U.S. Census.

located in central South Carolina approximately 130 kilometers (80 miles) north of Charleston, S.C. Sumter currently has noncommercial educational Channel *27, licensed to the South Carolina Educational TV Commission (Station WRJA–TV).

3. We believe the public interest would be served by proposing to assign a first local commercial channel to Sumter. Accordingly, we propose to amend the Television Table of Assignments, § 73.606(b) of the Rules, as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Sumter, SC	*27-	*27-, 63-

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 14, 1984, and reply comments on or before October 1, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Rodney M. Sprott, Weinberg, Brown & McDougall, 109 North Main Street, Sumter, South Carolina 29151–1280 (Petitioner)

Edward M. Johnson & Associates, Inc., One Regency Square, Suite 450, Knoxville, Tennessee 37915 (Consultant to petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84–20140 Filed 7–30–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Dockets No. 84–710; RM–4753]

TV Broadcast Station in Destin, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 64 to Destin, Florida, at the request of Multi-Systems of Destin, Inc. The assignment could provide Destin with its first local television service.

DATES: Comments must be filed on or before September 14, 1984, and reply comments on or before October 1, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.
FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Station (Destin, Florida); MM Docket No. 84–710, RM–4753.

Adopted: July 12, 1984.
Released: July 24, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Multi-Systems of Destin, Inc. ("petitioner") requesting the assignment of UHF TV Channel 64 to Destin, Florida, as that community's first local television allocation. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements. Petitioner has stated its intention to promptly apply for the channel, if assigned.

2. Destin (population 3,672),[1] in Okaloosa County (population 109,920), is located on the Gulf Coast approximately halfway between Pensacola and Panama City, Florida. Petitioner states that Destin is a growing community with both a permanent and year-round tourist population deserving of its first local television service.

3. In view of the fact that the assignment could provide Destin with its first local television facility, the Commission finds it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Rules, with respect to the following community, as follows:

City	Channel No.	
	Present	Proposed
Destin, FL		64+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note. A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 14, 1984, and reply comments on or before October 1, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Mr. Willis Johnson, Multi-Systems of Destin, Inc, P.O. Box 1574, Destin, Florida 32541

Alfred C. Cordon, Esq., Cordon and Jacob, 2000 L Street, N.W., Suite 616, Washington, DC 20036 (Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that §§ 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.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in §§ 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is 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 Section 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.)

[1] Population figures are derived from the 1980 U.S. Census.

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-20138 Filed 7-30-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-713; RM-4751]

TV Broadcast Station in Macon, GA; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 53 to Macon, Georgia, at the request of Larry G. Fuss, Sr. The assignment could provide Macon with its fifth television service.

DATES: Comments must be filed on or before September 14, 1984, and reply comments on or before October 1, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Macon, Georgia); MM Docket No. 84-713, RM-4751.

Adopted: July 11, 1984.

Released: July 24, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by Larry G. Fuss, Sr. ("petitioner") requesting the assignment of UHF TV Channel 53 to Macon, Georgia. The assignment could provide Macon with its fourth commercial television service. Petitioner has stated his intention to apply for the channel, if assigned.

2. Macon (population 116,896),[1] the seat of Bibb County (population 150,256), is located in central Georgia approximately 115 kilometers (72 miles) southeast of Atlanta, Georgia. Petitioner has provided us with demographic information about Macon in support of his request.

3. Channel 53 can be assigned to Macon in compliance with the Commission's minimum distance separation and other technical requirements. However, a site restriction of at least 9.5 miles southeast must be imposed to avoid a short-spacing to unused Channel 53 at Cleveland, Tennessee.

4. We believe it is in the public interest to seek comments on the proposed assignment at Macon in order to provide a fourth local commercial TV service. Accordingly, it is proposed to amend the Television Table of Assignments, § 73.606(b) of the Rules, with respect to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Macon, GA	13+, 24+, 41+, and *47+.	13+, 24+, 41+, *47+, and 53-.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 14, 1984, and reply comments on or before October 1, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Larry G. Fuss, Sr., 331 Bellford Court, Mars, Pennsylvania 16046

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the 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.

8. 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.

Charles Schott III,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and (0.283 of the Commission's Rules, it is proposed to amend the 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 is reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

[1] Population figures are taken from the 1980 U.S. Census.

(b) With respect to petitions for rule making which conflict with the

Broadcasting Company, Inc. The proposal could provide a first UHF

the attached Appendix and are incorporated by reference herein.

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 Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-20144 Filed 7-30-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 73 and 97

[BC Docket No. 79-47; RM 2830; FCC 84-340]

Rebroadcasts of Transmissions of Non-Broadcast Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Parts 73 and 97 of the Commission's rules concerning rebroadcasts of transmissions of privately owned, non-broadcast radio stations. The proposed rule changes would: (1) Allow rebroadcasts of messages transmitted by Personal Radio Service stations, (2) permit rebroadcasts of Citizens Band (CB) and amateur stations without prior permission of the message originator, (3) eliminate the requirements for FCC rebroadcast permission, and (4) revise the amateur rules pertaining to broadcast-related activity to clarify their intended purpose.

The proposals to allow rebroadcasts of personal radio messages and to eliminate the requirement for FCC permission would allow broadcasters greater discretion with respect to program material sources and would significantly reduce much of the administrative burden associated with rebroadcasts of tranmissions from non-broadcast radio stations. The proposal to allow CB and amateur rebroadcasts without permission from the message originator would take advantage of recent changes to Section 605 of the Communications Act of 1934, as amended. Finally, the proposed modifications to the amateur rules would clarify the Commission's intention to maintain the amateur service for purposes distinct from broadcasting.

DATES: Comments are due October 24, 1984 and replies are due November 23, 1984.

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

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: .

List of Subjects

47 CFR Part 73

Radio broadcasting, Television.

47 CFR Part 97

Radio.

Proposed Rule Making

In the matter of amendment of Parts 73 and 97 of the Commission's Rules Concerning Rebroadcasts of Transmissions of Non-broadcast Radio Stations; BC Docket 79-47, RM 2830.

Adopted: July 12, 1984.

Released: July 26, 1984.

By the Commission: Commissioner Rivera Absent.

1. The Commission has before it the matter of rebroadcasts by radio and television stations of messages transmitted by non-broadcast radio stations. On March 15, 1979, in response to a petition for rule making from the National Association of Broadcasters (NAB), the Commission adopted a *Notice of Inquiry*, 44 FR 20465, seeking information and comments on the question of whether to allow broadcasters to retransmit Citizen's Band (CB) radio communications that contain emergency and other public safety information. Subsequent to the action, the Congress modified the provisions of Section 605 of the Communications Act that pertain to unauthorized use of radio communications.[1] These legislative changes have eliminated the statutory proscriptions on the unauthorized interception and divulgence of amateur and CB transmissions and communications related to certain distress situations. More recently, in the context of the October, 1983 United States military action in Grenada, questions arose concerning whether, and under what circumstances, the rules permit rebroadcasts of amateur radio communications. In light of the record with respect to the inquiry, the recent changes to the Act, and the uncertainty concerning rebroadcasts of amateur

[1] 47 U.S.C. 605 *See*, Communications Amendments Act of 1982, Pub. L. 97-259.

communications, the Commission is proposing a comprehensive review and revision of its regulations and procedures with respect to the rebroadcast matter.

2. In its petition that led to the inquiry in this proceeding, the NAB asked the Commission to amend the rules to permit broadcast stations to rebroadcast CB and amateur transmissions that carry emergency information important to the public safety and convenience. The NAB contended that a narrow exception to permit rebroadcasts of CB emergency messages would not compromise the Commission's purposes for maintaining the prohibition on rebroadcast of such signals. With respect to amateur transmissions, the NAB recognized that the current broadcast rules permit rebroadcasts of amateur signals. NAB was concerned, however, that the amateur rules prohibit amateur stations from transmitting emergency and public safety information for broadcast or broadcast-related purposes.

3. The *Notice* addressed the CB issue "to explore the desirability of permitting CB rebroadcasts" and expressed the Commission's concern about the problems associated with validation of the accuracy and veracity of CB communications. The Commission asked for comment on the limited question of whether to permit rebroadcasts of CB transmissions of emergency information. In the Notice, which was combined with a *Memorandum Opinion and Order*, the Commission denied the NAB's request for rule changes to permit amateur stations to transmit emergency and public safety information intended for broadcast purposes.

4. The inquiry generated twelve comments, which were evenly divided in support and opposition on the question of CB rebroadcasting, and two reply comments, also divided on the matter. A list of the parties that submitted comments is provided in Appendix A.

The Current Rules

5. The Commission's regulations concerning rebroadcast of transmissions of non-broadcast radio stations are set forth in § 73.1207(c)–(e) of the Rules. Broadcast stations are permitted to rebroadcast the messages of all non-broadcast radio stations, except those in the Personal Radio Services, subject to requirements for permission that vary [illegible] message.[2] Rebroadcasts of Personal Radio Service transmissions are not permitted under any circumstances.

6. To rebroadcast the transmissions of a private stations, a broadcaster must obtain permission from the originating station and the FCC. In the case of a common carrier station, the broadcaster must secure permission from the message originator as well the station licensee. FCC authority may be requested informally by telephone and must be followed with a written confirmation that includes the written consent of the parties associated with the originating station. Transmissions originated by stations owned and operated by the Federal Government may be rebroadcast with permission of the originating government agency. FCC prior approval is not required for such rebroadcasts, but the station is required to submit written confirmation that prior approval for the rebroadcast has been obtained.

7. The rules for both the General Mobile Radio Service (GMRS) and the Citizens Band Radio Service include provisions prohibiting use of such stations to convey program material for a broadcast facility.[3] The amateur rules specify that an amateur station may not engage in any form of broadcasting, but do allow amateurs to give consent to rebroadcast of their transmissions, provided that the transmissions do not contain any direct or indirect reference to the rebroadcast.[4] Other provisions of the amateur rules preclude a broadcast station from any use of a licensed amateur's station by prohibiting the transmission or deliver of amateur communications where there is third party traffic involving compensation or business activity.[5] Thus, an amateur station may give permission to rebroadcast its signals, but may not engage in any activity for, or in conjunction with, a broadcast station.[6]

Discussion

8. In the rebroadcast matter the Commission is concerned with two major policy issues, both of which are directly associated with statutory provisions of the Act. One is the Section 303 principle of restricting use of frequencies to the classes of stations and the purposes of the services to which they are allocated. The other is the Section 605 restriction on the unauthorized use of radio communications not intended for the public. The Commission is enlarging the scope of this proceeding to examine these two issues, and any others that may arise in relation to this matter. Our intention in proposing rule changes is to eliminate unnecessary restrictions and procedures associated with rebroadcasting of non-broadcast radio communications. Interested parties are invited to submit comments and information on all aspects of this matter and the proposals presented herein.

9. Section 303 of the Act directs the Commission to manage the use of the radio frequencies and to do so in a manner that generally encourages the larger and more effective use of radio in the public interest.[7] In particular, sections 303(a) and 303(b) instruct the Commission to classify radio stations and to prescribe the nature of the service to be rendered by each class of stations. As we indicated in the *Notice*, in order to accommodate the optimum number of users and types of services to fulfill these statutory obligations, the Commission has found it necessary "to establish priorities, limit eligibility to hold radio station licenses, and restrict the use of stations to specified purposes and types of services which will be most beneficial to the public and to assure the most effective uses of this very limited spectrum space," *Citizen's Band Radio Rules*, 38 FCC 1238, 1241 (1965).

10. The policy embodied in the current rules reflects this approach. The rules generally permit rebroadcasts of non-broadcast radio communications, but prohibit the use of stations in non-broadcast services to transmit messages intended for broadcasting. This approach allows broadcast use of non-broadcast signals on a secondary basis that does not contravene the Commission's intentions with respect to the use of other services or otherwise interfere with other services' normal traffic and operation.

11. The exception to this general policy is the provision in Section 73.1207(e) that prohibits all rebroadcasts of Personal Radio Communications. This stricture was added to the broadcast prohibitions in the Personal Radio Service rules (Part 95) on transmission of program material for retransmission

[2] The Personal Radio Services (Part 95 of the Commission's Rules) include the General Mobile Radio Service (GMRS), the Remote Control (R/C) Radio Service, and the Citizens Band Radio Service. Prior to 1976, the Personal Radio Services were known as the Citizens Radio Service with subdivisions Class A, Class C, and Class D that corresponded to the individual subservices under the Personal Radio Service designation. *See, Third Report and Order* in Docket 20120, 41 FR 56067.

[3] *See*, 47 CFR 95.181(i)(12) (GMRS Rules), and 47 CFR 95.413(b) (CB Rule 13(b)). The rules for the GMRS and CB services do permit such stations to [illegible]

[4] *See*, 47 CFR 97.113.

[5] *See*, 47 CFR 97.114.

[6] The NAB request that was denied in the *Notice* addressed changes to §§ 97.113 and 97.114. *See*, NAB petition, p.2.

[7] 47 U.S.C. 303(a), (b), (g).

on a broadcast station.[8] At that time, the Commission found there were "strong reasons," in addition to conformance, for this modification: "(1) the broadcast services are adequately served by remote pickup broadcast service facilities for remote transmissions of this type; (2) the [Personal Radio Services are] essentially designed to provide for private, short distance radio communications for business and personal messages; and (3) congestion in the [Personal Radio Services] increases constantly, making sole use of a channel beyond guarantee and therefore impractical for use in conjunction with the broadcast services." [9]

12. The responses to the inquiry addressed the Commission's concern about the potential for rebroadcast of "erroneous or misleading information" that is often present in CB communications. The problem arises from the fact that the nature of the CB service facilitates anonymous messages and from the associated potential for, and observed transmission of, false identification and false information. Proponents of rule changes to eliminate the prohibition on CB rebroadcasts suggest several methods for checking the veracity and accuracy of CB messages and reports. Several commenters also argue that rebroadcast of CB emergency transmissions would benefit the listening public and law enforcement and civil defense officials in that it would enable them to avoid danger and inconvenience and would help alleviate problems cause by weather conditions. The NAB emphasizes that "stations rebroadcasting CB transmissions would exercise the same journalistic discretion in broadcasting CB reports as they normally exercise in broadcasting any information provided by members of the public by other means (*e.g.* telephone, letter, or personal contact)."

13. The comments filed in opposition generally argue that it would not be in the public interest to allow rebroadcasts of CB transmissions. Opposing parties cite the problems of verification, the poor technical quality of CB signals, and the lack of discipline among CB operators as reasons why CB rebroadcasts should not be permitted. In addition, several parties also argue that emergency information should be presented in the voice of an announcer who is trained in communication, word usage, and grammar.

14. Upon review of the comments on the CB question and further consideration of the larger Personal Radio Service issue in light of our basic policy towards rebroadcasting, the Commission believes that the prohibition on rebroadcasts of Personal Radio Service communications is no longer justifiable. The original rationale for the rule, while well intended, does not bear close scrutiny. From the discussion in the *Order* relating to conformance with the Personal Radio rules and to concern for congestion on the Personal Radio Service frequencies, it appears that the policy that gave rise to Section 73.1207(e) was intended to address situations in which a Personal Radio Service station would be used to transmit broadcast program material. While the Commission is not questioning its policy prohibiting such uses of Personal Radio stations, we observe that the broadcast rule also restricts reuse of Personal Radio signals that were not intended for broadcasting. Consistent with its policy with respect to other services, the Commission believes that rebroadcast of Personal Radio signals on a secondary basis would not conflict with the classification or purposes of the Personal Radio Service.

15. The responses to the *Notice* have not resolved the Commission's concerns about the quality of CB communications as a source of broadcast news and information and the need for adequate verification of information received from CB stations. Notwithstanding these considerations, the Commission is now of the opinion that it would be more appropriate for individual broadcast licensees to assume responsibility for and to exercise their discretion in determinations of the veracity, accuracy, quality, and usefulness of Personal Radio communications. The Commission agrees with the NAB's statement that broadcasters are aware of their responsibilities to the public and can be expected to apply the same journalistic discretion in rebroadcasting intercepted CB communications that they use in broadcasting information from any other public source. The Commission believes that licensees are in a position to know their individual communities well enough to make individual determinations in such cases.

16. Accordingly, we are proposing to eliminate the prohibition on rebroadcast of Personal Radio transmissions. This would provide broadcasters with authority to rebroadcast Personal Radio communications subject to conditions, if any, that may be developed pursuant to action on other issues in this proceeding. Comments are requested on this proposal and on any effect it may have on the Personal Radio services.

17. Consistent with the prohibitions on unauthorized use of radio communications in Section 605 of the Act, the rules require broadcasters to obtain appropriate permissions before rebroadcasting the transmissions of non-broadcast radio stations.[10] Prior to the 1982 statutory revisions, virtually all radio communications not intended for public reception were protected from unauthorized use.[11] The new section 605 provides specific exceptions to the privacy protections for CB and amateur communications, for transmissions by any station for use of the general public, and for transmissions that relate to ships, aircraft, vehicles, and persons in distress.

18. In view of the new statutory provisions, the Commission believes that in situations involving rebroadcasts of CB and amateur transmissions, it is no longer necessary to require broadcasters to obtain permission from the originating stations. Therefore, we are proposing to exempt rebroadcasts of CB and amateur transmissions from the requirements for prior authorization in § 73.1207(c)(1). This plan would effectively eliminate all restrictions on rebroadcasts of messages from stations in these two services. We invite comments, information, and discussion

[8] *See, Order*, adopted November 12, 1975, 40 FR 54791. Section 73.1207(e) was originally added as § 73.1207(d).

[9] *Id*, at para. 2(h).

[10] Section 605 states, in relevant part, that:

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. . . .

No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communications (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. . . .

This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.

Unauthorized rebroadcasts of broadcast signals are prohibited under a separate provision in section 325(a) of the Act 47 U.S.C. 325(a).

[11] The old Section 605 applied to all radio communications except for those which are "broadcast or transmitted by amateurs or others for use of the general public" or which relate to ships in distress. The issue of when an amateur communication is for the general public was clarified by a 1980 judicial interpretation that amateur communications other than calls for contact with another station are subject to the protection of Section 605, *Reston v. FCC*, 492 F. Supp. 697 (D.D.C. 1980).

concerning policy issues, including matters related to privacy, that may be relevant to the proposal to exempt rebroadcasts of CB and amateur communications from the requirement for prior authorization from the originating station.

19. The Commission is also proposing to eliminate the requirement that broadcast stations obtain FCC authority to rebroadcast transmissions of private non-broadcast radio stations. We are further proposing to eliminate the requirement for written notification to the FCC that approval was obtained prior to rebroadcast of transmissions from a government-owned station. Our administrative experience is that both informal (telephone) and formal (written) consent are routinely granted so long as the rebroadcast activity appears consistent with the rules, including provisions pertaining to the service of the originating station. Similarly, written follow-up submissions are routinely associated with a station's official records, but generally do not form the basis for any subsequent administrative or regulatory activity. It appears then, that the requirements for obtaining FCC rebroadcast authority and for submitting follow-up verification of permission serve no useful purpose. The Commission believes that to eliminate these requirements would remove an unnecessary regulatory procedure and would relieve both the Commission and broadcast licenses of the administrative burden associated with compliance thereto.

20. However, consent from the originating station is required under section 605 for privately operated radio stations in other than the CB and amateur services and for government radio stations. To meet this responsibility in the absence of requirements for FCC approval, we propose to require broadcast licensees to obtain written rebroadcast permission from the originating station in all cases where Section 605 applies and to maintain a copy of that permission at the station, to be available to FCC on request. Such permission would be retained until final FCC action on the station's license renewal application subsequent to the rebroadcast or for one year, whichever is longer. We request comment on the possibility of an alternative approach that would provide for implied consent to rebroadcast. Specific questions that need to be addressed with respect to this alternative include the standards or criterion for a determination that implied consent is granted and what records would need to be maintained to verify the implied consent.

21. The Commission believes that the amateur rules may be ambiguous and insufficiently specific with respect to their intent to maintain the amateur service for purposes separate and distinct from broadcasting. The staff advises that in addition to the misunderstanding of the amateur rules that has arisen in this proceeding, it periodically receives requests from broadcasters to use amateur facilities on a third party basis for some broadcast purpose. In order to clarify its policy on this issue and to accommodate the proposal to eliminate the requirement that broadcasters obtain permission to rebroadcast amateur communications, the Commission is proposing to rewrite Section 97.113 and to include in it the provisions of Section 97.91.[12] The revised § 97.113 would include specific prohibitions on use of amateur stations for broadcast news gathering or production purposes.

Procedural Matters

22. Accordingly, it is proposed to amend Parts 73 and 97 of the Commission's rules as set forth in Appendix B.

23. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule changes on small entities. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*) (1982).

24. For the 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 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 that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; and, on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

25. This *Notice of Proposed Rule Making* is issued pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. Interested parties may file comments on or before October 24, 1984 and reply comments on or before November 23, 1984. All relevant and timely comments filed in response to this *Notice* will be considered by the Commission. In accordance with the provisions of § 1.419 of the Commission Rules, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding shall be furnished the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided the fact of the

[12] Section 97.91 (47 U.S.C. 97.91) sets forth certain exceptions to the "no broadcasting" strictures of § 97.113 to allow for some one-way amateur communications. All but one of these exceptions would be preserved in the proposed new § 97.113. We propose to delete the emergency communications exception because we do not wish to imply that an amateur radio operator is free to engage in broadcasting or broadcast-related activities in an emergency. Rather, an amateur radio operator may make a necessary one-way communication such as transmission of a non-directed request for help or a distress signal in an emergency (see § 97.3(w)). A rule of reason applies.

Commission's reliance on such information is noted in the Report and Order.

26. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

27. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632-6302.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties filing comments and reply comments:

Comments

1. Raymond Dopmeyer
2. Ross W. Forbes, Corporate Operations Manager, Concerned Communications Corporation
3. The School Board of Dade County Florida, by its attorneys
4. National Capital REACT, Inc.
5. Maryland-District of Columbia-Delaware Broadcasters Association, Inc., by its attorneys
6. American Broadcasting Companies, Inc.
7. National Association of Broadcasters
8. National Radio Broadcasters Association
9. Stephen A. Ballo
10. Georgia Association of Broadcasters by, its counsel
11. REACT International, Inc.
12. Obine Walker

Reply Comments

1. National Capital REACT, Inc.
2. National Association of Broadcasters

Appendix B

Parts 73 and 97 of Title 47 of the Code of Federal Regulation are proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. Section 73.1207 would be amended by revising paragraph (c) to read as follows:

§ 73.1207 [Amended]

* * * * *

(c) The transmissions of non-broadcast stations may be rebroadcast under the following conditions:

(1) The broadcasting of messages originated by privately owned non-broadcast stations other then those in the Amateur and Citizens Band (CB) Radio Services may be done upon only obtaining prior permission from the station licensee. Additionally, messages transmitted by common carrier stations may only be rebroadcast upon prior permission of the originator of the message as well as the station license. Written consent of the licensee of the originating station, and also of the message originator in cases of common carrier stations, must be maintained at the station to be made available to the Commission upon its request. Such written permission shall be retained until final FCC action on the broadcast station's license renewal application subsequent to the rebroadcast or for one year, which ever is longer.

(2) Except as provided in paragraph (d) of this section, messages originated entirely by non-broadcast stations owned and operated by the Federal Government may be rebroadcast upon obtaining prior permission from the government agency originating the messages. Written consent of the agency must be maintained at the station to be available to the Commission upon its request. Such written permission shall be retained until final FCC action on the broadcast station's license renewal application subsequent to the rebroadcast or for one year, whichever is longer.

(3) Messages originated by stations in the Amateur and Citizens Band (CB) Radio Services may be rebroadcast at the discretion of broadcast station licensees. No permissions are required pursuant to rebroadcasts of CB and amateur transmissions.

* * * * *

2. Section 73.1207 would be amended by removing paragraph (e).

PART 97—AMATEUR RADIO SERVICES

§ 97.91 [Reserved]

1. Section 97.91 would be removed and reserved.

2. Section 97.113 would be revised to read as folows:

§ 97.113 Broadcasting and broadcast-related activities prohibited.

(a) An amateur station shall not be used to engage in any form of broadcasting, that is, the dissemination of radio communications intended to be received by the public directly or by intermediary relay stations.

(b) An amateur station may not be used for any activity related to program production or news gathering for broadcast purposes.

(c) An amateur station shall not retransmit programs or signals emanating from any class of radio station other than amateur.

(d) The following one-way amateur transmissions are not considered broadcasting:

(1) Beacon or radio control operation;

(2) Information bulletins consisting solely of subject matter relating to amateur radio; and

(3) Transmissions intended for persons learning or improving proficiency in the International Morse Code.

(e) Round table discussions or net operations where more than two amateur stations are in communication with one another are not considered broadcasting.

Appendix C

Regulatory Flexibility Initial Analysis:

I. Reason for Action

1. Elimination of the prohibition on rebroadcast of Personal Radio Service communications would remove an unnecessary restriction on broadcasters. Elimination of requirements for permission prior to rebroadcast of non-broadcast communications, to the extent proposed in this proceeding, would conform the rebroadcast rules with the 1982 revision of section 605 of the Communications Act of 1934, as amended, and would eliminate most of the administrative burden on licensees and the Commission associated with the procedures for such permission. The proposed changes to the amateur rules would serve to clarify the Commission's policy concerning use of amateur radio facilities for broadcast purposes.

II. Objectives

2. The Commission proposes to modify its rebroadcast rules to allow (1) rebroadcasts of Personal Radio Service communications, (2) eliminate requirements for permission with respect to CB and amateur transmissions that are no longer necessary under the revised section 605 of the Act, (3) eliminate the requirements for separate FCC permission to rebroadcast which appear to serve no useful purpose, and (4) clarify the rules concerning use of amateur stations for broadcast purposes. These proposals would expend the authority of broadcasters with respect to rebroadcasting activities while maintaining the Commission's intended distinctions among the various classes of radio frequency services and would eliminate unnecessary administrative procedures.

III. Legal Basis

3. Action to eliminate the prohibition on rebroadcast of Personal Radio Service messages and rewrite the amateur rules is proposed in furtherance of the Communications Act, sections 303(a), (b), and (g). These sections direct the Commission to classify radio stations and prescribe the nature of service rendered by each class and to generally encourage the larger and more effective use of radio. Action proposing to modify the requirements for permission to rebroadcast including a modification of § 97.113 of the amateur rules, is pursuant to the revised Section 605 of the Act which exempts amateur and CB communications, transmissions intended for the public, and certain distress messages from the privacy protections on unauthorized use of radio communications.

IV. Description, Potential Impact, and Number of Small Entities Affected

2. Revising the rebroadcasting rules to simplify the requirements for permission from the originating station and to permit rebroadcasts of Personal Radio transmissions would be expected to have a beneficial effect on the 1400 television and 9400 radio stations. The expanded authority would reduce the administrative requirements associated with rebroadcasting signals of non-broadcast stations and would provide new opportunities for use of Personal Radio communications in both news and entertainment programming. Stations in the majority of non-broadcast radio services would experience no adverse effect, as broadcast stations would still be required to obtain permission from the originating station prior to rebroadcast of its transmissions. Operators of CB stations (approximately 4 million) and licensees of amateur stations (approximately 415,000) might experience some undesirable effects through loss of privacy as rebroadcasting of their transmissions would not be subject to the requirements for prior permission. However, the effect would likely by very limited as the broadcast industry does not now engage in frequent rebroadcasts of the transmissions of other stations and the proposed rules are not expected to increase or foster substantial new rebroadcasting activity.

V. Reporting, Record Keeping, and Other Compliance Requirements

3. Broadcast stations would be required to maintain copies of written permission to rebroadcast from stations originating communications in services protected under section 605 of the Act. This would replace the current more burdensome procedure whereby broadcast stations must submit a written request, including the permission of the originating station, to the FCC.

IV. Federal Rules Which Overlap, Duplicate, or Conflict With This Rule

None.

VII. Significant Alternatives

4. With respect to authorization to rebroadcast transmissions of Personal Radio Service stations, the alternative is to maintain the current rule which prohibits rebroadcasts of the transmissions of such stations. As indicated above, the Commission believes there is no longer adequate justification for restricting rebroadcasts of Personal Radio stations. Moreover, the impact on Personal Radio station operators from rebroadcasting activity is expected to be negligible.

5. The alternative to the proposal to exempt CB and amateur transmissions from the requirements for permission from the originating stations is to require such permission. However, to require permission from CB and amateur stations prior to rebroadcast would seem unnecessary in light of the revised section 605 and therefore would appear to be unfair to broadcasters.

6. The third major proposal in this proceeding is to eliminate the requirement that stations obtain FCC approval prior to rebroadcast of private, non-broadcast radio communications and instead merely require licensees to retain a copy of written permission from the message originator at the station, to be available on request. There are two significant alternatives to this proposal: (1) Maintain the current requirements for permission and (2) require only informal, verbal permission from the message originator. The first alternative is undesirable in that the Commission routinely grants such requests and the request process imposes administrative costs on both the Commission and the requesting station. With respect to the second alternative, the Commission believes this would be undesirable in that there would be no verification that the station has complied with section 605. We believe it is necessary to obtain and maintain a copy of written permission to serve as documentation in situations where there are questions as to whether proper permission was obtained.

[FR Doc. 84-20018 Filed 7-30-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Comment Period on Proposed Threatened Status and Critical Habitat for the Railroad Valley Springfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of threatened status and critical habitat for the Railroad Valley springfish, and that the comment period on the proposal will be extended. This fish is found only in thermal springs in northeastern Nye County, Nevada. This hearing and extension of comment period will allow comments on this proposal from all interested parties.

DATES: The public hearing will be held from 7 to 9 p.m., on Thursday, August 16, 1984. The comment period on the proposal, which was to have closed on June 18,1984, is extended until August 31, 1984.

ADDRESSES: The public hearing will be held at the Duckwater Indian Reservation Tribal Headquarters in Duckwater, Nevada. Comments should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Don King, Project Leader, U.S Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Building C, Reno, Nevada 89502 (702/784-5227 or FTS 470-5227), or Mr. John L. Spinks, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION: .

Background

The Railroad Valley springfish is found only in thermal springs in northeastern Nye County, Nevada. This fish is threatened by habitat alteration and predation and competition from exotic fishes. A proposal of threatened status with critical habitat for the Railroad Valley springfish (*Crenichthys nevadae*) was published in the **Federal Register** (49 FR 15109) on April 17, 1984. On June 7, 1984, a public hearing on this proposal was requested by Mr. Steven

Bradhurst, Consultant, Nye County Department of Planning.

The U.S. Fish and Wildlife Service will hold a public hearing on proposed threatened status with critical habitat for the Railroad Valley springfish from 7 to 9 p.m., on Thursday, August 16, 1984, at the Duckwater Indian Reservation Tribal Headquarters, Duckwater, Nevada. The comment period on the proposal, which was to have closed on June 18, 1984, is extended until August 31, 1984.

Author

The primary author of this notice is Carolyn Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 500, Portland, Oregon 97232 (503/231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

Dated: July 25, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–20073 Filed 7–30–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 148
Tuesday, July 31, 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

Commodity Credit Corporation

Wool and Mohair Payment Programs; Determination Regarding Support Prices for Pulled Wool and Mohair for the 1984 Markting Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determinations.

SUMMARY: This notice sets forth certain determinations concerning the support prices for pulled wool and mohair for the 1984 marketing year. These determinations are made in accordance with the national Wool Act of 1954, as amended.

EFFECTIVE DATE: July 31, 1984.

ADDRESS: Emergency Operations and Livestock Programs Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gerald Schiermeyer at (202) 447–5171. A Final Regulatory Impact Analysis has been prepared and is available from the Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This notice of determinations has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This notice has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more: (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determinations since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program to which this notice of determinations applies are: Title—National Wool Act Payments; Number—10.059 as found in the Catalog of Federal Domestic Assistance Programs.

The National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1985 shall be 77.5 percent of an amount determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959 and 1960, and rounding the resulting amount to the nearest full cent.

Section 703(c) of the Wool Act also provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 percent above or below the comparable percent of parity at which shorn wool is supported.

Comments were requested concerning the method of calculating price support payments for pulled wool and the level of price support for mohair. A total of 21 comments (7 with respect to pulled wool and 14 with respect to mohair) were received. Of the seven comments received with regard to pulled wool, all favored using the same method for calculating price support payments that has been employed since the inception of the wool program. Under this method, the 1984 average market price for shorn wool is subtracted from the 1984 support price of shorn wool and that figure is multipled by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). The result is then multiplied by 80 percent which represents a quality differential which is determined because pulled wool which is derived from unshorn lamb pelts contains a shorter staple and is of a lower quality of wool than wool shorn from other sheep. No other comments were received on this proposed determination. In addition, all 14 commentators who responded to the proposed determination with respect to the level of price support for mohair favored supporting the price of mohair based upon the October 1983 parity prices for mohair and shorn wool and at the same percentage of parity at which shorn wool is supported for the 1984 marketing year.

After taking the foregoing comments into consideration, it has been determined that price support payments for pulled wool for the 1984 marketing year will be calculated in the same manner as in prior years. Further, the price of mohair will be supported for the 1984 marketing year at the same percentage of parity at which shorn wool is supported.

Determinations

Accordingly, the following determinations with respect to the method for calculating the support price for pulled wool, as well as the support price for mohair, for the 1984 marketing year have been made:

a. Support Price—Pulled Wool

The support price for pulled wool for the 1984 marketing year cannot be determined until the 1984 average market price for shorn wool is calculated, which should occur by April 1985. The method for calculating the

support price for pulled wool shall be as follows: Once the average market price for shorn wool is known, the support price for pulled wool will be determined by subtracting the 1984 average market price for shorn wool from the 1984 support price of shorn wool and multiplying that figure by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). The result is then multiplied by 80 percent which represents a quality differential which is determined because pulled wool which is derived from unshorn lamb pelts contains a shorter staple and is a lower quality of wool than wool shorn from other sheep.

b. Support Price—Mohair

The October 1983 parity prices for shorn wool and mohair are $2.11 per pound and $6.61 per pound, respectively. The support price for shorn wool for the 1984 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.65 per pound or 78.2 percent of the October 1983 parity price for shorn wool. The price support level for mohair for the 1984 marketing year is equal to the percentage of the parity price at which shorn wool is supported. Accordingly, 78.2 percent of the October 1983 parity price for mohair results in a support price for mohair for the 1984 marketing year of $5.169 per pound.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed in Washington, D.C., on July 18, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84-20198 Filed 7-30-84; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Apache National Forest Grazing Advisory Board; Meeting

The Apache National Forest Grazing Advisory Board will meet at 10:30 a.m., September 7, 1984 at the Hannagan Administrative Site at Hannagan Meadows, 23 miles south of Alpine, Arizona. There will be a field trip following the meeting to review the Bear-Wallow Pasture of the KP Allotment and a discussion of Transitory Range.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602) 333–4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: Any interested persons besides the Advisory Board Members are welcome to attend and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: July 24, 1984.

Nick W. McDonough,

Forest Supervisor.

[FR Doc. 84-20209 79 Filed 7-30-84; 8:45 am]

BILLING CODE 3410-11-M

Sitgreaves National Forest Grazing Advisory Board; Meeting

The Sitgreaves National Forest Grazing Advisory Board will meet at 10:30 a.m., September 21, 1984 at the Maxwell House in Show Low, Arizona. There will be a field trip following the meeting to review results of on-the-ground application of herbicides to control reinvading juniper.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602) 333–4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: Any interested persons besides the Advisory Board Members are welcome to attend and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: July 23, 1984

Nick W. McDonough,

Forest Supervisor.

[FR Doc. 84-20210 Filed 7-30-84; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Southern and Midwestern Advisory Committees; 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 Southern and Midwestern Advisory Committees to the Commission will convene at 4:00 p.m., on August 28, and will end at 1:00 p.m., on August 30, 1984, at the Peabody Hotel, First Floor Ballroom, 149 Union Avenue, Memphis, Tennessee 39103. The purpose of the conference is to provide State Advisory Committee members, staff and Commissioners with an opportunity to discuss civil rights issues in America, and the extent to which the Commission can programmatically address those issues.

Persons desiring additional information, or planning a presentation to the Committees, should contact the Southern Regional Office at (404) 221–4391 or the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-20001 Filed 7-30-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held August 28, 1984, 3:00 p.m., Herbert C. Hoover Building, Room 7808, 14th Street and Constitution Avenue NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of progress on Committee's 1984 annual plan.
4. Report on current work program of the subcommittees:
   a. Foreign Availability,
   b. Hardware, and
   c. Licensing Procedures.
5. New Business.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: July 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–20126 Filed 7–30–84; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held August 29, 1984, 1:00 p.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constititution Avenue NW., Washington, DC. The Subcommittee meeting will continue to its conclusion on August 30, in Room 3708, Herbert C. Hoover Building. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigations of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information contact Mrs. Margaret A. Cornejo (202) 377–2583.

Dated: July 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–20124 Filed 7–30–84; 8:45 am]

BILLING CODE 3510–DT–M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 28, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue NW, Washington, DC. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export control applicable to telecommunication equipment or technology.

Agenda: *General Session:*

1. Nomination and election of chairman.

2. The Committee would like to invite public comments with regards to existing commodity or technology controls. The commodities and technologies that fall under the responsibilities of the Committee are those relating to the following Commodity Control List (CCL) entries: 1353, 1501, 1502, 1514, 1516/4516, 1517/4517, 1518, 1519, 1520, 1521, 1522, 1526, 1527, 1531, 1537, 1544, 1548, 1565, 1767.

Invited comments will be restricted to these or substantially related items.

In particular the Committee would like to invite public evidence of foreign available equipment (or technology) falling within the above mentioned CCL entries. Information is desired relating to equipment (or technologies) produced or available in the following country groups:

a. Proscribed countries (East Bloc countries),

b. Non-COCOM free world countries.

Specific information is needed on:

1. Manufactures and country of origin,

2. Product's capabilities and features,

3. Product availability, and

4. Proof of delivery of products in sufficient quantity and quality.

The Committee is generally concerned with future regulatory levels and changes needed to existing commodity or technology control level. Request specifically oriented to individual license application should not be presented at this time. *Executive Session*—Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Margaret A. Cornejo, (202) 377–2583.

Dated: July 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–20129 Filed 7–30–84; 8:45 am]

BILLING CODE 3510–DT–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 Alco World Trade, Inc. ("Alco"). 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 84–00018."

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 codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and 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 Alco on April 25, 1984. The application was deemed submitted on April 27, 1984. A summary of the application was published in the **Federal Register** on May 10, 1984 (49 FR 19879). 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 Alco meet the four standards of the Act:

Alco World Trade, Inc.—Application No. 84–00018.

Export Trade

1. Food Service Equipment ("Products"), including:
   a. Baking/dough equipment.
   b. Cleaning/sanitation/warewashing equipment; kitchen utensils.
   c. Cooking and warming equipment.
   d. Cookware, tableware, kitchenware and kitchen tools.
   e. Custom fabricated equipment for kitchen interiors.
   f. Fire extinguishing systems.
   g. Fish/lobster tanks: Wood, concrete, metal.
   h. Food preparation equipment.
   i. Serving equipment, including food containers.
   j. Storage and handling equipment, including refrigeration and dispensing.
   k. Vending machines.
   l. Ventilating systems, including industrial and kitchen fans.
   m. Cash registers.
   n. Counting systems.
   o. Dough retarders.
   p. Doughnut machines.
   q. Bakery supplies.
   r. Proof boxes.
   s. Glass washing equipment, commercial and household.
   t. Waste compactors.
   u. Garbage disposers.
   v. Sinks.
2. Export trade services (consulting, trade promotion, international market research and development, advertising, marketing, product research and design exclusively for export, transportation, trade documentation and freight forwarding, communication, processing foreign orders, foreign exchange, taking title to goods, and buying and selling for export) in connection with the foregoing commodities ("Services").

Export Markets

The Export Markets include all parts of the world except 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. Alco may act as a broker or representative for individual suppliers and distributors in the Export Markets for Products and Services in Export Trade.
2. Alco may enter into agreements with individual suppliers of Products and Services wherein:
   (a) Alco may agree to serve as the exclusive sales representative for Products and Services in any Export Market and, in addition, may agree not to represent any competitors of such supplier for Products and Services in any Export Market unless authorized by the supplier; and/or
   (b) The supplier may agree not to sell, directly or indirectly through any other intermediary, into the Export Markets in which Alco exclusively represents the supplier and, if such sales do occur, to pay a commission to Alco.
3. Also may enter into nonexclusive agreements with persons located in the Export Markets appointing them as sales representatives or distributors in the Export Markets.
4. Alco may enter into exclusive agreements with persons in the Export Markets wherein:
   (a) Alco agrees to deal in Products and Services in the Export Markets only through that person; and/or
   (b) That person may agree not to represent competitors of Alco in the sale of Products and Services in any Export Markets or not to buy Products and Services from Alco's competitors for resale in the Export Markets.
5. Alco may enter into agreements with individual suppliers to act as an export intermediary with regard to Products and Services in the Export Markets whereby Alco may:
   (a) Designate the price at which Products or Services will be sold or resold in the Export Markets;
   (b) Establish the quantities of Products or Services that will be sold through Alco in the Export Markets;
   (c) Designate the terms or conditions of sale or financing for Products or Services in the Export Markets;
   (d) Tie the sale of Products and Services to other Products or Services also of U.S. origin in the Export Markets;
   (e) Allocate foreign markets, territories or customers among suppliers; and
   (f) Refuse to deal with foreign buyers which are in competition with Alco in the Export Markets.

6. Alco may enter into exclusive or nonexclusive agreements with individual buyers in the Export Markets to act as a procuring agent with respect to a particular transaction.

7. With respect to invitations to bid or sales opportunities in the Export Markets, Alco may:

(a) Contact individual suppliers of Products and Services specified in the invitation to bid or the purchase specifications; and/or

(b) Distribute to each supplier bid requirements, bidding dates, purchase specifications and any other information provided by the prospective purchaser; and/or

(c) Solicit and receive independent quotations for the Products and Services from individual suppliers; and/or

(d) Enter into agreements with individual suppliers whereby Alco will submit a response to the invitation to bid or purchase specifications that proposes the supply of such supplier's Products and Services.

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, NW., Washington, DC 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: July 26, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–20099 Filed 7–30–84; 8:45 am]

BILLING CODE 3510–DR–M

Importers and Retailer's Textile Advisory Committee Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held Tuesday, September 11, 1984, 1:30 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, N.W., Washington, D.C. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: July 25, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84–20088 Filed 7–30–84; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Certain Procedures To Obtain Waivers of Certain Requirements Affecting the Importation of Certain Ornamented Trousers, Slacks and Shorts of Vegetable Fibers (Except Cotton) or Silk Which Are Subject to Cotton or Man-Made Fiber Restraints

July 25, 1984.

On June 28, 1984 a notice was published in the **Federal Register** (49 FR 26622) which changed the textile category classification for certain trousers, slacks and shorts of vegetable fibers other than cotton or of silk, subject to cotton or man-made fiber restraints, ornamented, effective on June 21, 1984. The purpose of this notice is to announce that any importer having visas or export licenses for these products in Category 359 or 659, issued by the exporting government prior to June 28, 1984, and for which entry is made into the Customs territory of the United States on or before October 1, 1984, may request a waiver of the requirement for the textile category classifications which became effective June 21. Such importer should submit copies certified by the applicant as true copies of the visas or export licenses to the Chairman of the Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230. Submissions made in any request for a waiver are subject to Section 1001 of Title 18 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–20087 Filed 7–30–84; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary, Defense.

ACTION: Notice of a new system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records to its inventory of systems of records subject to the Privacy Act of 1974. The system notice for the new system is set forth below.

DATES: The new system will be effective August 30, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C–315, The Pentagon, Washington, DC 20301. Telephone: (202) 695–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** at FR Doc. 83–12048 (48 FR 25950) June 6, 1983 and FR Doc. 84–4415 (49 FR 6145) February 17, 1984.

A new system report as required by 5 U.S.C. 552a(o) was submitted on June 22, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

July 26, 1984.

DM&L 24.0

SYSTEM NAME:

Joint Service Review Activity File.

SYSTEM LOCATION:

Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics), (MP & FM) (LLP), Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted a complaint to the Joint Service Review

Activity in accordance with DoD Directive 1332.28 and the decisional principles contained within the *Urban Law* court decision. Complaints relate to decisional documents issued by the Discharge Review Boards of the Military Departments.

CATEGORIES OF RECORDS IN THE SYSTEM:

The JSRA files consist of the following: The complaint submitted by the individual, a copy of the decisional document, and review of the complaint by the Military Department, the Joint Service Review Activity, and the Deputy Assistant Secretary of Defense (MP&FM). Additionally, any evidence submitted by the complainant to support the complaint is maintained with the documents listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, U.S.C. 1553, "Review of Discharge or Dismissal," and DoD Directive 1332.28, "Discharge Review Board (DRB) Procedures and Standards," dated August 11, 1982.

PURPOSE(S):

This data is used to maintain the necessary documents needed to process complaints submitted by applicants or their counsel in an expeditious fashion; used by the Discharge Review Boards of the Military Departments in evaluating the validity of the complaint; The Joint Services Review Activity in making its evaluation and recommendation on the complaint; the Deputy Assistant Secretary of Defense in making a final determination on the complaint. The documents are available to the complainant and/or applicant for his/her case. They receive a copy of the DASD final determination. Only information which has been expurgated of all identifying information will be released to the public when requested.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's Published System Notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by surname.

SAFEGUARDS:

Access to the building is by authorized identification pass or official escort. The records are maintained in a locked file cabinet which is under continuous observation during duty hours. The room is locked after duty hours.

RETENTION AND DISPOSAL:

The records are maintained until the complaint action is finalized. Records are then kept for 1 year in the inactive status. The records are then forwarded to the appropriate Military Department for inclusion in the Official Military Records or destruction if copies of the action have been filed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Director, Joint Services Review Activity, Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics) (Military Personnel and Force Management), Room 3D–823, The Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

General information concerning the JSRA procedures may be obtained from the Administrative Director, Joint Services Review Activity, Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics) (Military Personnel and Force Management), Room 3D–823, The Pentagon, Washington, D.C. 20301. Telephone: 202/697–3387.

RECORD ACCESS PROCEDURES:

Requests from individuals for their own files should be sent to the address indicated in "Notification Procedure" section above. Written requests for information should contain the full name and address of the individual and a notarized signature.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records, and for contesting contents and appealing initial determinations by the individual concerned, are contained in 32 CFR Part 286b, and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

The basic information contained in the JSRA's file comes from the complainant, and the decisional document issued by the Military Department. This information forms the basis for reviews conducted by the Discharge Review Board of the Military Department, the Joint Service Review Activity and the Deputy Assistant Secretary of Defense (Military Personnel and Force Management).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–20098 Filed 7–30–84; 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/approval the following existing collection of information under the provisons 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; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Annual Report on Uniform Commutation Fund

Some institutions of higher education which host ROTC units elect to receive commutation instead of uniforms for their ROTC programs. The institutions purchase the uniforms for the ROTC students, and are reimbursed by the Services for uniforms and associated custodial costs. The annual report on the fund is an accounting of monies spent and a computation of excess funds for refund to the sponsoring Services.

Participating Institutions of Higher Education: 135 respondents; 155 burden hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mr. 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 Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301, telephone (202) 695–0643. This information collection will be administered by the Department of Defense and is not for contact.

Dated: July 26, 1984.

M.S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-20094 Filed 7-30-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Fuel Pier Relocation Project to the Terminal Island Naval Complex, Long Beach, California; Record of Decision

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice.

SUMMARY: This announces the availability of a Record of Decision regarding the Final Environmental Impact Statement on Defense Logistics Agency's Fuel Pier Relocation Project to the Terminal Island Naval Complex, Long Beach, California. Copies of the Record of Decision may be obtained from the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Goode, Environmental Officer, Defense Fuel Supply Center, DFSC-FQ, Cameron Station, Alexandria, VA 22314. Telephone (202) 274-6989.

SUPPLEMENTARY INFORMATION: Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1505.2) direct the preparation of a public Record of Decision concerning decisions reached on issues discussed in Environmental Impact Statements. In December 1982, a Final Environmental Impact Statement was published concerning Defense Logistics Agency's Fuel Pier Relocation Project to the Terminal Island Naval Complex, Long Beach, California. The Record of Decision states that it has been determined to construct a fuel pier for transferring fuel at the Navy Mole on Terminal Island Naval Station, Long Beach, CA. The Record of Decision summarizes alternative locations and pipeline routes reviewed in the EIS, preferences among alternatives, and measures which will be undertaken to minimize environmental effects. Implementation of these decisions may begin upon publication of this notice.

Dated: July 25, 1984.

Christ F. Potamos,

Colonel, USA, Staff Director, Installation Services and Environmental Protection.

[FR Doc. 84-20204 Filed 7-30-84; 8:45 am]

BILLING CODE 3620-01-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 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.

Revision

Request for Verification of Manufacturers Part Number (DD Form 1982).

The Defense Logistics Agency, Office of the Secretary of Defense needs to extend the DD Form 1982 to verify manufacturers part numbers, submitted without Technical data for National Stock Number assignment required by Chapter 145, Title 10 of the U.S. Code, from all entities, contractors that do business with the government. This form is used exclusively by government activities.

The DD Form 1982 is used to request the manufacturer's assistance in validating a part number that has been submitted to a Military Service/Agency as representing an item manufactured or supplied by his concern, where no technical data is available for complete identification and substantiation of the item of production/item of supply involved. The Form requests also that any available technical data or information be furnished for the purpose of preparing a Federal Item Identification.

Business firms: 6,000 responses; 25 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel L. 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 G. Frye, Action Officer, Defense Logistics Agency, Cameron Station, Alexandria, VA, ATTN: DLA-SC, Telephone (202) 274-6491.

Dated: July 26, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-20095 Filed 7-30-84; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Operational Test and Evaluation Requirements and Facilities will meet on August 15, 1984, at Commander Operational Test and Evaluation Force, Norfolk, Virginia 23511. Sessions of the meeting will commence at 8:00 a.m. and terminate at 6:10 p.m. on August 15, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to determine the adequacy of the Navy's ability to test new systems and equipment. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) title 5, United States Code.

For futher information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: July 26, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-20123 Filed 7-30-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Long-Term Goals

for RDT&E will meet on August 15, 1984, at the Office of Naval Research, Room 915, 800 No. Quincy Street, Arlington, Virginia. Sessions of the meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on August 15, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review previously received briefing material and hold discussions relative to goal setting and the planning process for the Navy's Technology Base. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: July 26, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–20122 Filed 7–30–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP84–121–002, CP84–172–001, CP84–205–002, CP84–247–001, CP84–256–001, CP84–282–001, CP84–301–001, and CP84–346–001]

ANR Pipeline Co.; Supplement To Requests Blanket Authorization

July 27, 1984.

Take notice that on June 27, 1984, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket Nos. CP84–121–002, CP84–172–001, CP84–205–002, CP84–247–001, CP84–256–001, CP84–282–001, CP84–301–001 and CP84–346–001 a supplement to request filed December 9, 1983, in Docket No. CP84–121–000, January 4, 1984, in Docket No. CP84–172–000, January 23, 1984, in Docket No. CP84–205–000, February 17, 1984, in Docket No. CP84–247–000, February 24, 1984, in Docket No. CP84–256–000, March 3, 1984, in Docket No. CP84–282–000, March 14, 1984, in Docket No. CP84–301–000 and April 11, 1984, in Docket No. CP84–346–000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that ANR proposes to include "flexible authority" in end-user transportation services ANR provides for various end users, all as more fully set forth in the supplement which is on file with the Commission and open to public inspection.

Specifically, ANR proposes to provide "flexible authority" in the end-user transportation services which ANR provides for Gulf State Utilities (GSU) at Docket No. CP84–121–000, Bethlehem Steel Corporation (Bethlehem) at Docket No. CP84–172–000, ARMCO Inc. (ARMCO) at Docket No. CP84–205–000, The General Tire & Rubber Company (General Tire) at Docket No. CP84–247–000, Middletown Paperboard Company (Middletown) at Docket No. CP84–256–000, 3M Corporation (3M) at Docket No. CP84–282–000, Westvaco Corporation (Westvaco) at Docket No. CP84–301–000, and Indiana Gas Company, Inc. (Indiana Gas) at Docket No. CP84–346–000. It is stated that the referenced transportation services are provided pursuant to ANR's blanket certificate authority issued in docket No. CP82–480–000 on September 30, 1982, and § 157.208(e)(2) of the Commission's Regulations. It is explained that the referenced end-users have advised ANR that each may require modifications in the existing transportation services to meet the operational needs of its identified facilities. It is further explained that the modifications of service may consist of obtaining supplemental or replacement sources of supply and/or changes in receipt and/or delivery points. Any such modifications of service would not result in a change in volumes transported or end-use facility destination, ANR asserts. ANR avers that it is currently serving GSU at its Willow Glen, Louisiana, facility; Bethlehem at its Sparrow Point, Maryland facility; ARMCO at its Middletown, Ohio facility; General Tire at its Ashtabula and Mogadore, Ohio, facilities; Middletown at its Middletown, Ohio, facility; 3M at its St. Paul, Minnesota facility; Westvaco at its Covington, Virginia, facility and the Indiana Gas' end-users at their respective facilities: RCA Corporation in Bloomington, Indiana, Cummins Engine Company in Columbus, Indiana, Gohmann Asphalt in Jeffersonville, Indiana, Colgate-Palmolive Corporation in Jeffersonville, Indiana, and Griffin Industries in Columbus, Indiana.

ANR avers that upon implementation of "flexible authority," ANR would file a report with the Commission within 30 days, providing, where applicable:

(i) A copy of the gas purchase contract between the end-user and the seller, and a copy of any amendment to the ANR and end-user transportation agreement;

(ii) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, the identification of the parties, and the current contract price;

(iii) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(iv) A statement that the gas is not committed or dedicated to interstate commerce within the meaning of NGPA Section 2(18);

(v) The location of the receipt/delivery points being added or deleted, and the appropriate transportation charge resulting from the addition or deletion of receipt or delivery points (for deletions the producer/supplier will be provided);

(vi) Where an intermediary participates in the transaction between the end-user and the seller, the information required by § 157.209(c)(1)(ix) of the Commission's Regulations;

(vii) The identity of any other pipeline involved in the transportation.

Finally, ANR avers that relative to transportation service ANR provides on behalf of Bethlehem, ANR, Bethlehem, and Caliche Pipeline Company (Caliche) have executed amendments to the transportation agreement (agreement) to add points of receipt whereby Bethlehem's seller, Caliche, is authorized to tender gas to ANR for Bethlehem's account. The addition of points of receipt was necessitated by Caliche's inability to deliver adequate sales volumes from the initial points of receipt referenced in the agreement, as amended November 18, 1983, and December 22, 1983, it is stated. Caliche's tendering of gas to ANR for Bethlehem's account through the additional points has allowed Caliche to meet its sales obligation and has afforded Bethlehem a continuing supply source, it is further stated. Utilization of these additional points of receipt was made under the terms and conditions of the agreement, as amended, with the transportation rates derived consistent with ANR's EUT–1 Rate Schedule on file in its FERC Gas Tariff, Original Volume No. 1, it is asserted. The natural gas Caliche continues to supply it gas that is not

"committed to or dedicated to interstate commerce" and is being sold at a price that does not exceed the maximum lawful price authorized under the Regulations implementing the Natural Gas Policy Act of 1978, ANR avers. The agreement as filed in the Request for Authorization contains language which the parties interpreted as broad enough to allow amendment and addition of receipt and/or delivery points without the necessity of a supplemental filing in Docket No. CP84–172–000, it is explained. Upon receipt of notice of the Commission's granting of "flexible authority" in transportation services provided by other interstate pipelines, ANR revisited the issue of filing for specific supplemental authority to utilize the additional receipt points in the Bethlehem service, it is further explained. ANR alleges that due to the large number of filings made by ANR, including initial submissions and supplemental filings for all of the end-user services provided by ANR, ANR inadvertently fialed to make a specific request for "flexible authority" in the Bethlehem service in a more timely manner. ANR and Bethlehem have always been, and continue to be, of the opinion that the agreement and the Commission's grant of authority under the notice and protest procedures contemplates the addition of points of reciept to complete the transportation service and that the service provided by ANR on behalf of Bethlehem is consistent with the Commission's Regulations implementing the end-user transportation service, ANR avers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–20159 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–526–000]

Consolidated Gas Transmission Corp. and Texas Eastern Transmission Corp.; Application

July 26, 1984.

Take notice that on June 28, 1984, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Eastern Transmission Corporation (Texas Eastern), One Houston Center, 1221 McKinney, Houston, Texas 77010, (Applicants) filed in Docket No. CP84–526–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to drill one new well, recondition one old production well, and equip them both for use as observation wells, and to plug and abandon an existing observation well at their jointly-owned Oakford storage pool in Westmoreland County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants seek authorization to drill one new well (to be known as Well No. JW–265) within the northern pool boundaries and to recondition one old plugged production well (to be known as Well No. JW–266) located within the protective area surrounding the storage pool. Both wells, it is stated, would be completed in the Murrysville Sand, the shallower of the two formations in the pool, and would be equipped and operated as observation wells to detect gas migration in the northern portion of the pool.

Applicants further propose to plug and abandon Well No. JW–38, an observation well located in the southwestern end of the Fifth Sand, the deeper formation in the pool. It is explained that Well No. JW–38 was drilled and completed in 1917 and reconditioned in 1954 and present data indicate that its casing is leaking. Applicants have determined that the cost of reconditioning the well would exceed the cost of drilling a new one, and that it is not necessary to retain the well for observation purposes since there are other Fifth Sand observation wells nearby.

Applicants state that the estimated cost of their proposal is $770,000. Consolidated proposes to finance the instant proposal from funds obtained from its parent, Consolidated Natural Gas Company, or from funds on hand. Texas Eastern states that the proposed facilities would be financed with funds on hand, by borrowing under Texas Eastern's revolving credit arrangement, or by short-term financing. No additional sales or services are proposed in the subject application.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–20161 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–33–007]

El Paso Natural Gas Co.; Compliance Filing

July 26, 1984.

Take notice that on July 20, 1984, El Paso Natural Gas Company (El Paso) tendered a filing in compliance with the Federal Energy Regulatory Commission's (Commission) order issued July 5, 1984 (order) in Docket No. TA84–2–33–000. Ordering paragraph (B)

of the order directed El Paso to file, within 15 days of the date of issuance thereof, revised tariff sheets reflecting the recalculation of carrying charges in Account No. 191 to reflect the effect of deferred state income taxes for the period January 1, 1979 through December 31, 1980.

In compliance with ordering paragraph (B) of the Commission's July 5, 1984 order, El Paso has imputed a combined Federal and state income tax rate of 48 percent in the carrying charge calculation of this filing and has adjusted its Account No. 191 balance included in its April 16, 1984 PGA compliance filing to reflect the effect of deferred state income taxes on the calculation of the carrying charges for the period January 1, 1979 through December 31, 1980. Such adjustment impacts the calculation of carrying charges from January 1, 1981 through December 31, 1983 pursuant to § 154.67(c) of the Commission's regulations requiring the quarterly compounding of interest. The revised calculation results in a decrease of $2,363,478 to the balance in Account No. 191 as of June 30, 1983 in place of the decrease made in El Paso's April 16, 1984 filing of $2,169,770 resulting in a net change of a further decrease of $193,708. This adjustment to the beginning balance of Block 7 results in a new total carrying charge of $7,233,365 which is $5,386 less than the carrying charge as included in El Paso's compliance filing filed April 16, 1984, thus resulting in a total decrease of $199,094. The balance in Account No. 191 for the block ended as of December 31, 1983, after such adjustment and after including $4,490,863 for unpaid accruals and exchange gas, is identical to the Account No. 191 balance stated in El Paso's March 1, 1984 PGA filing and its April 16, 1984 PGA compliance filing. Therefore, the surcharge rate of $.3703 per dth in El Paso's rates filed March 1 and April 16, 1984 remains the same thereby obviating the need to file revised tariff sheets.

El Paso states that copies of its filing have been served upon all parties of record in Docket No. TA–84–2–33–000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–20162 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6928–001]

City of Gillette, WY; Surrender of Preliminary Permit

July 27, 1984.

Take notice that the City of Gillette, Permittee for the proposed Iron Creek Power Project, FERC No. 6928, has requested that its preliminary permit be terminated. The permit was issued on May 9, 1983, and would have expired on April 30, 1986. The project would have been located on the Shoshone River in Park County, Wyoming.

The Permittee filed its request on April 27, 1984, and the surrender of the preliminary permit for Project No. 6928 is deemed accepted 30 days after issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–20160 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–101–000]

Great Lakes Gas Transmission Co.; Petition to Permit Waiver

July 26, 1984.

Take notice that on July 6, 1984, Great Lakes Gas Transmission Company (Great Lakes) tendered for filing its "Petition For Waiver Of the Commission Rule" (18 CFR 154.111) promulgated by the Commission by its order No. 380, dated May 25, 1984 in Docket No. RM–83–71–000. Order No. 380, *inter alia*, would require elimination of purchased gas and other variable costs from minimum commodity bill provision that operate to recover such costs.

Great Lakes states that it seeks the waiver so as to exempt the applicability of the Rule to its Rate Schedule CQ, if the Commission does not, prior to July 31, 1984, grant Great Lakes' request in a manner that would permit the continued effectiveness of the minimum commodity bill provisions of its Rate Schedule CQ.

Great Lakes further states that its tariff provisions are effective and that on several occasions in the past, it has granted partial or full waiver of its resale customer's take-or-pay obligations. This, Great Lakes says, clearly demonstrates that it has been able to provide necessary relief to its resale customers to alleviate their minimum bill problems.

Great Lakes requests that the Commission grant waivers of its regulations so as to make the waiver effective concurrently with the effective date of the Rule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 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 August 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–20163 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7904–001]

Harrison Enterprises; Surrender of Preliminary Permit

July 27, 1984.

Take notice that Harrison Enterprises, the Permittee for the Balls Canyon Project No. 7904, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7904 was issued on May 31, 1984, and would have expired on October 31, 1985. The project would have been located on Balls Creek in Sierra County, California.

The Permittee filed the request on June 18, 1984, and the surrender of the preliminary permit for Project No. 7904 is deemed accepted as of June 18, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–20164 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84-524-000]

Michigan Gas Storage Co.; Application

July 26, 1984.

Take notice that on June 28, 1984, Michigan Gas Storage Company (Michigan Storage), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP84-524-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities by sale to Consumers Power Company (Consumers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Michigan Storage proposes to abandon, by sale to Consumers, 6.073 miles of 12-inch nominal diameter pipeline known as the Schoenherf Road interconnection in Macomb County, Michigan. It is stated that in addition all related properties and appurtenant facilities would be included in the proposed sale.

Michigan Storage states that this pipeline segment is presently being used to provide emergency service to Consumers on the eastern end of Consumers' distribution system in Macomb County, Michigan. Following abandonment of such facilities, Michigan Storage states that it would still have the capability of supplying emergency service to Consumers distribution system in the area in the event it is needed.

Michigan Storage states that the abandonment of the subject facilities, would relieve Michigan Storage of the obligation of maintaining these facilities and the sale of the facilities to Consumers would strengthen its distribution system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20166 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP83-66-005 and CP84-349-002]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 26, 1984.

Take notice that on July 20, 1984, Mississippi River Transmission Corporation ("Mississippi") tendered for filing at Docket No. RP83-66 revised tariff sheets to its FERC gas Tariff as listed on the attached Appendix for the purpose of correcting the effective date of the sheets submitted with its compliance filing of June 26, 1984 made to implement a Stipulation and Agreement approved by Commission's Letter Order dated May 25, 1984. Mississippi states that Article XI of the aforesaid Stipulation and Agreement provided generally for an effective date of October 1, 1983 for Mississippi's Second Revised Volume 1 of its FERC gas tariff and that Mississippi's original compliance filing inadvertently proposed a May 1, 1984 effective date for the revised sheets. Mississippi states further that this revised compliance filing makes no changes in its currently effective rates and that the refunds reflecting new base tariff rates effective October 1, 1983 have been distributed to its jurisdictional customers and this revised compliance filing does not affect such refunds.

Mississippi also states that as a result of the instant filing, the number designation of the rate tariff sheet set forth on the attached Appendix submitted with a compliance filing at Docket No. CP84-349 is also changed. Such change does not affect the sheets' contents from that originally filed in CP84-349 docket.

Mississippi states the copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-20167 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA84-2-26-000 and TA84-2-26-001]

Natural Gas Pipeline Company of America; Change in Rates

July 26, 1984.

Take notice that on July 20, 1984, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective September 1, 984.

Fifty-sixth Revised Sheet No. 5
Twenty-third Revised Sheet No. 5A
Tenth Revised Sheet No. 5C
Tenth Revised Sheet No. 5D

The purpose of the instant filing is to reflect rate adjustments pursuant to Sections 18 and 29 of the General Terms and Conditions of the Tariff (PGA and Incremental Pricing) together with an adjusment pursuant to Section 24 of the Tariff (Research, Development and Demonstration). The latter adjustment is in compliance with the Commission's order issued September 30, 1982 in Docket No. RP82-67.

The overall effect of the filed for adjustments on Natural's DMQ-1 rates is an increase of 32.45 cents in the commodity component with the demand

and entitlement components remaining unchanged. Of the 32.45 cent increase, .09 cents is due to the Research, Development and Demonstration Adjustment. Appropriate adjustments have been made with respect to Natural's other sales rate schedules. The adjustments reflect an annualized revenue increase of $279.8 million attributable to gas costs. The effect of these rate changes over the next six month deferred account recovery period is a revenue increase of $163.9 million. This revenue increase is comprised of a $162.4 million increase in gas costs and a $1.0 million increase due to the increase in the deferred account recovery rate. The effect of the Research, Development and Demonstration Adjustment is $.5 million over the six month period.

Sheets Nos. 5C and 5D reflect no projected incremental pricing surcharges (MSAC) for the six month period beginning September 1, 1984.

Natural requests any waivers of the Commission's regulations to the extent, if any, required to put the proposed tariff sheets into effect on September 1, 1984.

A copy of this filing has been mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to interview or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such peititions or protests must be filed on or before August 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-20169 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5959-002]

New York State Office of Parks, Recreation and Historic Preservation; Surrender of Preliminary Permit

July 27, 1984.

Take notice that the New York State Office of Parks, Recreation and Historic Preservation, Permittee for the proposed Quaker Lake Project No. 5959, requested by letter dated May 30, 1984, that its preliminary permit be terminated. The preliminary permit was issued February 22, 1983, and would have expired on August 31, 1984. The project would have been located on Quaker Run in Cattaraugus County, New York.

The surrender of the preliminary permit for Project No. 5959 is effective thirty days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20170 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5962-002]

New York State Office of Parks, Recreation and Historic Preservation; Surrender of Preliminary Permit

July 27, 1984.

Take notice that the New York State Office of Parks, Recreation and Historic Preservation, Permittee for the proposed Glen Creek Project No. 5962, requested by letter dated May 30, 1984, that its preliminary permit be terminated. The preliminary permit was issued February 22, 1983, and would have expired on August 31, 1984.The project would have been located on Glen Creek in Schuyler County, New York.

The surrender of the preliminary permit for Project No. 5962 is effective thirty days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20171 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5963-002]

New York State Office of Parks, Recreation and Historic Preservation; Surrender of Preliminary Permit

July 27, 1984.

Take notice that the New York State Office of Parks, Recreation and Historic Preservation, Permittee for the proposed Martin Dunham Project No. 5963, requested by letter dated May 30, 1984, that its preliminary permit be terminated. The preliminary permit was issued February 22, 1983, and would have expired on August 31, 1984. The project would have been located on Quacken Kill in Rensselaer Country, New York.

The surrender of the prelminary permit for Project No. 5963 is effective thirty days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20172 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-562-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

July 27, 1984.

Take notice that on July 10, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-562-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove certain compressor facilities located in Andrews County, Texas, all as more fully set forth in the application on file with the Commission and open to public inpection.

Specifically, Northern proposes to abandon and remove the Florey mainline compressor station (Florey) which consists of three, 2800 horsepower compressor units; two, 1764 horsepower compressor units and one, 2000 horsepower compressor unit all located in Section 13, Block A-19, Public School Land, Andrews County, Texas.

Northern states that its Permian Area gas supply facilities consist basically of two systems commonly known as the West Leg and the East Leg and that Florey is located on a section of the East Leg system which section runs from the Spraberry compressor Station to the Plains compressor station. It is explained that Florey was originally constructed during the 1950's and 1960's as the most economical means of providing additional capacity on the East Leg system to allow Northern to meet its gas purchase commitments and that during such time, all of the gas purchased from the East Leg system together with volumes transported for El Paso Natural Gas Company (El Paso) under Rate Schedule T-1 of Northern's F.E.R.C. Gas Tariff, Original Volume No. 2, was compressed at Florey for transportation to the Plains measuring station located in Yoakum County, Texas. The average daily volumes being compressed at Florey were approximately 600,000 Mcf of gas per day during the 1960's, it is submitted.

Northern states that due to declining production behind the Florey mainline compressor station, said station has not been in the operation and such compression has been suspended. Northern projects that the flows on Northern's pipeline system would be at such a level that compression at Florey would no longer be needed. Northern asserts that the proposed abandonment of the Florey mainline compressor station is the most efficient and economical means of operating

Northern's pipeline system. It is asserted that the pipeline capacity from Spraberry to Plains with and without Florey in operation is approximately 672,000 Mcf of gas per day, and 462,000 Mcf of gas per day, respectively, and that volume throughput from Spraberry to Plains would need to exceed approximately 462,000 Mcf of gas per day before compression at Florey would be required. Northern does not anticipate the volume throughput from Spraberry to Plains to exceed 462,000 Mcf of gas per day in the near future. More specifically, during the next five (5) years, Northern estimates the peak day volume flowing from Spraberry to Plains to be approximately 201,000 Mcf of gas per day. Northern states that the estimated cost to abandon and remove compression facilities is $719,000 with salvage value estimated at $95,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20173 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5716-015, et al.]

Natural Gas Companies; Applications for Certificates, Abandonments of Service and Petitions to amend Certificates [1]; Mobil Oil Corporation, et al.

July 26, 1984.

Take notice that eact of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 13, 1984, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-5716-015, D, July 5, 1984	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, Hugoton Field, Haskell County, Kansas.	(1)	
G-5716-016, D, July 5, 1984	do	Northern Natural Gas Company, Hugoton Field, Haskell County, Kansas.	(1)	
G-7642-008, D, July 5, 1984	do	Northern Natural Gas Company, Hugoton Field, Stevens County, Kansas.	(1)	
G-7645-006, D, July 5, 1984	do	Northwest Central Pipeline Corporation, Guymon-Hugoton Field, Texas County, Oklahoma.	(1)	
G-11742-001, D, July 5, 1984	do	Northwest Central Pipeline Corporation, Kearny and Stevens Counties, Kansas.	(1)	
G-15714-000, D, July 10, 1984	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Transwestern Pipeline Company, Texas Panhandle, Lipscomb County, Texas.	(2)	
CI61-1562-001, D, July 9, 1984	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	Trunkline Gas Company, Esther Field, Vermilion Parish, Louisiana.	(3)	
CI66-32-E, July 9, 1984	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transcontinental Gas Pipe Line Corporation, Southeast Gueydan and Gueydan Fields, Vermilion Parish, Louisiana.	(4)	14.73
CI72-578-001, D, July 5, 1984	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Eastern Transmission Corporation, East Cameron Blocks 271 & 286, Offshore Louisiana Parish, Louisiana.	(5)	
CI77-39-001, D, July 10, 1984	Mobil Oil Exploration & Producing, Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Eastern Transmission Corporation, Eugene Island Block 333 (portion of SE/4 of Eugene Island Block 312), Offshore Louisiana.	(6)	
CI84-478-000, E, July 6, 1984	Sun Exploration and Production Company (Successor To Petro-Lewis Funds Inc.), P.O. Box 2880, Dallas, Texas 75221-2880.	Northwest Central Pipeline Corporation, Rodman Plant, Garfield County, Oklahoma.	(7)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI84-479-000, E, July 6, 1984	....do	Northwest Central Pipeline Corporation, Rodman Plant, Garfield County, Oklahoma.	(1)	
CI84-480-000, E, July 6, 1984	....do	Northwest Central Pipeline Corporation, Rodman Plant, Garfield County, Oklahoma.	(2)	
CI84-481-000, E, July 6, 1984	Sun Exploration and Production Company (Successor To Petro-Lewis Funds Inc.), P.O. Box 2880, Dallas, Texas 75221-2880.	Northwest Central Pipeline Corporation, Rodman Plant, Garfield County, Oklahoma.	(3)	
CI84-482-000, A, July 9, 1984	Anadarko Production Company, P.O. Box 1330, Houston, Texas 77001.	Texas Gas Transmission Corporation, South Pelto Field, Offshore Louisiana.	(4)	
CI84-483-000, F, July 5, 1984	POGO Producing Company (Partial Successor In Interest To Amax Petroleum Corporation), Post Office Box 61289, Houston, Texas 77208.	United Gas Pipe Line Company, Block A-356, High Island Area, Offshore Texas.	(5)	
CI84-484-000, E, July 9, 1984	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	United Gas Pipe Line Company, Lawson Field, Acadia Parish, Louisiana.	(6)	14.73
CI84-486-000, A, July 10, 1984	The Superior Oil Company, Post Office Box 1521, Houston, Texas 77001.	Natural Gas Pipeline Company of America, West Cameron 71 and 149 Fields, Offshore Louisiana.	(7)	15.025
CI84-487-000, A, July 11, 1984	Pennzoil Producing Company, P.O. Box 2967, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, Vermilion Area Block 103, Offshore Louisiana.	(8)	15.025
CI84-488-000, B, July 6, 1984	Meadows Oil Co.—Ineida Long, Star Rt., Box 4, Harrisville, West Virginia 26362.	Consolidated Gas Supply Corporation, Murphy District Ritchie County, West Virginia.	(9)	
CI84-489-000, B, July 2, 1984	Viking Resources, 1109 Hudson Lane, No. 4, Hudson Place, Suite B, P.O. Box 2441, Monroe, Louisiana 71207.	Primos Production, Monroe Gas Field, Ouachita Parish, Louisiana.	(10)	
CI84-490-000 (G-12751), B, July 10, 1984.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	United Gas Pipe Line Company, Cadeville Field, Ouachita Parish, Louisiana.	(11)	
CI84-491-000, B, July 11, 1984	Dodds et al, Darrell Goe Agent, P.O. Box 85, Albion, Pennsylvania 16401.	Consolidated Gas Supply Corporation, Cherry Hill Field, Erie County, Pennsylvania.	(12)	
CI84-492-000, B, July 11, 1984	....do	Consolidated Gas Supply Corporation, Cherry Hill Field, Erie County, Pennsylvania.	(13)	
CI84-493-000, B, July 11, 1984	Darrell Goe, P.O. Box 85, Albion, Pennsylvania 16401	Consolidated Gas Supply Corporation, Beaver Center, Erie County, Pennsylvania.	(14)	
CI84-494-000, B, July 11, 1984	Charles Dodds et al, Darrell Goe Agent	Consolidated Gas Supply Corporation, Cherry Hill Field, Erie County, Pennsylvania.	(14)	
CI84-495-000, B, July 11, 1984	Darrell Goe, Rt. No. 1, Albion, Pennsylvania 16401	Consolidated Gas Supply Corporation, Albion Field, Erie County, Pennsylvania.	(15)	
CI84-496-000 (G-9349), B, July 11, 1984.	Monsanto Oil Company, 5051 Westheimer, Houston, Texas 77056.	Texas Gas Pipe Line Corporation, Big Hill Field, Jefferson County, Texas.	(16)	
CI84-497-000 (CI65-1050-000), B, July 6, 1984.	J. E. Henry, 310-3 Tom O'Shanter Lane, Richardson, Texas 75080.	Sohio Petroleum Company, East Washington Field, McClain County, Oklahoma.	(17)	
CI84-499-000, E, July 13, 1984	Sun Exploration and Production, Company (Successor To Petro-Lewis Funds Inc.), P.O. Box 2880, Dallas, Texas 75221-2880.	Northwest Central Pipeline Corporation, Enid Plant, Garfield County, Oklahoma.	(3)	
CI68-666-001, E, July 12, 1984	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transcontinental Gas Pipe Line Corporation, SE Gueydan Field, Vermilion Parish, Louisiana.	(18)	14.73
CI70-478-001, E, July 11, 1984	....do	Transcontinental Gas Pipe Line Corporation, West Cameron Block 45, Offshore Louisiana.	(19)	14.73
G-5367-000, July 18, 1984	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	El Paso Natural Gas Company, Levelland Gasoline Plant, Hockley County, Texas.	(20)	
CI71-900-001, E, July 16, 1984	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transcontinental Gas Pipe Line Corporation, North Live Oak Field, Vermilion Parish, Louisiana.	(21)	14.73
CI77-208-001, E, July 18, 1984	....do	El Paso Natural Gas Company, Southeast Parsell Field, Roberts & Hemphill Counties, Texas.	(22)	14.73
CI84-503-000, A, July 16, 1984	Stephens Production Company, Post Office Box 2407, Fort Smith, Arkansas 72902.	Arkansas Louisiana Gas Company, Arkoma Area, Haskell, LeFlore and Pittsburg Counties, Oklahoma	(23)	

[1] To release gas for irrigation fuel.

[2] The Ola Pipe #5 Well will not produce sufficient quantities of casinghead gas to economically justify connection to Transwestern's existing system; thus both parties desire to release the casinghead gas produced from the Tonkawa formation by the subject well from the Gas Purchase Agreement.

[3] The partial release of that portion of several leases which were not included in producing units.

[4] Effective December 1, 1983, Phillips Oil Company assigned to Applicant its working interest in the Camerina SUA, Vermilion Parish School Board #7, Miogyp RE SUA, and the U Miogyp located in S.E. Gueydan and Gueydan Fields, Vermilion Parish, Louisiana.

[5] Lease expired.

[6] Applicant is filing for additional delivery points.

[7] Assignment, Bill of Sale and Conveyance, Petro-Lewis Funds, Inc. conveyed to Sun Exploration and Production Company its interest in the Rodman Plant, effective May 1, 1984.

[8] Applicant is filing under Gas Purchase and Sales Agreement dated May 16, 1984.

[9] POGO has acquired by assignment an undivided 2.01495% interest in Block A-356, High Island Area, Offshore Texas, previously owned by AMAX. The instrument of assignment effective April 1, 1984.

[10] Effective December 1, 1983, Phillips Oil Company sssigned to Applicant its working interest in the Lawson Field, Acadia Parish, Louisiana.

[11] Applicant is filing under Gas Purchase Contract dated June 6, 1984.

[12] Applicant is filing under Gas Purchase Agreement dated June 21, 1984.

[13] Insufficient production.

[14] Reservoir pressure of well is not sufficient to feed gas into UGPI system without compression. Volume of gas is not enough to justify compression.

[15] All leases subject to the basic contract between British-American Oil Producing Company and United dated March 22, 1957 in which Gulf acquired an interest have expired by their own terms and were surrendered to the landowner prior to the expiration of this contract by its own terms on July 16, 1977, except Lease No. 11752 which is held by production from acreage covered by leases which are not subject to this contract.

[16] Not economically feasible to product at this rate.

[17] The last well on the lease, the M.P. Pipkin No. 5-C, ceased to be productive of gas in 1983. The well was temporarily abandoned on June 26, 1983 and the committed lands reverted to the land owners. Monsanto no longer owns an interest in the lands committed to the Contract. Therefore, continued service is unwarranted.

[18] Percentage sale to Sohio being abandoned because the Plant became uneconomic.

[19] Effective December 1, 1983, Phillips Oil Company assigned to Applicant its interest in the Southeast Gueydan Field, Vermilion Parish, Louisiana.

[20] Effective December 1, 1983, Phillips Oil Company assigned to Applicant its interest in all informations down to the base of the Lower Cyclamina in State Lease 5269, Block 20 West Cameron Block 45 Field, Offshore Louisiana.

[21] Applicant is filing to change in delivery point.

[22] Effective December 1, 1983, Phillips Oil Company assigned to Applicant its interest in the North Live Oak Field, in Vermilion Parish, Louisiana.

[23] Effective December 1, 1983, Phillips Oil Company assigned to Applicant its interest in gas attributable to Applicant's interest in the Fields and Sullivan Unit which is produced from any production formations underlying the unitized leases between the depths of 10,110 feet and 10,130 feet as identified in the Fields and Sullivan Well No. 1 on the Schlamberger compensated neutron Formation Density Log dated November 25, 1975.

[24] Applicant is filing under Gas Purchase Contract dated May 12, 1964, amended by rollover contract dated December 29, 1983.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84-20106 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-14-000; Kansas Docket Nos. NGPA-K-81-1235 and NGPA-K-81-1236; JD Nos. 83-11339 and 83-11340]

Natural Gas Policy Act; Protest of Jurisdictional Agency Determinations Denying Application for Determination Under Section 102(c)(1)(C)

Issued: July 26, 1984.

On January 20, 1983, TXO Production Corporation (TXO) filed with the Federal Energy Regulatory commission (Commission) a protest to determinations made by the State corporation Commission of the state of Kansas (KCC) that gas produced from TXO's Zuercher No. 3 and Muir "D" No. 1 gas wells did not qualify for the maximum lawful price under section 102(c)(1)(C) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301, 3312(c)(1)(C) (1982), as natural gas produced from a new onshore reservoir. The determinations being protested were made by the KCC in orders dated November 24, 1982, in the respective KCC proceedings captioned above. TXO had filed with the KCC for NGPA section 102 determinations of December 10, 1981, and a hearing was held before the KCC on March 25, 1982.[1]

TXO bases its protest on the grounds that the determinations by the jurisdictional agency were not supported by substantial evidence. Therefore, TXO asserts, the record before the Commission may have been incomplete so as to prevent meaningful Commission review of the determinations.

In order to qualify for pricing under section 102(c)(1)(C) of the NGPA, as natural gas produced from a new onshore reservoir, the new reservoir must be confined by either impermeable rock or water barriers and characterized by a single natural pressure system, or by lithologic or structural barriers which prevent pressure communication, thus separating it from older, non-qualifying reservoirs. *See* NGPA sections 2(6) and 102(c)(1)(C).

The KCC order of November 24, 1982. states:

> The application . . . is hereby denied for the reason that applicant failed to show through its witness and evidence that the Mississippi reservoir consists of more than one (1) common source of supply. The layers of impermeable strata between the porous areas are thin and not uniform throughout the formation. A clear designation of zones cannot be made. The [KCC] considers the Mississsippi formation a single source of supply. . . .

TXO asserts that its expert witness at the hearing before the KCC testified at length that the subject wells were producing from accumulations separated by lithologic and permeability barriers and there was no pressure communication between the two subject wells or other nearby wells. TXO asserts further that the KCC sponsored no witness of its own at the hearing, and that although KCC counsel asked the TXO witness whether he was aware that the KCC policy was to consider the Mississippi formation as a common source of supply, no testimony or exhibits were presented in support of this policy.

TXO asserts therefore that the determinations are unsupported by the testimony and evidence in the record and it therefore protests the above order pursuant to § 275.203 of the Commission's regulations.

Any person desiring to be heard or to make any protest to TXO's protest should, within 30 days after this notice is published in the **Federal Register**, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, a petition to intervene or a protest in accordance with Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered in determining the appropriate action to be taken, but will not make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission Rules. 18 CFR 385.214 (1983).

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20165 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-379-001; EL83-24-000]

Florida Power and Light Co.; Compliance Filing

July 26, 1984.

Take notice that on June 19, 1984, Florida Power and Light Company (FPL) submitted for filing its compliance report pursuant to the Commission's order.

FPL submitted a substitute Attachment A to the Phase Two Seminole ABPSA rate schedule, in which the proposed Capacity Adjustment Clause has been eliminated. In addition, FPL submitted a substitute Revised Sheet No. 76, which consists of the second page of Rate Schedule PRT-3 for Phase Two.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before August 3, 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. 84-20065 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-793-004; ER83-561-001]

Florida Power and Light Co.; Refund Report

July 26, 1984.

Take notice that on July 11, 1984, Florida Power and Light Company (FPL) submitted for filing its refund report pursuant to a Settlement Agreement accepted by the Commission by a letter dated May 29, 1984.

Under Docket No. ER82-793-004, FPL states that on June 28, 1984, refunds totaling $15,528,310.97 were made to FPL's full and partial requirements customers in accordance with the Settlement Agreements and approved rate schedules. FPL also states that subsequently, several clerical errors were discovered in Seminole's billing determinants and payment dates requiring a recalculation of refunds due to Seminole. These refunds and additional interest payments in the amount of $46,559.54 were made to Seminole on July 9, 1984.

Under Docket No. ER83-561-001, FPL states that on June 28, 1984, a refund in the amount of $121,079.04 was made to Seminole in accordance with the Settlement Agreement subsequently, two corrections were identified, requiring a recalculation of the refund due to Seminole. These corrections include prorating the May 1983 TFUC to reflect the May 2, 1984 effective date of Amendment Two; and the recalculation of the number of days interest accrued to give credit for the payment date and refund date.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before August 9, 1984. Comments will be considered by the Commission in

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[1] The Commission received notice of the KCC's determinations on November 29, 1982. The determinations were published in the **Federal Register** on January 6, 1983, and became final on January 13, 1983, under § 275.202(a) of the Commission's regulations. 18 CFR 275.202(a) (1983).

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. 84-20066 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA84-4-000]

Laketon Asphalt Refining, Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

July 26, 1984.

Take notice that Laketon Asphalt Refining, Inc. on June 25, 1984, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before August 10, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before August 10, 1984, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St. NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20067 Filed 7-30-84; 8:45 am]

Billing Code 6717-01-M

Pacific Power and Light Co, et al.; Order Granting Late Intervention, Denying Rehearing, Clarifying Prior Order, Accepting Compliance Filing, Approving Settlement Agreements, Terminating Dockets, Granting and Denying Motions, Consolidating Certain Dockets, Convening Joint State Board, and Establishing Hearing Procedures

In the mattter of Pacific Power and Light Company: Docket Nos. ER81-780-000, ER83-260-000, ER82-471-000, ER82-473-000, ER82-533-000, ER82-549-000, ER82-568-000, ER82-578-000, ER82-671-000, ER82-688-000, ER82-840-000, ER83-020-000, ER83-266-000, ER83-331-000, ER83-332-000, ER83-388-000, ER83-525-000, ER83-612-000, ER83-614-000, ER83-673-000, ER83-737-000, ER84-110-000, ER84-190-000, Utah Power and Light Company: Docket Nos. ER82-002-000, ER82-397-000, ER82-466-000,ER83-373-000, ER83-461-000;CP National Corporation: Docket Nos. ER81-789-000, ER82-461-000, ER82-543-000, ER83-534-000: Portland General Electric Company: Docket Nos. ER81-788-000, ER82-462-000, ER82-539-000, ER82-734-000, ER82-810-000, ER83-127-000, ER83-540-000, ER83-573-000, ER83-748-000, ER84-163-000, ER84-042-000, ER84-347-000, ER84-403-000; Puget Sound Power and Light Company: Docket Nos. ER81-728-000, ER82-448-000, ER82-715-000, ER83-044-000, ER83-045-000, ER83-046-000, ER83-167-000, ER83-334-000, ER83-541-000, ER83-567-000, ER83-706-000, ER84-040-000, ER84-198-000, ER84-305-000; Idaho Power Company: Docket Nos. ER82-119-000, ER82-306-000, ER82-618-000, ER82-622-000, ER82-661-000, ER83-241-000, ER83-241-001, ER83-241-002, ER83-687-000, ER83-712-000; Montana Power Company: Docket Nos. ER82-776-000, ER83-382-000, ER83-386-000, ER84-026-000, ER84-156-000; Washington Water Power Company: Docket Nos. ER82-095-000, ER82-595-000, ER82-629-000, ER83-361-000, ER83-564-000, ER84-310-000.

Issued July 25, 1984.

Under the terms of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act),[1] participating electric utilities sell to Bonneville Power Administration (BPA) at "average system cost" (ASC) amounts of energy equivalent to their residential customers' loads and repurchase such energy from BPA at BPA's lower preference rate. The Utility passes the resulting savings on to its residential customers. BPA's direct service industrial customers (DSIs) bear the costs of the exchange in return for the opportunity to sign long-term firm power contracts with BPA.

The Commission issued a Final Rule governing these exchanges on October 6, 1983. [2] Under the established procedures, participating utilities must file each ASC rate proposal with BPA. That rate is to be reviewed by BPA within 120 days. If BPA's review results in an ASC determination different from that developed by the utility, BPA is to issue a report of its findings together with the ASC rate to be used by the utility. The utility's proposed ASC rate, BPA's report, and BPA's adjusted ASC rate, if any, must then be filed with the Commission for review. The final rules further provide that such filings are subject to the procedures applicable to other filings under section 205 of the Federal Power Act, as the Commission deems appropriate. The Commission may order changes in an ASC rate which was not determined in compliance with the final rules.

In Order No. 337, the Commission required parties to the exchange sale dockets, of which over eighty are now pending, to notify the Commission within 60 days of the effective date of the rule of the dockets in which there are unresolved issues, to identify the issues, and to state their positions. The notification date was subsequently extended to April 11, 1984. Reply comments were authorized to be filed by April 30, 1984, pursuant to an order of the Commission's Secretary. Action on the ASC dockets has been held in abeyance pending the final rule and receipt and analysis of the above-mentioned comments.

Comments were filed by Puget Sound Power and Light Company (Puget), Portland General Electric Company (Portland), Idaho Power Company (Idaho), Montana Power Company (Montana), and the DSIs. Reply comments were filed by Puget, Idaho, the DSIs, and BPA. Each set of comments addressed specific issues in the various ASC dockets. In addition, some participants also made various procedural motions and comments. In addition to its comments on specific issues, Portland renews a previous motion for consolidation of the ASC dockets and referral to a Joint State Board.[3] Portland asks that the Board be empowered to conduct hearings and make recommendations to the Commission.[4] Puget also has an

[1] Pub. L. No. 96-501, 94 Stat. 2697, *et seq.* (1980)

[2] Order No. 337, Docket No. RM81-41-000, Sales of Electric Power to the Bonneville Power Administration; Methodolgy and Filing Requirements; Final Rule. III FERC Statues and Regulations ¶ 30,506 (1983). The fihall rules became effective on January 10, 1984.

[3] Section 9(g) of the Northwest Power Act requires such Joint State Board assistance as the Commission deems appropriate in reviewing of ASC rates. The Commission has previously covened a Joint State Board to comment on the ASC methodology originally proposed by BPA. 17 FERC ¶ 61,005 (1981).

[4] Idaho and the Washington Utilities and Transportation Commission have also previously filed motions for referral to a Joint State Board. Action on the these motions was deferred.

outstanding request for an "independent audit" by the Commission staff.

The DSIs comments address, *inter alia*, the standard for Commission review and the role of the Joint State Board. Basically, the DSIs contend that the Commission's role is similar to that of an appellate court. It should therefore defer to BPA on questions of fact where those determinations are supported by substantial evidence, but should carefully review legal matters to ensure that BPA is in compliance with the applicable legislation, the regulations, and the ASC methodology. The DSIs also argue that the Commission need not convene a Joint State Board, but if it does, the Board's role should be limited to filing comments on the existing record. The DSIs also oppose Puget's and Idaho's requests for an independent audit, settlement conferences, and hearings on the ground that the existing record is fully developed and settlement discussions have not been fruitful (except as noted below). However, they do not oppose consolidating dockets on a utility-by-utility basis. In its reply to the DSIs, Idaho submits that evidentiary hearings are necessary and because the rates in question are subject to Commission jurisdiction under the Federal Power Act, deference on questions of fact is inappropriate. Puget takes a similar position in its reply comments.

In its reply comments, BPA opposes the motions for consolidation and referral to a Joint State Board. It argues that there is no need to further consider changes to the BPA-determined ASCs and that the Commission has no legal obligation or practrical reason to convene a Board. In the alternative, it requests that the Board's role be limited to submission of comments.

We shall deal with the foregoing matters below. Prior to doing so, however, we note that our analysis of the participants' comments and the documents on file with the Commission indicates that many of the ASC dockets may be terminated at this time. We shall therefore dispose of these matters at the outset.

Dockets Which May Be Terminated

A letter to the Secretary filed on April 15, 1984, and signed by Pacific Power and Light Company (PP&L), the DSIs, and Hanna Nickel Smelting Company states that the signatories and BPA have agreed that the Commission should approve the BPA-determined rate in all of PP&L's pending ASC dockets. The letter also gives notice of withdrawal of all comments filed by the signatories. BPA, predictably, has not opposed the letter. It appears that no State commission or other entity has intervened in the twenty-three PP&L ASC dockets. Moreover, we see no reason to set these proceedings for hearing. We shall therefore approve the BPA-determined rates in these dockets and terminate the dockets.

We are also able to terminate at this time all pending dockets of Utah Power and Light Company (UP&L) and CP National Corporation (CP National). Appended to the DSI's comments are letters stating that BPA, the DSIs, UP&L, and CP National have agreed that the Commission should accept the ASC rates determined by BPA in those dockets. Settlement agreements to that effect between BPA, the DSIs, and CP National and BPA, the DSIs, and UP&L, respectively, are also appended. No other participant filed comments. We find the settlements in these dockets to be fair and reasonable and in the public interest. We shall thus approve the BPA-determined rates and terminate the dockets.[5]

In addition to the foregoing, all of the Washington Water Power Company's (Water Power) dockets may be terminated. In a letter appended to the DSIs' comments, Water Power and the DSIs state that BPA's ASC determination in Docket Nos. ER82-629-000, ER82-595-000, and ER83-361-000 should be accepted by the Commission. No participant has objected to the request and it will be granted. In the other two Water Power ASC dockets, ER83-564-000 and ER84-310-000, Water Power and the DSIs agree that the BPA-determined ASC rate should be adjusted upward to reflect a correction to radial transmission line costs.[6] In its reply comments, BPA notes the requested change and registers no objection. The Commission finds no cause to set these dockets for hearing. We shall therefore accept the revised rates as proposed by DSIs and Water Power and terminate the dockets.[7] Finally, no party has requested further Commission action in Montana Docket No. ER83-386-000. The BPA-determined rate will likewise be accepted in that docket and the docket terminated.

Denial of Rehearing

A final preliminary matter concerns a pending request for rehearing in Docket No. ER83-241-001. In Docket No. ER83-241-000, we determined that BPA's revision to Idaho's method of functionalizing general plant and administrative and general expenses was inconsistent with the Interim Rule procedures then in effect for establishing ASCs.[8] Idaho was ordered to file a revised ASC rate reflecting the proper manner of functionalization prescribed in footnote 2 of the Interim Rule and BPA was ordered to make refunds as required by the Interim Rule.[9] The Commission noted that the revised rate, however, would still be collected subject to refund pending approval of a Final Rule. On April 1, 1983, DSIs filed a request for rehearing.[10] DSIs contend that the Commission violated its own regulations by ordering refunds prior to issuing a final order with respect to Idaho's rate. DSIs further contend that the Commission violated its own procedural due process requirements by not affording a prior opportunity for comments in accordance with former

[5] We note that the settlement agreements do not mention UP&L Docket No. ER82-002-000 and CP National Docket No. ER81-789-000. These are the first ASC filings made by these utilities and were filed in advance of any BPA review during the period when the interim ASC rules were in effect. The ASCs in these dockets were later superseded by filings in Docket Nos. ER82-466-000 and ER82-461-000, respectively, in which ASCs for the same exchange period were resubmitted after review by BPA. The original dockets, which are no longer active, have never been terminated. Filings of the same nature were made by the other utilities in Docket Nos. ER81-760-000 (PP&L), ER81-788-000 (Portland), ER81-778-000 (Puget), ER82-119-000 and ER82-306-000 (Idaho), ER82-776-000 (Montana) and ER82-095-000 (Water Power). All of these inactive dockets will be terminated below.

[6] The changes are as follows:

	As filed (mills)	As revised (mills)
ER83-564-000:		
Washington jurisdiction	17.58	17.78
Idaho jurisdication	15.47	16.56
ER84-310-000:		
Washington jurisdication	17.91	18.11
Idaho jurisdiction	15.81	16.00

[7] In this connection, we note there is no rate schedule on file with the Commission reflecting the revised rates in Docket Nos. ER83-564-000 and ER84-310-000. An appropriate compliance filing should therefore be made by Water Power within 30 days of the date of this order.

[8] The Interim Rule was codified at 18 CFR 35.13a in Sales of Electric Power to the Bonneville Power Admnistration: Filing of Rate Schedule; Interim Rule, FERC Statutes and Regulations, Regulations Preambles Volume 1977-1981 ¶ 30,299. Section 35.13a was deleted by the Final Rule.

[9] Idaho Power Company, "Order Requiring Modification of Average System Cost Rates and Noting Interventions", 22 FERC ¶ 61,300 (1983). Idaho's compliance filing was submitted in Docket No. ER83-24-002.

[10] An order granting rehearing for purposes of further consideration was issued May 10, 1983. On June 21, 1983, BPA filed an untimely petition to intervene. We shall grant this petition, as no other party can adequately represent BPA's interest, BPA is an active party in all the ASC dockets, and no party will be prejudiced thereby. See 18 CFR 385.214(d).

section 35.13a(d)(5)(ii) of the regulations, and by finding that the BPA-determined rate was not in compliance with the Interim Rule. All of these assertions are incorrect.

First, the Interim Rule required the Commission to order a change in any ASC rate found not to be calculated in accordance with the Interim Rule and to specify the necessary changes in a Commission order. Former 18 CFR 35.13a(d)(5)(iii). Here, the Commission determined that BPA had not followed the Interim Rule. While other potential issues remained outstanding, our original order was nonetheless "final" with respect to the appropriate method of functionalization.[11] Moreover, the Final Rule essentially adopted the Interim Rule without change. The decision concerning the adjustment amount would therefore have been the same under the Final Rule. Second, notice of Idaho's filing was published in the **Federal Register** at the time that it was received by the Commission and DSIs, like any other interested party, were afforded an opportunity to submit comments on Idaho's filing. DSIs did so in their petition to intervene. Since no party other than DSIs filed comments in this docket prior to the Final Rule, the reply comment provision of 35.13a(d)(5)(ii) was never triggered.[12] Finally, DSIs contend that BPA's functionalization of general plant and administrative and general expenses on wage and salary ratios is a "separate analysis" and may therefore be used in place of the footnote 2 and 3 formulae.[13] We disagree. The Interim (and Final) Rule contemplates an independent analysis of each general plant and administrative and general (A&G) item so as to determine the appropriate direct assignment. To the extent that an item cannot be separately identified, the functionalization formula contained in the footnote applies. BPA's proposed use of wage and salary ratios is merely another formulary method for approximating the assignment of certain expenses to various operating functions. The separate analysis contemplated by the rule was not intended to permit this. General plant and A&G expenses are categories which by definition are difficult to specifically identify as belonging to one function or another. Hence, where no separate identification of an expense item has been made, the ASC methodology provides a formula applicable to all cases. DSIs' request for rehearing will therefore be denied.

Disposition of Outstanding Dockets

In the remaining ASC dockets the parties have identified many issues which they believe require further consideration.[14] Our review of the comments and the filings in these dockets leads us to conclude that few, if any, of the issues are common to two or more utilities. Rather, the issues generally turn on whether the ASC methodology has been properly applied in the context of facts specific to the utility and/or the docket. Thus, it is appropriate to consolidate the dockets on a utility-by-utility basis for further proceedings. We are aware that simultaneous proceedings may create a burden on common participants—the DSIs, BPA, and our trial staff. However, with proper coordination of activities, this burden may be minimized. We leave to the Chief Administrative Law Judge's discretion the question of whether to assign different judges to each utility's dockets.

Our review also indicates that the issues raised vary between law, fact, policy, and mixtures thereof. Under these circumstances, we believe the most appropriate course is to set the dockets for evidentiary hearing on the issues raised.[15] As noted in section 35.31(b) of our regulations, the Commission's review is limited to ascertaining whether each ASC approved by BPA was determined in accordance with the approved methodology. If it was, it is deemed just and reasonable. Hearings should be conducted with this limitation in mind. We also note that many of these dockets have been pending for some time. Under these circumstances, expeditious procedures are in order and the presiding judge(s) is directed to conduct the proceedings in that spirit. We encourage the parties to attempt to reduce the burden on all concerned by dealing with as many of the issues as possible on the basis of written submissions only. We also note that our decision to order evidentiary hearings is a result in part of the fact that this is our first experience with a unique form of Commission rate review. As additional experience is acquired in dealing with ASC rates, alternative means may be developed to resolve ASC proceedings.

We further believe that it is appropriate to modify the ordinary course of the decision-making process in these unique circumstances. Ordinarily, the hearing process results in an initial decision which, pursuant to Rule 708(d) of our Rules of Practice and Procedure (18 CFR 385.708(d)), becomes a final Commission decision unless exceptions are filed or the Commission issues an order staying the effectiveness of the decision. Where, as here, the presiding judge will be dealing with the ASC methodology for the first time and there is no precedent to guide the judge's thinking, we believe the finality rule should not be applied. Rather, the judge's decision will be a "recommended decision" only, with no potential for final effectiveness.

We have devoted much thought to the form of assistance to be provided by the Joint State Board in our review of BPA's rate determinations, as provided by section 9(g) of the Northwest Power Act. Initially, we note that BPA and the DSI's assert that we are not required to convene a Board. We do not reach these assertions for we have determined that the Joint State Board should participate in those proceeding which are to be set for hearing. In our opinion, such participation will be beneficial to the decision making process. In those instances noted above where the parties have agreed upon a rate and we have no

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[11] Our disposition of the functionalization issue was analogous to summary disposition of specific issues in orders suspending and setting for hearing public utility rate filings. While the proceeding continues through the administrative process, the summary resolution of a particular issue is considered final for purposes of appeal. *See, e.g., Public Service Co. of New Mexico v. FERC*, 653 F.2d 681 (D.C. Cir. 1981).

[12] There is no comparable provision in the Final Rule.

[13] DSIs correctly point out that our prior order referred only to footnote 2 relating to general plant and not to footnote 3 relating to A&G expenses. The prior order should properly have referred to both footnotes. The results of our findings, however, are unchanged.

[14] The comments filed pursuant to Order No. 337 identify the following functionalization issues: general plant, intangible plant, construction work in progress (CWIP), working capital, taxes, attrition, administrative and general costs, regulatory commission fees and expenses and radial transmission lines. Other issues are reconciliation of filed cost of service with State commission approved cost of service, exclusion of CWIP from rate base, investment tax credits, cash working capital, purchased power and transmission operations and maintenance expenses, new large single load exclusion, conservation and customer assistance program expenses, distribution losses, income and other taxes, and cancelled plant costs.

[15] As the Commission's trial staff will be a full participant in each hearing, there is no need for the "independent audit" requested by Puget, however that term is interpreted. The request will therefore be denied.

independent reason to set the docket for hearing, Joint State Board assistance does not appear to be necessary.

We believe that the proceedings which are set for hearing will be most easily and effectively resolved if the Board's role is consistent with the one it played in establishment of the ASC methodology; that is, to submit written comments on the record following the recommended decision and the briefs on and opposing exceptions. It would be unduly burdensome and inefficient for the Board members to be required to preside over several evidentiary hearings. Thus, we shall order that the Board be reconvened, under the same terms and conditions provided for in the order originally convening the Board.[16] If a State Commission wishes to nominate a new member to serve on the reconvened Joint Board, the nomination should be submitted to the Chairman of this Commission within 30 days of the issuance of this order.

The Commission orders:

(A) BPA's petition for late intervention in Docket No. ER83-241-000 is granted.

(B) DSIs' request for rehearing in Docket No. ER83-241-001 is denied.

(C) Idaho's compliance filing in Docket No. ER83-241-002 is accepted for filing to become effective for the exchange period from August 20, 1982, through October 31, 1982.

(D) In the event that BPA has not already done so, it is directed to reimburse Idaho for the difference between the exchange amount as stated in the compliance filing and the BPA-determined amount which has been in effect, with interest calculated at the rate charged to BPA by the U.S. Treasury during the period the rate was in effect. Reimbursement, if still required, shall be made within thirty (30) days of the date of this order. The foregoing reimbursement is subject to further adjustment depending upon the final resolution of other issues in dispute in Docket No. ER83-241-000.

(E) The average system costs determined by BPA in the following dockets are hereby accepted and the dockets are terminated:

Pacific Power and Light Company: ER83-260-000, ER82-471-000, ER82-473-000, ER82-533-000, ER82-549-000, ER82-568-000, ER82-578-000, ER82-671-000, ER82-688-000, ER82-840-000, ER83-020-000, ER83-266-000, ER83-331-000, ER83-332-000, ER83-388-000, ER83-525-000, ER83-612-000, ER83-614-000, ER83-673-000, ER83-737-000, ER84-110-000, ER84-190-000.

Utah Power and Light Company: ER82-397-000, ER82-466-000, ER83-373-000, ER83-461-000.

CP National Corporation: ER82-461-000, ER82-543-000, ER83-534-000.

Montana Power Company: ER83-386-000.

Washington Water Power Company: ER82-595-000, ER82-629-000, ER83-361-000.

(F) BPA's determinations of Water Power's ASC rates in Docket Nos. ER83-564-000 and ER84-310-000 are hereby accepted, revised as noted in the body of this order to reflect revised radial transmission costs, and said dockets are terminated. Water Power shall make an appropriate compliance filing within 30 days of the date of this order.

(G) The following dockets are hereby terminated:

Pacific Power and Light Company: ER81-780-000.

Utah Power and Light Company: ER82-002-000.

CP National Corporation: ER81-789-000.

Portland General Electric Company: ER81-788-000.

Puget Sound Power and Light Company: ER81-778-000.

Idaho Power Company: ER82-119-000, ER82-306-000, ER83-241-000, ER83-241-002.

Montana Power Company: ER82-776-000.

Washington Power Company: ER82-095-000.

(H) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 5 and 9 of the Pacific Northwest Electric Power Planning and Conservation Act, section 402(a) of the Department of Energy Organization Act and by Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act and the Pacific Northwest Electric Power Planning and Conservation Act [18 CFR Chapter I], a public hearing shall be held concerning the consistency with the ASC methodology of the average system costs determined by BPA in these proceedings for Puget, Portland, Montana, and Idaho.

(I) For purposes of hearing and decision, the pending ASC dockets of Puget, Portland, Montana, and Idaho are hereby consolidated on a company-by-company basis.

(J) A presiding administrative law judge or judges, to be designated by the Chief Administrative Law Judge, shall preside over these proceedings. The presiding administrative law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure. The presiding administrative law judge shall transmit the record to the Joint State Board with his recommended decision.

(K) Pursuant to section 9(g) of the Pacific Northwest Electric Power Planning and Conservation Act and section 209 of the Federal Power Act, the Commission hereby reconvenes the Joint State Board and invests the Board with the duties and authority described in the body of this order. The Board's comments on the recommended decision shall be due within 90 days of the transmittal date of the recommended decision.

(L) All motions not granted above are hereby denied.

(M) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20069 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[16] That order provided that to the extent possible, meetings of the Board should be governed by the Commission's Rules of Practice and Procedure, that the Commission's representative on the Board would be the presiding officer, with the power and authority provided to presiding officers in the regulations, and that each member shall have an equal vote in any recommendation representing the Board's opinion, with the right to file dissenting comments. That order also provided for reasonable travel and *per diem* allowances for Board members. 17 FERC at 61,011 (1981). The presiding judge will be required to transmit the record to the Board with his recommended decision. The Board's comments will be due 90 days thereafter. Finally, our order contemplates the same State representatives currently designated.

[Docket Nos. RP81-130-013 et. al., and RP83-25-012]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 23, 1984.

Take notice that Transwestern Pipeline Company (Transwestern) on July 18, 1984 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets pursuant to the Commission's letter order issued July 3, 1984 approving Stipulation and Agreement in the subject dockets resolving all issues in those dockets with the exception of those items reserved in Article VI of the settlement which are subject to the outcome of proceedings in Docket No. RP81-130-000.

Article II of the settlement agreement provides that Transwestern will file revised tariff sheets and make refunds to its jurisdictional customers within a prescribed time after the Commission's order approving the settlement becomes final.

In anticipation of the July 3, 1984 Order becoming a final order, Transwestern hereby submits for filing as a part of its currrently effective FERC Gas Tariff, Second Revised Volume No. 1, six copies each of the following sheets:

A. Effective April 1, 1984

Substitute Twenty-fifth Revised Sheet No. 5.
Substitute Twenty-fourth Revised Sheet No. 6.

In addition to the above sheets which have been filed as a part of its currently effective tariff and in accordance with the Stipulation and Agreement, Transwestern hereby submits for filing as a part of its superseded FERC Gas Tariff, Second Revised Volume No. 1, six copies each of the following sheets:

B. Effective June 1, 1983

Second Substitute Twenty-second Revised Sheet No. 5
Second Substitute Twenty-second Revised Sheet No. 6

C. Effective October 1, 1983

Substitute Twenty-third Revised Sheet No. 5
Substitute Twenty-third Revised Sheet No. 6

D. Effective December 1, 1983

Substitute Revised Twenty-third Revised Sheet No. 5
Substitute Revised Twenty-third Revised Sheet No. 6

E. Effective January 1, 1984

Substitute Twenty-fourth Revised Sheet No. 5

The rates reflected on the above listed tariff sheets are the settlement rates for the period from June 1, 1983 through the present time as prescribed by Article II. A. of the settlement approved in Docket Nos. RP81–130–000 *et. al.*, and RP83–25–000. The differenced between these settlement rates and the rates which Transwestern billed subject to refund will determine the principal amount of the refunds Transwestern will make in accordance with Article II. B.

Transwestern requests the Commission allow the sheets submitted herewith to become effective on their respective proposed effective dates. In this regard, Transwestern has furnished the sheets to its principal customers, Pacific Lighting Gas Supply and Northwest Central Pipeline Corporation. They have indicated that such sheets are in accordance with the settlement in the subject dockets. Accordingly, Transwestern requests an expedited notice and comment period.

Copies of the filing were served on Transwestern's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 31, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–20071 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–409–000]

Cogentrix of North Carolina, Inc.—Treesweet; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 26, 1984.

On July 10, 1984, Cogentrix of North Carolina, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Treesweet Products Co. citrus processing plant in Ft. Pierce, Florida. The primary energy source will be coal. The facility will consist of two stoker-fired boilers and a single condensing steam turbine generator rated 35,000 kilowatts. The net electric power production capacity will be 30,180 kilowatts. The turbine will be designed for steam extraction to supply feed water heating and to provide process steam for Treesweet.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–20064 Filed 7–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–395–000]

City of Harrisburg—Department of Incineration and Steam Generation; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 26, 1984.

On July 5, 1984, City of Harrisburg, Department of Incineration and Steam Generation, 1670 South 19th Street, Harrisburg, Pennsylvania 17104, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the Harrisburg Steam Generating Facility, 1670 South 19th Street, Harrisburg, Pennsylvania. The primary energy source for the facility will be biomass in the form of municipal solid waste. The facility will consist of two existing water-wall design incinerator boilers, a new steam turbine generator set, and related auxiliary equipment. The electric power production capacity of the facility will be 7.7 megawatts.

Any person desiring to be heard to objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the

applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennety F. Plumb,

Secretary.

[FR Doc. 84-20063 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-77-001]

O'Brien Energy Systems, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 26, 1984.

On July 11, 1984, O'Brien Energy Systems, Inc. (Applicant) of Green and Washington Streets, Downington, Pennsylvania 19355 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the SmithKline Beckman Corporation in Upper Merion Township, Montgomery County, Pennsylvania. The facility will consist of three 1875 kW spark ignition engine generator units and three waste heat recovery boilers. The useful thermal output, which is in the form of steam, will be used in space heating, humidification, and in cleaning processes. The primary energy source for the facility will be biomass in the form of landfill methane gas. The electric power production capacity of the facility will be 5625 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20068 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-343-000]

Rushford Kiln and Milling, Limited; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 26, 1984.

On May 24, 1984, Rushford Kiln and Milling, Limtied, (Applicant) of P.O. Box 282, Rushford, New York 14777, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. On July 12, 1984, supplemental information was filed regarding the facility. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Rushford, Allegany County, New York. The facility will consist of four 104 kilowatt spark ignition engine gnerator units, a waste heat recovery boiler, and various heat exchangers. The useful thermal output, which will be in the form of hot water, will be used in the lumber dry kilns, offices, equipment room, and warehouse. The primary energy source for the facility will be natural gas. The Electric power production capacity of the facility will be 416 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washignton, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20070 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-350-000]

University Energy; Application for Commission Certification of Qualifying Status of a Congeneration Facility

Julu 26, 1984.

On June 4, 1984, University Energy, 3430 Camino Del Rio North, Suite 200, San Diego, California 92108 submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed integrated topping-cycle congeneration turbo expansion facility will be constructed at the Pacific Gas & Electric Moss Landing Plant in Monterey County, California. Heat recovered from the engines will be used in the form of steam to heat fuel oil storage tanks and to preheat natural gas entering turbo expander generating facilities. The primary energy sources will be natural gas and energy made available by depressurization of high pressure transmission gas to low pressure distribution gas. The electric power production capacity of the facility will be 3.25 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 824 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth P. Plumb,

Secretary.

[FR. Doc. 84-20072 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8169-000, et al.]

Hydroelectric Applications (The Nuclear Energy Group, Inc., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been

filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Perliminary Permit.

b. Project No.: 8169–000.

c. Date Filed: March 12, 1984.

d. Applicant: The Nuclear Energy Group, Inc.; Hydro Systems Division.

e. Name of Project: Carlyle Reservoir Dam.

f. Location: On the Kaskaskia River, in Clinton County, Illinois.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Brian B. Hegarty, The Nuclear Energy Group, Inc./Hydro Systems Division.

i. Comment Date: September 7, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Carlyle Dam and Reservoir and would consist of: (1) Two proposed penstocks, 12 feet in diameter and about 432 feet long; (2) a proposed concrete powerhouse, approximately 72 feet by 63 feet, housing two turbine/generator units with a total installed capacity of 8,750 kW; (3) two proposed tailraces, each 14.8 feet in diameter and about 108 feet long; (4) a proposed 4.16 kV transmission line, approximately 2650 feet in length; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 21.500,000 kWh.

k. Purpose of Project: The proposed market for the generated energy would be the Illinois Power Company, or municipal utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $40,000.

2a. Type of Application: Preliminary Permit.

b. Project No: 8193–000.

c. Date Filed: March 22, 1984.

d. Applicant: William F. Munch.

e. Name of Project: Kinderhook.

f. Location: Kinderhook Creek in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: William F. Munch, Route 295, Canaan, New York 12029.

i. Comment Date: September 10, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 130-foot-long dam which is owned by the Village of Valatie; (2) an existing 2-acre reservoir; (3) a proposed forebay; (4) a proposed powerhouse containing two turbine/generator units, each rated at 150 kW, for a total installed capacity of 300 kW; (5) a proposed 500-foot long, 4.8-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy would be 700 MWh.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issued, of a preliminary permit for a period of 8 months during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $75,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 8204–000.

c. Date Filed: March 26, 1984.

d. Applicant: Colorado Slopes Power

e. Name of Project: Paonia Dam.

f. Location: On Muddy Creek in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, II, P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: September 5, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation Paonia Dam and would consist of: (1) A welded steel pressure pipe extending the existing pipe; (2) a new powerhouse containing one or more generating units having a total rated capacity of 1,670 kW; (3) an existing 14.4-kV transmission line located at Paonia Dam; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7.7 GWh.

k. Purpose of Project: The most likely market for the energy derived from the proposed proposed project would be an established electric utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

4a. Type of Application: Preliminary Permit.

b. Project No.: 8213–000.

c. Date Filed: April 2, 1984.

d. Applicant: Silver Star Hydro Ltd.

e. Name of Project: Silver Creek Hydro.

f. Location: On Silver Creek within Toiyabe National Forest, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, Groves Energy Company, 1121 L St., Suite 1000, Sacramento, California 95814.

i. Comment Date: September 10, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 20-foot-long diversion structure at elevation 7,300 feet; (2) a 42-inch-diameter, 2,800-foot-long penstock; (3) a powerhouse at elevation 6,810 feet containing a generating unit with a rated capacity of 1,700 kW; and (4) a short length of 16-kV transmission line connecting into the existing Southern California Edison Company line. The water used would be discharged back into Silver Creek. The Applicant estimates a 5 million kWh average annual energy production. A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $70,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 8214–001.

c. Date Filed: April 3, 1984.

d. Applicant: James River Associates.

e. Name of Project: Richard W. James Hydroelectric Project (Twelfth Street Hydro).

f. Location: On the James River, in Richmond, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: J. Kirk Rector, #500 CFS Center, 324 South State Street, Salt Lake City, UT 84111.

i. Comment Date: September 4, 1984.

j. Description of Project: The project would consist of: (1) An existing concrete dam, approximately 1708 feet long by 6 feet high; (2) an existing reservoir with a storage capacity of 7,680 acre-feet at a normal maximum surface elevation of 33.3 feet, m.s.l.; (3) an existing canal, 2,240 feet long by 48 feet wide; (4) nine existing conduits each 13.5 feet in diameter and 20 feet long; (5) an existing powerhouse, 240 feet by 58 feet housing eleven new generator units with a total installed capacity of 8,850 kW; (6) a proposed 13.2 kV or 34.5 kV transmission line approximately 600 feet long; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 35,000,000 kWh. The Owner of the dam is the Virginia Electric and Power Company.

k. Purpose of Project: The Applicant anticipates that the project power will be sold to a local municipalities, or the local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $150,000.

6a. Type of Application: Preliminary Permit.

b. Project No.: 8217–000.

c. Date Filed: April 2, 1984.

d. Applicant: Sutter-Yuba Water and Power Association.

e. Name of Project: Parks Bar Hydroelectric.

f. Location: On the Yuba River in the Counties of Yuba and Nevada, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Larry T. Combs, Sutter County Administrative Officer, 463 Second St., Yuba City, California 95991.

i. Comment Date: September 17, 1984.

j. Description of Project: Applicant proposes to study two alternative dam locations, approximately one mile apart, and two alternative dam heights at each location. The proposed project at the upstream location would consist of a 100- or 150-foot-high dam at elevation 300 or 350 feet and a powerhouse, at the foot of the dam, containing two generating units with a total installed capacity of 36,000 kW. The alternative project, at the downstream site, would consist of a 120- or 170-foot-high dam at elevation 300 or 350 feet and a powerhouse, at the foot of the dam, containing two generating units with a total installed capacity of 36,000 kW. A 1.5 to 2.5-mile-long, 60-kV transmission line would connect the selected project with the existing Pacific Gas and Electric Company's (PG&E) transmission line near Smartville, California. Applicant states that the higher dams at both locations would inundate the existing PG&E's Narrows I Powerhouse part of FERC Project No. 1403.

k. Purpose of Project: The estimated 100 million kWh of project energy, generated annually, would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: 8229–000.

c. Date Filed: April 5, 1984.

d. Applicant: Cook Electric Incorporated.

e. Name of Project: Freeman Creek.

f. Location: Freeman Creek, tributary to Carmen Creek, near the town of Carmen, in Lemhi County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dale Hatch, Cook Electric, Incorporated, P.O. Box 1071, Twin Falls, Idaho 83303–1071.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high concrete intake at elevation 6,200 feet; (2) a 9,340-foot-long, 24-inch-diameter buried penstock; (3) a powerhouse with three turbines and a capacity of 1,200 kW with an average annual generation of 7,472,270 kWh; and (4) an 8-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $14,900. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

8a. Type of Application: Preliminary Permit.

b. Project No: 8240–000.

c. Date Filed: April 11, 1984.

d. Applicant: Town of Cokeville.

e. Name of Project: Pine Creek Water Power Project.

f. Location: On Pine Creek in Lincoln County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Hon. David Murdock, Mayor, P.O. Box 99, Cokeville, Wyoming 83114.

i. Comment Date: September 17, 1984.

j. Description of Project: The proposed project would utilize existing inoperative facilities owned by the Bureau of Land Management, Department of the Interior, and would consist of: (1) A diversion dam and flume requiring replacement; (2) an existing power canal in apparently good condition; (3) an existing 18-inch penstock and intake structure; (4) a new powerhouse to contain a turbine-generator unit rated at 210 kW; (5) a renovated tailrace returning flow to Pine Creek; (6) a new transmission line about 100 feet long connecting to existing lines; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,300,000 kWh. Project energy would be sold to the Utah Power and Light Company.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $43,000.

9a. Type of Application: Preliminary Permit.

b. Project No: 8241–000.

c. Date Filed: April 11, 1984.

d. Applicant: Rocky Mountain Water Works.

e. Name of Project: Snowmass Water and Sanitation District PRV No. 1 hydropower project.

f. Location: At the water distribution system of the Snowmass Water and Sanitation District, in Pitkin County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William B. DeOreo, Rocky Mountain Water Works, 3030 15th Street, Boulder, Colorado 80302.

i. Comment Date: September 10, 1984.

j. Description of Project: The project would consist of: (1) A proposed turbine generator with an installed capacity of 20 kW, located within the existing water distribution system of the Snowmass Water and Sanitation District; (2) proposed electrical controls and switchgear; (3) a proposed 440 kV transmission line approximately 50 feet long; and (4) appurtenant facilities. Applicant estimates that the average annual energy generation would 85,000 kWh.

k. Purpose of Project: Applicant anticipates that project energy will be sold to the Colorado Ute Electric Association.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would prepare an application for FERC license. Applicant estimates that the cost of the studies under permit would be $500.

10a. Type of Application: Preliminary Permit.

b. Project No: 8257–000.

c. Date Filed: April 23, 1984.

d. Applicant: Fluid Energy Systems, Inc.

e. Name of Project: Hobo Diversion Water Power.

f. Location: On Kern River, within Sequoia National Forest in Kern County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: K. Thomas Miller, President, Fluid Energy Systems, Inc., 2210 Wilshire Blvd., No. 699, Santa Monica, California 90403.

i. Comment Date: September 10, 1984.

j. Description of Project: The proposed project would consist of: (1) A 20-foot-high, 300-foot-long diversion structure at elevation 2,280 feet; (2) a 14-foot-diameter, 5.25-mile-long tunnel; (3) a surge chamber and vertical power tunnel intersecting the water tunnel 3.75 miles below the diversion works for Powerhouse Number One; (4) a 14-foot-diameter, 800-foot-long power tunnel; (5) Powerhouse Number One at elevation 1,980 feet, containing a generating unit with a rated capacity of 12,950 kW; (6) a 1,500-foot-long transmission line tying into the existing Southern California Edison Company line (SCE); (7) an 80-foot-high, 600-foot-long earth filled dam impounding a reservoir with a gross storage capacity of 2,570 acre-feet (8) a 10-foot-diameter, 13,000-foot-long penstock; (9) a surge tank; (10) a 1,400-foot-long, double barrel penstock; (11) Powerhouse Number Two at elevation 1,920 feet, containing a generating unit with a rated capacity of 11,000 kW; and (12) a 1,300-foot-long transmission line tying into the existing SCE line. Both powerhouses would discharge the water back into Kern River. The Applicant estimates a 133 GWh average annual energy production.

A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $785,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

11a. Type of Application: Preliminary Permit.

b. Project No: 8263–000.

c. Date Filed: April 26, 1984.

d. Applicant: Summit Hydropower.

e. Name of Project: Falls Mill Dam No. 1.

f. Location: On the Yantic River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Duncan Broatch, Summit Hydropower, P.O. Box 122, Putnam, Connecticut 06260.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 25-foot-high and 140-foot-long Falls Mill Dam No. 1 owned by the City of Norwich; (2) a small reservoir with a water surface elevation of 53 feet mean sea level; (3) a new 20-foot-wide and 200-foot-long canal with headgates at the north side of the dam; (4) a new 6-foot-diameter and 100-foot-long steel penstock; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of 726 kW; (6) an existing 4.8-kV and 175-foot-long transmission line; and other appurtenances. Applicant estimates an average annual generation of 2,836,342 kWh.

k. Purpose of Project: Project energy would be sold to the Northeast Utilities Company or to the City of Norwich.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

12a. Type of Application: Preliminary Permit.

b. Project No: 8264–000.

c. Date Filed: April 26, 1984.

d. Applicant: Summit Hydropower.

e. Name of Project: Falls Mill Dam No. 2.

f. Location: On the Yantic River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Duncan Broatch, Summit Hydropower, P.O. Box 122, Putnam, Connecticut 06260.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 12-foot-high and 110-foot-long Falls Mill Dam No. 2 owned by the City of Norwich; (2) new 2-foot-high flashboards on top of the dam; (3) a small reservoir with a surface elevation of 69 feet mean sea level after the installation of the proposed flashboards; (4) an existing intake structure and forebay at the north end of the dam; (5) an existing powerhouse containing an existing 180-kW turbine-generator unit and a new 90-kW turbine-generator unit; (6) an existing 4.8-kV and 300-foot-long transmission line; and (7) other appurtenances. Applicant estimates an average annual generation of 1,054,838 kWh.

k. Purpose of Project: Project energy would be sold to the Northeast Utilities Company or to the City of Norwich.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a

preliminary permit for a period of 3 years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

13a. Type of Application: Preliminary Permit.

b. Project No: 8268–000.

c. Date Filed: April 26, 1984.

d. Applicant: Dillon Lake Hydro Associates.

e. Name of Project: Dillon Lake Project.

f. Location: On the Licking River, near the City of Zonesville, in Muskingum County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David M. Coombe, Dillon Lake Hydro Associates, 410 Severn Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Dam and Reservoir and would consist of: (1) A 20-foot-diameter, 660-foot-long existing penstock; (2) a proposed powerhouse containing one generating unit with an installed capacity of 2,100 kW; (3) a new 300-foot-long transmission line; and (4) appurtenant facilities. The Applicant estimates the annual generation would be 10,450,000 kWh.

k. Purpose of Project: All project energy produced would be sold to the Ohio Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $50,000.

14a. Type of Application: Preliminary Permit.

b. Project No: 8269–000.

c. Date Filed: April 26, 1984.

d. Applicant: Wills Creek Hydro Associates

e. Name of Project: Wills Creek Lake Project.

f. Location: On the Wills Creek, in the City of Wills Creek, in Coshocton and Muskingum Counties, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David M. Coombe, Wills Creek Hydro Associates, 410 Severn Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: August 30, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of engineers' Wills Creek Dam and reservoir and would consist of: (1) A 20-foot-diameter, 283-foot-long existing penstock; (2) a proposed powerhouse containing one generating unit with an installed capacity of 2,400 kW; (3) a proposed 300-foot-long transmission line; and (4) appurtenant facilities. The Applicant estimates the annual generation would be 10,300,000 kWh.

k. Purpose of Project: All project energy produced would be sold to the Ohio Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

15a. Type of Application: Preliminary Permit.

b. Project No: 8270–000.

c. Date Filed: April 26, 1984.

d. Applicant: Pleasant Hill Hydro Associates.

e. Name of Project: Pleasant Hill.

f. Location: On the Clear Fork of the Mohican River in Ashland County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Pleasant Hill Dam and outlet works and would consist of: (1) A new powerhouse near the west abutment of the dam at the end of the 19-foot-diameter outlet conduit with one 1,160-kW turbine-generator unit; (2) a new 750-foot-long transmission line; and (3) other appurtenances. The Applicant estimates an average annual generation of 4,900,000 kWh.

k. Purpose of Project: Project energy would be sold to the Ohio Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

16a. Type of Application: Preliminary Permit.

b. Project No.: 8271–000.

c. Date Filed: April 27, 1984.

d. Applicant: Steven E. Miller.

e. Name of Project: Campbell Creek Power Project.

f. Location: On Campbell Creek, near town of Willow Creek, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Steven E. Miller, P.O. Box 452, Arcata, California 95521.

i. Comment Date: August 31, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 40-foot-long concrete diversion structure at elevation 1,760.00 feet; (2) a 30-inch-diameter, 5,500-foot-long diversion conduit; (3) a 24-inch-diameter, 2,000-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 1,000 kW operating under a head of 950 feet; and (5) a 3,000-foot-long, 12.5-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 8.8 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month preliminary permit to conduct technical, environmental, and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

17a. Type of Application: Preliminary Permit.

b. Project No.: 8288–000.

c. Date Filed: May 7, 1984.

d. Applicant: John Elwood Williams.

e. Name of Project: JEPCO-Dan River I.

f. Location: On the Dan River in Stokes County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John Elwood Williams, 3341 Buena Vista Road, Winston-Salem, North Carolina 27106.

i. Comment Date: September 4, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed dam, 122 feet long and 21 feet high; (2) a proposed reservoir with approximately 6 acres of water surface area and a normal maximum surface elevation of 1,080 feet, M.S.L.; (3) a proposed powerhouse, housing one turbine-generator unit with an installed capacity of 240 kW; (4) a proposed tailrace; (5) a proposed 7,200-volt transmission line approximately 1,000 feet in length; and (6) appurtenant facilities. Applicant estimates that average annual energy generation would be 2,000,000 kWh.

k. Purpose of Project: Applicant anticipates that project energy will be sold to the Surry-Yadkin Membership Corporation.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $15,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 8296–000.

c. Date Filed: May 5, 1984.

d. Applicant: Malacha Power Project, Inc.

e. Name of Project: Renewable Power.

f. Location: On Pit River, partially within U.S. lands managed by the Bureau of Land Management, in Lassen County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Fred G. Castagna, President, Malacha Power Project, Inc., 2576 Hartnell Ave., Redding, California 96002–2319.

i. Comment Date: September 10, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 60-foot-long diversion structure at elevation 3,996 feet; (2) a 13.5-foot-diameter, 22,704-foot-long diversion tunnel; (3) two 10-foot-diameter, 5,046-foot-long penstocks; (4) a powerhouse at elevation 3,389 feet, containing a generating unit with a rated capacity of 36,000 kW; (5) a 1-mile-long, 60-kV transmission line connecting into the existing Pacific Gas and Electric Company line; and (6) a tailrace conveying water back into Pit River. The Applicant estimates a 95.5 million kWh average annual energy production.

A preliminary permit if issued does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $343,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

19a. Type of Application: Preliminary Permit.

b. Project No.: 8298–000.

c. Date Filed: May 10, 1984.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Elkhart City Power Project.

f. Location: On the Elkhart River in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, 1634 E. Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: September 12, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing masonry dam, approximately 150-feet in length and 8-feet high; (2) an existing impoundment with negligible storage capacity and normal maximum water surface elevation at approximately 728.4 feet m.s.l.; (3) a proposed powerhouse, approximately 35 feet by 25 feet; which will house two turbine/generator units with a total installed capacity of 200 kW; (4) a proposed 5,000-volt underground transmission line, about 450-feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy would be 2,314,000 kWH. Owner of the existing dam is the City of Elkhart.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Indiana and Michigan Electric Company or to the City of Elkhart.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $11,500.

20a. Type of Application: Preliminary Permit.

b. Project No: 8301–000.

c. Date Filed: May 10, 1984.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Ontario No. 1 Power.

f. Location: On the Pigeon River in LaGrange County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, 1634 East Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: September 14, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing earth dam, approximately 675 feet in length and 10 feet high; (2) an existing impoundment with negligible storage capacity and normal maximum water surface elevation at approximately 875.3 feet, m.s.l.; (3) a new brick powerhouse, approximately 24-feet square, which will contain one turbine/generator unit with an installed capacity of 100 kW, and utilizing an existing powerhouse foundation; (4) an existing headrace; (5) gates; (6) a proposed 5,000-volt underground transmission line, about 850 feet long; and (6) appurtenant facilities. Applicant estimates that the average annual energy would be 657,000 kWh. Owner of the existing dam is the Indiana Department of Natural Resources.

k. Purposes of Project: The Applicant anticipates that project energy will be sold to Northern Indiana Public Service Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a

preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $11,500.

21a. Type of Application: Preliminary Permit.

b. Project No: 8302–001.

c. Date Filed: May 21, 1984.

d. Applicant: Charles R. Pepe, Associates.

e. Name of Project: Columbia Hydroelectric.

f. Location: On the Paulins Kill River in Knowlton Township,

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles R. Pepe, 120 North Pascack Road, Spring Valley, New York 10977.

i. Comment Date: September 14, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 330-foot-long concrete dam with 2-foot-high flashboards; (2) a proposed 43-acre reservoir with a total storage capacity of 275 acre-feet at elevation 290.0 feet M.S.L., (3) an existing powerhouse containing a total rated capacity of 450 kW; (4) an existing tailrace channel; and (5) appurtenant facilities. The project would generate up to 2,300,000 kWh annually. The dam is owned by the State of New Jersey.

k. Purpose of Project: The Applicant proposes to sell the power to and directly connect with the New Jersey Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of studies under permit would be $20,000.

22a. Type of Application: Preliminary Permit.

b. Project No: 8305–000.

c. Date Filed: May 14, 1984.

d. Applicant: Carr Power Project.

e. Name of Project: Carr Power.

f. Location: On Old Cow Creek, in Shasta County California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John W. Carr, P.O. Box 807, Redding, California 96099.

i. Comment Date: September 10, 1984.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 150-foot-long diversion structure at elevation 1,840 feet; (2) a 7-foot-deep, 12-foot-wide, 5000-foot-long ditch; (3) a 72-inch-diameter, 1,000-foot-long penstock; (4) a powerhouse at elevation 1,690 feet containing a generating unit with a rated capacity of 1,530 kW; (5) a 1,000-foot-long, 12-kV transmission line tying into the existing Pacific Gas and Electric Company line; and (6) a tailrace conveying water back into Old Cow Creek. The Applicant estimates a 8.1 million KWh average annual energy production.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 24-month permit to conduct feasibility studies and prepare a license application at a cost of $45,000.

k. Purposes of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

23a. Type of Application: Preliminary Permit.

b. Project No: 8307–000.

c. Date Filed: May 14, 1984.

d. Applicant: Jack A. Shaffer.

e. Name of Project: Cedar-Willow Creek Power Project.

f. Location: On Cedar and Willow Creeks, near town of Willow Creek, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jack A. Shaffer, 1629 Fickle Hill Road, Arcata, California 95521.

i. Comment Date: September 14, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 40-foot-long diversion structure on Cedar Creek at elevation 2,400.00 feet; (2) a 4-foot-high, 40-foot-long diversion structure on Willow Creek at elevation 2,400.00 feet; (3) a 30-inch-diameter, 4,000-foot-long diversion conduit; (4) a 24-inch-diameter, 800-foot-long penstock; (5) a powerhouse with a total installed capacity of 540 kW operating under a head of 320 feet; and (6) a 1,000-foot-long, 12.5-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 4.0 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month preliminary permit to conduct technical, environmental, and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualifed license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to

the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an applicaton. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing application, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption applilcation, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene.*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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 received on or before the specified comment data for the particular application.

C. *Filing and Service of Responsive Documents.*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street,

NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the Particular application.

D1. *Agency Comments.*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments.*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments.*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments.*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 26, 1984.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-20217 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-027]

Pennzoil Co.; Thirteenth Amendment to Application for Immediate Clarification or Abandonment Authorization

July 26, 1984.

Take notice that on July 24, 1984, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G–7004–027 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to five new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Thirteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty . . . to provide adequate gas service to all applicants . . . and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, August 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G–7004–006 need not seek intervention herein. Each such person will be treated as having

also intervened in Docket No. G–7004–027.

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. 84–20153 Filed 7–30–84; 8:45 am]

BILING CODE 6717–01–M

[Docket No. ER84–472–000]

Public Service Company of Colorado; Order Accepting for Filing and Suspending Rates, Ordering Summary Disposition, Granting Late Intervention, Denying Request To Reject, and Establishing Hearing and Price Squeeze Procedures

Issued: July 26, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

On June 1, 1984, Public Service Company of Colorado (PSCC) tendered for filing a two-step increase in its rates to eight wholesale customers.[1] The Phase One rates would increase revenues by approximately $5.3 million (9.2%), based on a calendar 1984 test year. The Phase Two rates provide for a further increase of about $1.6 million (2.8%), representing a total increase of $6.9 million. PSCC requests an effective date of July 31, 1984, for its full increase, but asks to implement the Phase One rates during any suspension of Phase Two. PSCC also requests waiver of §§ 35.13(c)(2) and 35.13(c)(3) of the Commission's regulations.[2]

Notice of the filing was published in the **Federal Register**, with comments due on or before June 25, 1984.[3] Timely interventions were filed by (1) the Colorado Cities of Aspen, Burlington, and Glenwood Springs and Towns of Center and Julesburg (the Cities); (2) the Colorado-Ute Electric Association, Inc. (CUEA); and (3) Centel Corporation, Southern Colorado Power Division (Centel). CUEA raises no issues and requests no particular Commission action. Centel protests PSCC's filing and requests suspension and a hearing.[4]

The Cities also protest PSCC's filing. They request a five month suspension of PSCC's Phase Two rates, and a hearing, on the basis of several cost of service issues,[5] as well as because of an alleged price squeeze.[6] The Cities request that PSCC's Phase One rates not be allowed to go into effect asserting that the Phase One rates do not relieve the alleged price squeeze. Further, the Cities suggest that no increase should be permitted, even subject to refund, until "the potential price discrimination issue is fully explored through discovery." Finally, they request that the Commission order PSCC to keep accurate and detailed accounts of all funds collected due to the increase, and that any excessive amounts be refunded to them.

On July 9, 1984, PSCC responded to the pleadings of the Cities and Centel. While not opposing the motions to intervene, the company does object to the requests to suspend its rates for five months or to preclude the Phase One rates from taking effect. PSCC also addresses the cost of service issues raised by the intervenors.

On July 12, 1984, the Commission received a motion for permission to file a late intervention from the Colorado Public Utilities Commission (CPUC). The CPUC states that it received actual notice of this docket on June 20, 1984, that it "acted as quickly as possible," and that its late intervention will not enlarge the issues in this proceeding or prejudice the rights of any other party. In its accompanying motion to intervene, the CPUC objects, *inter alia*, to PSCC's requested rate of return.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the Cities', CUEA's, and Centel's timely motions to intervene serve to make parties to this proceeding. Furthermore, given the early stage of this proceeding, the apparent interest of the CPUC as an agency which regulates the retail rates of certain of PSCC's wholesale customers, and the absence of any undue prejudice or delay, we find that good cause exists to grant the CPUC's motion to intervene out of time.

We note initially that PSCC's rate increase is supported in part by the inclusion of construction work in progress (CWIP) in rate base, under § 35.26(c)(3) of our regulations. Those regulations require that no more than 50 percent of CWIP (other than for pollution control or fuel conversion) allocable to sales for resale (production and transmission related) be included in rate base.[7] PSCC has included 50 percent of all non-pollution control or fuel conversion CWIP in rate base. However, approximately 12.5 percent of such CWIP is related to the distribution function, and is thus not properly allocable to wholesale service. As a result, PSCC has, in fact, included approximately 70% of allocable CWIP in rate base. We shall therefore summarily reject PSCC's CWIP treatment and order the company to file revised rates and cost support consistent with our regulations.

As noted, the Cities request that we not allow the Phase One rates to go into effect, but have not supported what amounts to a motion to reject. Our review indicates that PSCC's submittal regarding the Phase One rates substantially complies with the Commissions regulations, but for the CWIP issue discussed above.[8] Furthermore, phased rate filings such as PSCC's do not contravene the requirements of the Federal Power Act and have been frequently permitted by this Commission. Thus, we decline to reject PSCC's Phase One rates.

Our preliminary review of PSCC's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Co.*, Docket No. ER82–23–000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Here, our preliminary review indicates that PSCC's proposed Phase One increase may not yield substantially excessive revenues. Under these circumstances,

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[1] *See* Attachment for customers and rate schedule designations.

[2] We note that these particular sections have no applicability to PSCC's filing and that waiver is therefore unnecessary.

[3] 49 FR 24771 (1984).

[4] Centel challenges PSCC's: (1) Claimed cash working capital allowance; (2) treatment of capacity replacement payments received from General Atomic Company related to the Fort St. Vrain nuclear plant; (3) common equity capitalization ratio; and (4) claimed common equity allowance.

[5] The issues include: (1) Excessive and improperly derived return on common equity; (2) whether the Fort St. Vrain nuclear generating plant is fully used and useful; (3) cash working capital allowance; and (4) improper accounting of payments received from General Atomic Company.

[6] The Cities also support their request for a maximum suspension with an argument that placing the rates in effect, subject to refund, would cause retail rate instability if PSCC's proposed rates are later adjusted.

[7] *See*, Order No. 298, Docket No. RM81–38–000, 48 FR 24,323 (1982), 3 FERC Stat. & Reg. ¶ 30,455.

[8] *See, Municipal Light Boards* v. *FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

we shall suspend the Phase One rates for one day from 60 days after filing, to become effective, subject to refund, on August 2, 1984. With respect to the Phase Two rates, however, preliminary review suggests that the proposed increase may yield substantially excessive revenues. Accordingly, we shall suspend Phase Two rates for five months, to become effective, subject to refund, on January 1, 1985.

In light of the Cities' price squeeze allegations, we shall institute price squeeze procedures and phase those procedures in accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339-00, 8 FERC ¶ 61,131 (1979).[9]

The Commission orders:

(A) The CPUC's untimely motion to intervene is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) PSCC's inclusion of more than 50 percent of allocable non-pollution control or fuel conversion CWIP in rate base is summarily rejected, as discussed in the body of this order. Within fifteen (15) days of the date of this order, the company shall file revised cost statements and rates conforming to section 35.26 of the Commission's regulations.

(C) The Cities' requests to reject the Phase One rates or to suspend any increase until after price squeeze discovery are hereby denied.

(D) PSCC's proposed rates are hereby accepted for filing, as modified by Paragraph (A) above; the Phase One rates are suspended for one day from 60 days after filing, to become effective, subject to refund, on August 2, 1984, and the Phase Two rates are suspended for five months from sixty days after filing, to become effective, subject to refund, on January 1, 1985.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of PSCC's rates.

(F) The Commission staff shall serve top sheets in this proceeding with ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[9] The Commission has noted on a number of occasions that, in the absence of extraordinary circumstances, unproved price squeeze allegations should not be considered in determining an appropriate suspension period. Here, the Cities effectively ask for an unlimited suspension of both the Phase One and Phase Two rates pending price squeeze discovery, despite the statutory five month limit on our suspension authority. Given our consistent practice with regard to phased filings and the treatment of price squeeze allegations for suspension purposes, we shall deny the Cities' request.

PUBLIC SERVICE COMPANY OF COLORADO RATE SCHEDULE DESIGNATIONS

[DOCKET NO. ER84-472-000]

Filing Date: June 1, 1984.

Effective: August 2, 1984 (Phase I rates—odd numbers); January 1, 1985 (Phase II rates—even numbers).

Procedure and the regulations under the

Designation	Customer	Description
(1) Supplement No. 16 to Rate Schedule FPC No. 3 (Supersedes Supplement No. 14)	City of Aspen, Colorado	Phase I rates.
(2) Supplement No. 17 to Rate Schedule FPC No. 3 (Supersedes Supplement No. 16)	do	Phase II rates.
(3) Supplement No. 20 to Rate Schedule FPC No. 9 (Supersedes Supplement No. 18)	Home Light & Power Company	Phase I rates.
(4) Supplement No. 21 to Rate Schedule FPC No. 9 (Supersedes Supplement No. 20)	do	Phase II rates.
(5) Supplement No. 15 to Rate Schedule FPC No. 11 (Supersedes Supplement No. 13)	City of Glenwood Springs, Colorado	Phase I rates.
(6) Supplement No. 16 to Rate Schedule FPC No. 11 (Supersedes Supplement No. 15)	do	Phase II rates.
(7) Supplement No. 9 to Rate Schedule FERC No. 37 (Supersedes Supplement No. 5)	Colorado-Ute Electric Association	Schedule of Rates Service (including Transmission Agreement)—Phase I.
(8) Supplement No. 10 to Rate Schedule FERC No. 37 (Supersedes Supplement No. 9)	do	Phase II rates.
(9) Supplement No. 17 to Rate Schedule FPC No. 15 (Supersedes Supplement No. 14)	City of Burlington, Colorado	Phase I rates.
(10) Supplement No. 18 to Rate Schedule FPC No. 15 (Supersedes Supplement No. 17)	do	Phase II rates.
(11) Supplement No. 16 to Rate Schedule FPC No. 13 (Supersedes Supplement No. 14)	Central Telephone & Utilities Corporation (Southern Colorado Power Division).	Phase I rates.
(12) Supplement No. 17 to Rate Schedule FPC No. 13 (Supersedes Supplement No. 16)	do	Phase II rates.
(13) Supplement No. 11 to Rate Schedule FPC No. 17 (Supersedes Supplement No. 9)	Town of Center Colorado	Phase I rates.
(14) Supplement No. 12 to Rate Schedule FPC No. 17 (Supersedes Supplement No. 11)	do	Phase II rates.
(15) Supplement No. 11 to Rate Schedule FERC No. 20 (Supersedes Supplement No. 10)	Town of Julesburg, Colorado	Phase I rates.
(16) Supplement No. 12 to Rate Schedule FERC No. 20 (Supersedes Supplement No. 11)	do	Phase II rates.

[FR Doc. 84-20154 Filed 7-30-84; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. CP84-519-000]

Rural Energy Systems, Inc., et al.; Application

July 26, 1984.

Take notice that on June 26, 1984, Rural Energy Systems, Inc. (Applicant, P.O. Box 511, Dakota City, Nebraska 68731, filed in Docket No. CP84-519-000 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Northern Natural Gas Pipeline Co. (Northern), Respondent, to establish a connection with Applicant's facilities and to sell natural gas to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests a connection to Northern's facilities near Dakota City, Nebraska, for the purpose of selling gas to its parent company, IBP Inc. (IBP), and, if able, to other customers and residences in the area. Applicant explains that the gas required would be 5,800 Mcf for a peak day requirement in the third year of operation and 1,000,000 Mcf per year for the third year annual requirement.

Applicant states that it plans to construct and operate .332 mile of 4-inch line and appurtenant facilities to deliver natural gas to IBP's complex which processes approximately 1,300,000 head of cattle per year. Applicant estimates the cost of construction to be $52,900.00 which would be financed from funds on hand. Applicant asserts the right of way is presently available to it; however, if offered Applicant attests that it would be prepared to purchase lines from Iowa Public Service Co. (Public Service), Respondent, the historical seller of gas to IBP.

For the described service, Applicant alleges that the delivered price to IBP would be $3.59/million Btu versus the present delivered price of $4.03/million Btu by Public Service.

Applicant and IBP also allege that the Public Service's line currently transporting natural gas to IBP's Dakota City complex should be under Commission jurisdication. Applicant asserts that Commission jurisdiction is required because there are no state public utility commission or any other local body which regulates the service and rates provided by Public Service to IBP. As a result, Applicant additionally requests that the Commission issue an order for Public Service to show cause why the current lines serving IBP are not under Commission jurisdiction and to file rates under sections 4(e) and (5) of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20155 Filed 7-30-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of May 28 Through June 1, 1984

During the week of May 28 through June 1, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Alan Ramo, May 29, 1984, HFA-0218

Alan Ramo filed an Appeal from a partial denial by the Director of Military Application of a Request for Information which he had submitted under the Freedom of Information Act. Ramo sought release of four paragraphs of a memorandum which had been withheld under Exemption 5 and one sentence of the memorandum which was withheld pursuant to Exemption 7(D) of the Act. Exemption 5 protects from mandatory disclosure predecisional, intra-agency material. Exemption 7(D) protects investigatory records obtained from a confidential source. In considering the Appeal, the DOE found that Exemption 5 could not properly be applied to the memorandum, because the document transmitted information, but contained no recommendation or other predecisional material. However, the DOE also found that Exemption 7(D) was properly applied, noting that all information received from a confidential source is protected, not just the identity of the source. The DOE also found that Exemption 7(D) might apply to one paragraph of the memorandum, which had been withheld solely pursuant to Exemption 5. The matter was remanded to the Director of Military Application with instructions either to release that paragraph or to issue a new determination which justified withholding it under Exemption 7(D). The Director was also required to release the remaining material withheld pursuant to Exemption 5.

Request for Exception

Big Muddy Oil Processors, Inc., May 29, 1984, BXE-1368

Big Muddy Oil Processors, Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart L, in which the firm sought an extension of exception relief that permitted it to resell at market prices the crude oil that it reclaimed. In considering the request, the DOE concluded that exception relief was appropriate only with respect to waste crude oil reclaimed by the firm, and denied the firm's request that exception relief should be extended to blending agents used in the reclamation process. Accordingly, exception relief was granted in part.

Motion for Discovery

State of Texas, June 1, 1984, HRD-0186

The State of Texas filed a Motion for Discovery directed toward Tesoro Petroleum Corporation. The discovery motion related to an enforcement proceeding involving a Proposed Remedial Order issued to Tesoro by the Economic Regulatory Adminstration. In its Motion, Texas sought information regarding: (1) Tesoro's marketing and business operations within Texas; (2) Texas' possible direct purchases from Tesoro; and (3) the extent to which Texas may be a party injured by Tesoro's alleged overcharges. In support of its Motion, Texas generally claimed that the requested discovery was necessary in order for it to protect its interests in the Tesoro enforcement proceeding. The DOE found that Texas had not established that discovery was necessary to obtain relevant and material evidence. The DOE also found that Texas failed to show that the requested information was not otherwise available to it. Accordingly, Texas' Motion was denied.

Interlocutory Orders

Economic Regulatory Adminstration/States of Texas, California, Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island, West Virginia, May 30, 1984, HRZ-0192, HRZ-0201

The States of Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and West Virginia filed a Request to Participate, and the States of California and Texas filed Notices of Objection and Statements of Objections in an enforcement proceeding involving a Proposed Remedial Order issued to Tesoro Petroleum Corporation. The ERA requested that OHA either order California and Texas to file formal Requests to Participate or limit the extent of the States' participation to remedial aspects of the proceeding. The OHA recognized that the States did not specify in their Statements of Objections the aspects of the proceedings in which they wished to participate, but rejected the ERA's argument that this technical failure resulted in deficient Statements of Objection. Accordingly, the

Statements of Objections were construed as Requests to Participate. OHA further declined to limit the participation of Texas and California to remedial issues. Additionally, ERA requested that OHA stay the briefing of remedial issues until Tesoro's liability was determined. OHA found this request unnecessary because these issues had already been fully briefed.

Texas, Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and West Virginia, June 1, 1984, HRZ-0204

The States of Texas, Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and West Virginia filed a Requests to Participate in an enforcement proceeding involving a Proposed Remedial Order issued to Hydrocarbon, Inc. Their submissions concerned only the distribution of any refunds which may ultimately be remitted by Hydrocarbon as a result of the enforcement proceeding. The DOE determined that the States should be allowed to participate in a Subpart V proceeding which will be initiated if it is determined that Hydrocarbon violated the pricing regulations.

Supplemental Order

Laketon Asphalt Refining, Inc., May 29, 1984, BYX-0196

The Office of Hearings and Appeals reviewed the exception relief that Laketon Asphalt Refining, Inc. received for January 1981 under the DOE Crude Oil Entitlements Program, pursuant to the *Delta* standards. As a result of the review, the OHA concluded that Laketon's entitlements purchase obligation incurred for January 1981 should be relieved. The amount of relief was limited to the NOOSR Ceiling of $2,273,809.

Refund Applications

Standard Oil Company (Indiana)/ Independent School District No. 756, Braintree Electric Light Department, May 30, 1984, RF21-7281, RF21-8787

The DOE issued a Decision and Order concerning Applications for Refund filed by Independent School District No. 756 and Braintree Electric Light Department. The applicants requested refunds as consumers of Amoco residual fuel oil. In considering the applications, the DOE found that because neither of the resellers from which the applicants purchased residual fuel oil had applied for refunds in connection with their own purchases of that Amoco product, it was reasonable to assume that any Amoco overcharges alleged were not absorbed by the resellers, but rather were passed along to the applicants. The DOE further noted that since both applicants were governmental entities, any refunds granted to them would broadly benefit the local populations that were adversely affected by the alleged overcharges. The DOE concluded that both applicants should receive refunds based upon the total number of gallons purchased during the consent order period times 100 percent of the volumetric amount established in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). The refunds granted in this proceeding total $1,919.

Standard Oil Company (Indiana)/Savage River Inn, et al., May 30, 1984, RF21-12095 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by branded retailers of Amoco motor gasoline. All of these firms contended that they were injured by more than the presumptive levels adopted in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). The DOE rejected the applicant's argument that their inability to sell gasoline at the maximum lawful selling price established that they incurred injury greater than the presumptive levels. The DOE also rejected the applicants' request to use funds remaining after all meritorious first stage claims had been paid to make additional pro rata refunds to first stage claimants. Therefore, each applicant was granted a refund based upon the presumptive levels.

Dismissal:

The following submission was dismissed:

Name	Case No.
Missouri Pacific Railroad Company	RF13-3

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 6, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-20107 Filed 7-30-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of June 4 Through June 8, 1984

During the week of June 4 through June 8, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Industrial Sprinkler Company, June 8, 1984, HFA-0212

Industrial Sprinkler Company filed an Appeal from a denial by the Manager of the DOE's Chicago Operations Office of a Request for Information that it submitted under the Freedom of Information Act. In the Request, Industrial sought information pertaining to the negotiation and settlement of a claim for equitable contract adjustment submitted to the DOE by Terminal Construction Company. The denial withheld portions of 14 responsive documents pursuant to Exemption 4, which exempts confidential proprietary data from mandatory disclosure, and Exemption 5, which protects predecisional material. In considering the Appeal, The DOE determined that most of the withheld information fell within the purview of the cited exemptions. The DOE further determined, however, that certain portions of the withheld documents, including material previously released to Terminal in the course of negotiations, yet withheld from Industrial under Exemption 5, should be remanded for further consideration, and that some segregable factual information should be released to Industrial. Accordingly, the Appeal was granted in part.

The Knoxville Journal, June 4, 1984, HFA-0217

The Knoxville Journal filed an Appeal from a denial by the Assistant Manager for Administration of the Oak Ridge Operations Office of a Request for Information which the newspaper had submitted under the Freedom of Information Act. The material was originally withheld pursuant to Exemption 6 of the Act, which protects materials whose release would result in an invasion of personal privacy. In consideration the Appeal, the DOE found that certain of the documents should be released to the public. Important issues that were considered in the Decision and Order were: (i) Whether deletion of all identifying details from medical records was sufficient to protect the identity of the patients involved, (ii) whether the need for the information or the potential for the public to benefit from release of the information should be considered and (iii) whether the public's ability to comprehend the information was relevant to disclosure.

Petition for Special Redress

Kern Oil & Refining Co., June 5, 1984, HEG-0034

Kern Oil & Refining Co. filed a submission, construed as a petition for special redress, in which it sought an order that would permit it to recover entitlements exception relief in the amount of $4,320,620, plus interest, from monies to be deposited by Dow Chemical, U.S.A. in a U.S. Treasury interest bearing account. In considering the request, the DOE pointed out that the Economic Regulatory Administration had not yet adopted a final remedy with respect to remaining Entitlements Program matters. The DOE therefore concluded that there was no basis for considering a petition for special redress, since another adequate administrative remedy existed. Accordingly, Kern's request was denied.

Request for Modification and/or Rescission

Economic Regulatory Administration, June 5, 1984, HRR-0092

On May 16, 1984, the Economic Regulatory Administration (ERA) filed a motion to

modify an ordering paragraph in a Remedial Order issued to County Fuel Company, Inc., which required the firm to remit its refund obligation to the DOE within 30 days. The ERA requested that this provision be modified to reflect County Fuel's status as a debtor in bankruptcy court and further asked that County Fuel's refund obligation be stayed pending a final order of the bankruptcy court. In considering the ERA Motion, the DOE pointed out that since the ERA intended to pursue enforcement of the Remedial Order through the bankruptcy court proceedings, County Fuel's refund obligation should be stayed pending further order from the bankruptcy court or the DOE. Accordingly, the motion was granted.

Interlocutory Order

State of Texas, June 7, 1984, HRZ-0203

The State of Texas filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to Holly Energy, Inc. and Holly Corporation. In that submission, Texas contended that the PRO failed to sufficiently identify the parties injured by the alleged violations and to specify how those parties will receive refunds of any overcharge amounts. The Office of Hearings and Appeals (OHA) determined that a Subpart V proceeding would be used to determine the manner in which any refunds from the firms would be distributed, unless the Economic Regulatory Administration informed OHA within 10 days that it wished to defer a decision on remedies until a later date. The OHA further determined that Texas would be allowed to participate in such a Subpart V proceeding, or would be permitted to participate in the Holly remedial order proceeding with respect to refund-related issues, if ERA was not prepared to agree to the institution of a Subpart V proceeding.

Request for Stay

Gregg Pritchard, June 5, 1984, HRS-0043

Gregg Pritchard filed an Application for Stay from the requirement that he file a Statement of Objections to the Proposed Remedial Order issued by the Economic Regulatory Administration to International Crude Corporation (ICC) and Gregg Pritchard. In considering the Application, the DOE determined that the enforcement proceeding against Mr. Pritchard should not be delayed pending a resolution of issues involved in the PRO by the court in bankruptcy proceedings involving ICC. The DOE pointed out that administrative resources would not be conserved if the stay were granted, that the public interest would not be advanced by a delay in the proceedings and finally that Mr. Pritchard has not shown he would be irreparably harmed in the absence of a stay. The stay request was therefore denied.

Refund Applications

Standard Oil Company (Indiana)/Alabama, et al., June 8, 1984, RQ21-63, et al.

The States of Alabama, Connecticut, Vermont and Washington filed proposed second-stage refund plans with the Office of Hearings and Appeals (OHA) pursuant to consent orders entered into by the DOE and Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company. Alabama proposed to utilize its refund share to fund energy conservation programs and alternative energy research. Connecticut proposed to utilize the refunds to expand the State's ridesharing program. Vermont proposed to develop and distribute educational materials regarding the energy efficiency of motor vehicles. Washington proposed a plan to fund a study of selected alternative transportation fuel systems. The OHA determined that these plans clearly benefited consumers of motor gasoline and middle distillates who were injured by the alleged overcharges in the Amoco and Belridge proceedings. Accordingly, the OHA approved the plans submitted by Alabama, Connecticut and Vermont. Washington's plan was approved on the condition that its budget for administrative expenses be reduced from the stated ten percent to five percent.

Standard Oil Company (Indiana)/Druid Park Amoco, et al., June 4, 1984, RF21-06925, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the nine applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding totaled $11,000.

Standard Oil Company (Indiana)/Belridge Oil Company/Illinois, June 7, 1984, RQ21-81, RQ8-82

The State of Illinois filed a second-stage plan for use of funds received by the ODE pursuant to the consent orders entered into with Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company. The DOE approved Illinois' proposal to utilize part of the monies to fund alternative energy research and energy conservation programs that would benefit consumers of motor gasoline and middle distillates in residential, agricultural and industrial sectors. The DOE did not approve one aspect of the Illinois plan that would identify the transportation needs of several non-profit organizations that receive funding through the Chicago Community Trust. The DOE found that this proposal did not demonstrate that the benefits to be derived would inure to consumers who were injured by the alleged Amoco and Belridge overcharges. The State was permitted, however, to clarify its request for the Chicago Community Trust program, in order to correct this deficiency.

Standard Oil Company (Indiana)/Panorama Truck Stop, et al., June 4, 1984, RF21-12270, et al.

The DOE issued a Decision and Order concerning four Applications for Refund from branded retailers of Amoco middle distillates. All of these firms contended that they were injured by more than the presumptive levels adopted in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The DOE rejected the applicants' argument that their inability to sell gasoline at the maximum lawful selling price established that they incurred injury greater than the presumptive levels. The DOE also rejected the applicants' request that any funds remaining after first stage claims are considered be used to grant additional pro rata refunds to those claimants. Therefore, each applicant was granted a refund based upon the presumptive levels.

Standard Oil Company (Indiana)/Rangel American Service, et al., June 5, 1984, RF21-10405, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the three applicants should receive a refund based upon the total volume of its Amoco motor gasoline pruchases. The refunds granted in this proceeding totaled $4,088.

Protective Order

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name	Case No.
ERA; Pel-Star Energy, Inc.; John H. Harvison; James C. Stevens.	HRJ-0049

Dismissal

The following submission was dismissed:

Name	Case No.
Gulf Energy & Development Corp	DRO-0356

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Bulding, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 16, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-20108 Filed 7-30-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 2 Through July 6, 1984

During the week of July 2 through July 6, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Pacific Gas and Electric Company, July 2, 1984, HFA-0027

Pacific Gas and Electric Company (PG&E) filed an Appeal from two partial denials issued by the Assistant Administrator for Management Services and the Western Area Power Administration (WAPA) of the Department of Energy (DOE) of a Request for information which PG&E had submitted under the Freedom of Information Act (FOIA). Three hundred and twenty documents were withheld pursuant to Exemption 5, which protects the deliberative process. In considering the Appeal, the DOE found that it was unclear whether the responsive material fell within the purview of Exemption 5 inasmuch as the WAPA failed to provide sufficient justification for withholding the documents or to furnish an adequate index which would permit the requester to ascertain whether the cited exemption reasonably applies to the documents. In addition, the DOE found that the WAPA had failed to address the issue of segregability or explain why discretionary release of the withheld documents was inappropriate. Accordingly, the matter was remanded to the WAPA which was directed to either release the documents initially withheld under Exemption 5, or in the alternative, to issue a new determination that: (i) Provides further descriptions of the subject matter of certain of the withheld documents; (ii) adequately justified the withholding of certain documents pursuant to Exemption 5; (iii) states whether there exists any factually segregable material in the withheld documents; and (iv) contains a statement concerning why discretionary release of certain responsive documents is inappropriate if the WAPA so finds.

Interlocutory Orders

Getty Oil Company, July 2, 1984, HRZ-0198

Getty Oil Company filed a motion to compel discovery of additional documents in the possession of the Economic Regulatory Administration. In that motion, Getty challenged the adequacy of ERA's rearch of its files for information responsive to the discovery requests approved in *Getty Oil Company*, 11 DOE ¶ 84,048 (1984). Getty also challenged ERA's claims of privilege with respect to one document that was identified as responsive to those requests but was not released to Getty. In its Decision and Order, the OHA determined that ERA should have identified certain forms in its files as responsive to the discovery requests, but that otherwise its search was adequate. It also found that the executive (deliberative process) and attorney work-product privileges had been properly invoked. Accordingly, Getty's motion was granted in part.

Highway Oil Company, Inc., July 3, 1984, HRZ-0200, HRD-0123, HRH-0123

Highway Oil Company, Inc. (Highway) filed a Motion to Dismiss, a Motion for Discovery, and a Motion for an Evidentiary Hearing in connection with a Statement of Objections to Proposed Remedial Order (PRO) issued to the firm on October 29, 1982 by the Economic Regulatory Administration (ERA). In the PRO, the ERA alleged that Highway violated certain reseller-retailer pricing regulations and rulings in its retail sales of motor gasoline.

In its Motion to Dismiss, Highway argued that the PRO suffered from serious factual and legal deficiencies, but failed to identify those deficiencies. The DOE reviewed the PRO and found that it was sufficient. Accordingly, the Motion to Dismiss was denied.

In its Motion for Discovery, Highway sought the answers to interrogatories, the production of certain documents, and the depositions of certain DOE personnel about the following: (1) Bases for the agency's interpretations of certain reseller-retailer pricing regulations; (2) contemporaneous constructions of certain aspects of the regulations; (3) issues relating to ERA's requirement that Highway justify certain costs; and (4) issues relating to the audit. In considering the Motion for Discovery, the DOE determined that most of the contested issues related to disputes about legal interpretations as opposed to factual matters. However, the DOE determined that a factual dispute did exist between ERA and Highway with regard to what Highway's May 15, 1973 selling prices were at six of the firm's retail outlets. Accordingly, Highway's Motion for Discovery was partially granted.

In its Motion for an Evidentiary Hearing, Highway sought to present oral testimony about the following: (1) The valuation of certain costs; (2) the proper interpretation of certain regulations; and (3) the determination of the firm's May 15, 1973 base data. With respect to the first category of issues, the DOE determined that Highways request failed to specifically identify any disputed factual issues. With respect to the second category of issues, the DOE determined that Highway sought to present oral testimony about legal rather than factual matters. Finally, with respect to the last category of issues, the DOE determined that although Highway identified a disputed factual issue, the firm failed to make any showing that oral evidence would be superior to documentary evidence. Accordingly, the Motion for Evidentiary Hearing was denied.

Refund Applications

Ozona Gas Processing Plant II/Odessa L.P.G. Transport Company, Inc., July 2, 1984, RF28-2

Odessa L.P.G. Transport Company, Inc. (Odessa), filed an Application for Refund pursuant to a Decision and Order issued on January 24, 1983 in *Office of Enforcement*, 10 DOE ¶ 85,056 (1983). In its Application, Odessa sought a portion of the funds obtained by the DOE through a consent order entered into by the DOE and the Ozona Gas Processing Plant located in Crockett County, Texas (Ozona II) on November 26, 1979. In considering the refund application, the OHA found that the Suburban Propane Gas Corporation purchased virtually all of the Ozona natural gas liquid (NGL) products sold by Ozona during the consent order period but has waived any claim it might have had to the Ozona funds. The OHA also determined that, during certain portions of the consent order period, Odessa had paid Suburban prices for NGLs that exceeded average market prices for those products at the level of distribution concerned. Based on this finding, OHA concluded that Odessa was competitively injured as a result of its purchases of NGLs from Suburban. The Odessa refund application was accordingly approved in part. The refund granted in this proceeding was $30,843 plus a pro rata share of the interest accrued on the Ozona II consent order fund.

Tenneco Oil Company/United Oil Marketers, July 6, 1984, RF7-111

United Oil Marketers, a motor gasoline reseller, filed an Application for Refund in the Tenneco Oil Company Special Refund Proceeding pursuant to 10 CFR, Part 205, Subpart V. United requested a refund on the basis of its purchases of 9,050,983 gallons of motor gasoline from Tenneco during the consent order period, march 3, 1973 through December 31, 1980. In reviewing the refund application, OHA found that the firm failed to calculate banks of unrecouped product cost increases during the period covered by the consent order. OHA determined that in this case a demonstration of the existence of banks is a necessary prerequisite to establishing elgibility for a refund based on purchases in excess of 600,000 gallons per year per covered product, since the nonexistence of banks may indicate that a firm was able to pass through all increased product costs to its customers. United's refund, therefore, was limited to its pro rata share of the consent order fund based on its purchases of 600,000 gallons of motor gasoline per year.

Protective Order

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name	Case No.
ERA; Pel-Star Energy, Inc.; John H. Harvison; James C. Stevens.	HRJ-0050

Dismissals

The following submissions were dismissed:

Name	Case No.
Cooper, Kirkham & McKinney	HFA-0231
Gray Trucking Company	HEF-0491
Hideca Petroleum Corporation	HRO-0118

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 17, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-20109 Filed 7-30-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of June 18 Through June 22, 1984

During the week of June 18 through June 22, 1984, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Marathon Petroleum Company; Marathon Oil Company, June 22, 1984, DRO-0195

Marathon Petroleum Company and Marathon Oil Company (Marathon) objected to a Proposed Remedial Order (PRO) that the Office of Special Counsel (OSC) issued to the firm on May 1, 1979. In the PRO, the OSC alleged that Marathon charged prices in first sales of crude oil which exceeded those permitted by the applicable regulations at 10 CFR Part 212, Subpart D. After considering Marathon's objections, the Office of Hearings and Appeals (OHA) concluded that the PRO, with certain modifications, should be issued as a final Remedial Order of the Department of Energy.

Major determinations made in the decision include: (1) That the Emergency Petroleum allocation Act of 1973, 15 U.S.C. 751 *et seq.*, and the Energy Policy and Conservation Act, 15 U.S.C. 757 *et seq.*, are constitutionally valid; (2) that the OHA has the authority to adjudicate enforcement proceedings; (3) that the PRO issued to Marathon was sufficiently specific to satisfy the requirements of both the applicable procedural regulations and due process; (4) that the OSC was not barred from prosecuting the action by various state statutes of limitations or by the equitable defense of laches; (5) that the "very large tract" exception to the property definition, articulated in FEA Ruling 1977-1, 42 FR 3628 (1977), and FEA Ruling 1977-2, 42 FR 4409 (1977), is unavailable to any lease that encompasses an area less than 10,000 acres; (6) that the royalty owner accountability exception, articulated in Ruling 1977-1 and Ruling 1972-2, does not require the base lease to set out explicitly the duty to account separately for production from identified portions of the premises; (7) that under part IV-(B) of Ruling 1977-2, stripper well exemption eligibility (10 CFR 210.32) does not extend to a unitized property until the unitized property itself, as a property, has sustained an average daily production of 10 barrels per day or less per well for 12 consecutive months following the establishment of a unitized base production control level (BPCL); (8) that the regulations pertaining to unitized properties, 10 CFR 212.75, 41 FR 36172 (1976), and part IV-(B) of Ruling 1977-2, are substantively void; (9) that the OSC properly did not credit a specified property with additional producing days for purposes of calculating average daily production under the stripper well exemption; (10) that Marathon used improper posted prices for crude oil sold from seven properties; (11) that the "special release rule" (10 CFR 212.74(b)) did not permit Marathon to sell as released crude oil an amount greater than a property's BPCL; (12) that Marathon, as operator of a property was not liable for certain overcharges resulting where an interest owner took its share of the production in-kind and: (i) it was convincingly shown that the interest owner determined independently the price at which it would be sold, or (ii) it was shown that no overcharges stemmed from the working interest owner's sale of the crude oil; (13) that Marathon failed to demonstrate that it was entitled to inter-property offsets of undercharges against overcharges; and (14) that all refunds Marathon would make would be distributed pursuant to a special refund proceeding to be convened under 10 CFR Part 205, Subpart V.

Request for Exception

Phillips Petroleum Co., June 22, 1984, BEE-1683

Phillips Petroleum Co. filed an Application for Exception from the provisions of 10 CFR 211.69 and 212.131 in which the firm sought to file an amended ERA-49 entitlements report form and to recertify certain barrels of crude oil sold to Cities Service Company. In considering the request, the DOE found that public policy required in this instance adherence to the limited reporting period specified in § 211.69 and therefore denied Phillips' request to amend its July 1980 ERA-49 form. The DOE also found, however, that exception relief from § 212.131 was necessary to correct an unfair distribution of burdens that existed between Phillips and Cities and therefore granted in part Phillips' request to recertify certain barrels of crude oil and invoice Cities for certain additional sums of money.

Motion for Discovery

Kaiser Aluminum International Corporation, June 21, 1984, HRD-0180

Kaiser Aluminum International Corporation (KAIC) filed a Motion for Discovery on November 23, 1983 in connection with a Statement of Objections to a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA). In the PRO, the ERA alleged that KAIC has violated the DOE crude oil reseller price regulations by selling crude oil at prices in excess of its purchase prices without performing a service or other function traditionally associated with the resale of crude oil. In its Motion, KAIC sought information concerning the location and business practices of a large number of crude oil resellers. The DOE determined that the firm had failed to show that the requested discovery was necessary to produce relevant and material information concerning the issues in the underlying enforcement proceeding. The Motion for Discovery was therefore denied.

Interlocutory Orders

Exxon Company, U.S.A. Hydrocarbon Trading & Transport Co., Inc.; Economic Regulatory Administration; Exxon Company, U.S.A.; Exxon Company, U.S.A.; Economic Regulatory Administration; Exxon Company, U.S.A., June 19, 1984, HRZ-0163, HRZ-0164, HRZ-0162, BRH-1271, BRD-1271, BRD-0085, HRZ-0144

Exxon Company, U.S.A. (Exxon), the Office of the Solicitor of the Economic Regulatory Administration (ERA), and Hydrocarbon Trading and Transport Company, Inc. (Hydrocarbon) all filed motions in connection with an enforcement proceeding pending before the Office of Hearings and Appeals. The enforcement proceeding to which the present motions relate was instituted on May 9, 1980, when the ERA issued a Proposed Remedial Order (PRO) to Exxon. In the PRO, the ERA alleges that during March, April and May of 1979 and 1980, Exxon, refused to supply to Hydrocarbon approximately 600,000 gallons of motor gasoline which it was required to supply pursuant to a supplier/purchaser relationship which existed between Exxon and Hydrocarbon. The PRO further alleges that Exxon's refusal to supply Hydrocarbon constitutes a violation of 10 CFR 211.9(a) of the Mandatory Petroleum Allocation Regulations.

After considering all of the arguments raised in the various motions, the DOE concluded that each motion should be denied. The DOE also determined that Exxon would be required to submit additional information so that the DOE could determine the appropriate remedy in the event that the DOE found that a Remedial Order should be issued.

Osborn Energy Corporation; E.O. White, June 21, 1984, HRZ-0195, HRD-0116, HRH-0116

In a Proposed Remedial Order (PRO) issued on January 6, 1983, the Economic Regulatory Administration charged Osborn Energy Corp. and E.O. White with violating the "anti-layering" provision of 10 CFR Part 212, Subpart L. That regulation prohibits a reseller from charging a price for crude oil in

excess of its actual purchase price unless the reseller provided some service or other function traditionally and historically associated with the resale of crude oil. In Motions for Discovery and Evidentiary Hearing, Osborn and White claimed that the regulation's reference to traditional reseller services is ambiguous and should be interpreted by reference to what they allege were actual practices in the crude oil ndustry. Accordingly, they sought discovery and an evidentiary hearing with regards to the opinion of the crude oil industry regarding historic industry practices. They also sought administrative record and contemporaneous construction discovery in support of their claims that the DOE has not interpreted the regulation in a consistent manner, and that the regulation is procedurally and substantively invalid.

After analysis of the official record, the Office of Hearings and Appeals found that, in enacting the regulation, the intention of the agency was that only specific services such as gathering, transportation and storage were to qualify as traditional reseller services within the meaning of the regulation. Accordingly, OHA denied discovery of crude oil industry practices. OHA denied administrative record and contemporaneous construction discovery, because Osborn and White failed to present any basis for the grant of such discovery. OHA did grant, however, discovery of those portions of the official record that were unavailable to the respondents, and an evidentiary hearing with regard to: (i) The specific service the respondents provided in the transactions covered by the PRO and (ii) White's activities at and/or control over Osborn. The OHA denied White's Motions to Dismiss him from this enforcement proceeding.

Refund Applications

Standard Oil Company (Indiana)/Otis D. Schultz, June 22, 1984, RF21-6213, RF21-6953

The DOE issued a Decision and Order concerning two Applications for Refund filed by Otis D. Schultz, a retailer and wholesaler of Amoco motor gasoline. Schultz elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that Schultz's volume of retail sales for the period 1976 through 1979 was previously included in Schultz's reported volume of wholesale sales for which refunds had already been granted. (*See* Case No. RF21-2164.) However, under the presumption method set forth in the *Office of Special Council* decision, a wholesaler is ony entitled to receive a refund equal to 34 percent of the volumetric refund amount while a retailer is entitled to receive a refund equal to 40 percent of the volumetric refund amount. The DOE therefore concluded that Schultz should receive an additional refund of six percent of the volumetric refund amount for that portion of his wholesale volume sold at the retail level from 1976 and through 1979. Prior to 1976, however, Schultz was an independent Amoco retailer but not an independent wholesaler. The DOE therefore determined that Schultz should receive the full presumption refund amount (i.e., 40 percent of the volumetric refund amount) for the Volumes of gasoline which he purchased and sold at retail from March 1973 through 1975. The refunds granted in this proceeding total $526.

Standard Oil Company (Indiana)/State of Kansas, June 18, 1984, RF21-12305 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by the State of Kansas (Kansas) in connection with its purchases as a consumer of Amoco middle distillates and motor gasoline.

Kansas elected to apply for a refund based upon the presumptions of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). In considering the applications, the DOE concluded that Kansas should receive a refund based upon the total volume of its eligible Amoco middle distillate and motor gasoline purchases. The refunds granted in this proceeding total $3,216.

Standard Oil Company (Indiana)/Sun Company, Inc., June 18, 1984, RF21-10396

The DOE issued a Decision and Order concerning an Application for Refund filed by Sun Company, Inc., in connection with its purchases of Amoco residual fuel oil for resale. Since there was no presumption of injury methodology for residual fuel oil purchases established in *Office of Special Counsel*, 10 DOE ¶85,048 (1982), Sun was required to document the injury it incurred in purchasing Amoco residual fuel oil. In considering the Application, the DOE concluded that it was appropriate to apply the competitive disadvantage methodology to determine Sun's injury. Based upon a comparison of Sun's purchase prices with average market price data, the DOE determined that during three months of the period in which Sun purchased Amoco residual fuel oil, it was competitively disadvantaged by Amoco's pricing practices. The DOE concluded that Sun should receive a refund based upon the volume of its eligible Amoco residual fuel oil purchases multiplied by the Amoco Volumetric amount. The refund granted in this proceeding totals $389.

Dismissals

The following submissions were dismissed:

Name	Case No.
Department of Interior/Plateau	HEE-0063
Petrolane, Inc.	HEG-0032

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-20110 Filed 7-30-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-47003C; FRL-2642-3]

Acrylamide; Decision Not To Require Health Effects Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice presents EPA's final decision not to require health effects testing for acrylamide at this time. Public comments received in response to the Agency's tentative decision not to require health effects testing of acrylamide indicated that the proposed decision should be made final. This notice addresses only the health effects testing of acrylamide. The Agency has addressed the need for environmental effects testing of acrylamide in a separate notice (48 FR 725, January 6, 1983).

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: (800-424-9065), In Washington, D.C. 554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: .

I. Background

Section 4(e) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend a list of chemicals for EPA to consider for promulgation of testing rules under Section 4(a) of the Act.

The ITC designated acrylamide for priority testing of health and environmental effects in its Second Report published in the **Federal Register** on April 19, 1978 (43 FR 16684). The ITC based its testing recommendations on high production (1976 production volume of 64 million pounds), anticipated 12 percent production growth rate over the following decade, exposure of an estimated 20,000 workers, possible widespread and low-level exposure of the general population due to its various uses, and insufficient testing information on the recommended effects.

The Agency published in the Federal Register of July 18, 1980 (45 FR 48510) its response to the ITC's testing recommendations covering health effects testing of acrylamide and requested comments on its tentative decision not to initiate rulemaking to require such testing. This decision was based on EPA's opinion that, because there was evidence that exposure of humans and several animal species to very low levels of acrylamide consistently induced neurotoxicity [the no effect level observed in cats is 0.3 to 1.0 mg/kg/day (Ref. 1)], any controls adopted on this basis would be likely to provide a reasonable degree of protection from any other potential acrylamide health hazards. Oncogenic effects were noted to be the one possible exception to this reasoning. However, because the Dow Chemical Company had initiated oncogenicity testing of acrylamide (Ref. 2), EPA concluded that it was not necessary to require additional oncogenicity testing at that time. The Agency also included in that notice its decision to initiate an assessment of acrylamide based upon existing toxicity data.

II. Response to Public Comments

The majority of comments received by the Agency on its tentative decision concurred with EPA's proposed rationale. These commenters recognized that EPA's decision would: (1) Not endanger human health because additional test data would be unlikely to change any control actions based on existing health effects information; (2) be a cost-effective approach to defining the potential hazard of acrylamide to humans; (3) avoid continued study for one chemical that could tie up scarce testing resources better used for others; and, (4) allow EPA to address other recommended chemicals more expeditiously.

In addition to these supportive comments, the Agency received two opposing opinions as well. The first of these argued that any control measures based on currently available information alone (i.e., neurotoxicity) may not adequately protect human health from uncharacterized health effects (e.g., reproductive and teratogenic effects). In response, EPA believes that when all test results from the known ongoing studies are available there will be sufficient data on acrylamide's toxic effects to reasonably determine or predict the health risks it presents to humans, and that the exposure levels consistent with protecting against neurotoxicity and oncogenicity would be so low that they would be unlikely to produce an unreasonable risk from other health effects.

The second opinion stated that through EPA's decision a precedent for generating significant health effects information only would be established, versus a more general approach to testing for all health effects, which might limit the data base available for identifying options for controlling toxic chemicals. In response to this argument, EPA believes that a decision on whether further testing is necessary for a chemical substance must be approached on a case-by-case basis. For acrylamide, EPA is taking into account the potency of the known effects, likely control levels and probability that other adverse effects will occur at still lower levels. EPA believes that no information essential to potential regulatory activities would be gained from requiring additional health effects testing at this time.

III. Additional Test Data

In a status summary of the oncogencity study (Ref. 3), Dow reported that test animals from an interim sixth-month sacrifice at the dose level 2.0 mk/kg/day (the highes exposure dose) had no gross or histopathologic effects that were ascrible to acrylamide; however, there were increased numbers of nerve fibers having invaginations of the axolemma and adjacent Schwann cells into the axoplasm. At the twelfth-month sacrifice of the 2.0 mg/kg/day group, the incidence and degree of involvement of focal degeneration of individual nerve fibers was examined. Male rats in this group had increased numbers of myelinated nerve fibers with degeneration or regenerative changes, as well as axolema invaginations. One of three female rats at the highest dose level sacrificed in the twelfth month of the study had ultrastructural changes similar to those noted in males. Slight focal degeneration of nerve fibers was also seen in rats at 2.0 mg/kg/day at the twelfth-month sacrifice. Preliminary histopathologic examination of peripheral nerves from rats sacrificed after 18 months revealed degenerative changes attributed to ingestion of acrylamide at the highest dose; this was noted especially in male rats. These lesions were consistent with those present at 12 months but more never fibers were affected. No carcinogenic effects from exposure to acrylamide were apparent through month 12.

In a second report from Dow (Ref. 4), interim gross pathologic observations from the scheduled 24-month sacrifice of 60 rats/sex/dose level suggests (1) an increased mortality in female rats at the 2.0 mg/kg/day dose level of acrylamide, and (2) an increased number of female rats with a grossly observed mass in the mammary region at the 2.0 mg/kg/day dose level of acrylamide. Dow has notified its employees and customers, and other producers and users of acrylamide of these preliminary test results.

More recently, the Dow Chemical Company submitted two study reports concerning the oncogenic effects of acrylamide as required under section 8(e) of TSCA (Refs. 5 and 6). In the first submission, Dow reported findings of the histopathological examinations at terminal sacrifice for the female test rats. This report described statistically significant increases in the numbers of neoplasms reported for animals exposed to 2.0 mg/kg/day for the following organs: Central nervous system (brain and spinal cord), mammary gland, clitoral gland, uterus, oral cavity, pituitary gland, and thyroid gland. A statistically significant increase in tibial nerve degeneration, described as a non-neoplastic lesion, was also reported in female rats at the 2.0 mg/kg/day dose level (Ref. 5). Additionally, a statistically significant increase in mortality was reported for male rats given 2.0 mg/kg/day of acrylamide (Ref. 5).

In the second submission, Dow reported the histopathological evaluations for the male rats at the terminal sacrifice from the acrylamide bioassay. This report describes statistically significant increases in the incidence (1) of mesothelioma of the scrotal cavity at 2.0 and 0.5 mg/kg/day, (2) of follicular adenoma (benign) of the thyroid gland at 2.0 mg/kg/day, and (3) of adrenal pheochromocytoma (benign) at 2.0 mg/kg/day (Ref. 6). The report also described an apparent increase, though statistically insignificant, in the number of animals with mesotheliomas of the scrotal cavity at the 0.1 mg/kg/day dose level.

The Agency also received a notice of test results for mutagenicity studies conducted by the American Cyanamid Company (Ref. 7). Data from an Ames test, Chinese Hamster Ovary/Sister Chromatid Exchange (CHO/SCE), and Mouse Micronucleus assay were all negative for acrylamide. However, the BALB/3T3 assay test results show that acrylamide does increase the transformation frequency when exogenous metabolic activation is provided.

Oncogenicity testing of acrylamide was also conducted by EPA at its Health

Effects Research Laboratory in Cincinnati, Ohio. In one study, acrylamide was shown to be capable of initiating tumors in mouse skin when a single 30 mg/kg dose of the chemical was injected intraperitoneally into female SENCAR mice followed two weeks later by repeated applications of 1 mg 12-o-tetradecanoyl phorbol-13-acetate (TPA) 3 times weekly for 20 weeks (Ref. 8). In a follow-up dose-response study of acrylamide in the mouse skin and lung adenoma assays, total doses of 300, 150 and 25 mg/kg of the chemical were administered in 6 aliquots over a 2 week period. Cumulative tumor counts 44 weeks following the start of promotion with TPA also showed that acrylamide was capable of initiating tumors in mouse skin (Ref. 9). Although data from the Strain a lung adenoma assay were not available in this reference, the lead investigator stated that study results for this assay are also positive (Ref. 10).

Preliminary results of the neurofunctional study in primates utilizing visual-motor activity measures reveal that when acrylamide was orally administered (10 mg/kg, 5 days/week until first appearance of toxicity, i.e., approximately 320 to 450 mg/kg total dose), test animals experienced gross behavioral disturbance and impaired coordination preceding and accompanying decreased body weights. Sensitivity to vibration decreased during dosing and remained affected for several weeks after cessation of dosing and was found to outlast all other effects (Ref. 11). As part of this study, researchers also observed altered visual thresholds and evoked potentials in cortical responses well before overt signs of toxicity occurred. Visual acuity and flicker-fusion thresholds were reduced and the latency of pattern-reversal evoked potentials increased. After dosing was terminated in two monkeys, the latency of evoked potentials and the flicker-fusion thresholds returned to control values within a few weeks. Visual acuity of both monkeys, however, showed some recovery but stabilized below control values (Ref. 12).

IV. Decision Not To Require Testing

EPA had completed a preliminary assessment of acrylamide's neurotoxicity during 1981. The Agency concluded in that assessment (Ref. 13) that the information then available indicated that any control measures (either voluntary or regulatory) based on acrylamide's neurotoxicity would provide reasonable protection from other toxic effects resulting from exposure to acrylamide, with the possible exception of oncogenicity. The Agency also concluded that available data on exposures to acrylamide through the use of polyacrylamide in drinking water purification and sugar refining do not suggest an unreasonable risk to human health (Ref. 13). Recent changes in acrylamide production methods and grouting operations appear to have significantly reduced worker exposure as well. In a more recent update of the preliminary assessment document (Ref. 14), EPA has concluded that there appears to be no significant neurotoxicity risk to workers handling dry acrylamide or to drinking water supplies due to the use of acrylamide soil grouts.

The final histopathology report from the oncogenicity study, expected to become available to EPA within six months will enable a final assessment of acrylamide's health risk. When final histopathological findings are reported regarding acrylamide oncogenicity, EPA will place them into the public docket and then will reevaluate the risk to workers exposed to acrylamide and explore any control actions that may be necessary.

The Agency concludes that completed and ongoing testing can reasonably be expected to provide sufficient and adequate data to assess the risk to human health caused by exposure to acrylamide and that no further testing should be required under TSCA section 4(a) at this time.

V. References

(1) McCollister, D.D. *et al.* "Toxicology of Acrylamide." Toxicology and Applied Pharmacology, Vol. 6, pp. 172–181, 1964.

(2) U.S. Environmental Protection Agency "Assessment of Testing Needs: Acrylamide." Support Document for Decision Not to Require Testing for Health Effects. July, 1980. (EPA 560/11–80–016).

(3) Gorzinski, S.J. and Johnson, K.A. Acrylamide Monomer: 2-Year Oncogenicity Study Administered Via the Drinking Water to CDF Fischer 344 Rats, 18-month Status. (Attachment to M.A. Friedman letter of August 3, 1982.)

(4) Goodman, C.H. "Letter Enclosing Preliminary Data of a Two-year Chronic Toxicity-Oncogenicity Study on Acrylamide." Dow Chemical Company, Midland, Michigan. December 15, 1982.

(5) Goodman, C.H. "Letter Submitting Information Under Section 8(e) of TSCA." Dow Chemical Company, Midland, Michigan. July 15, 1983.

(6) Blair, E.H. "Letter Submitting Information Under Section 8(e) of TSCA." Dow Chemical Company, Midland, Michigan, March 14, 1984.

(7) Most, R.W. "Letter Enclosing a Synopsis of Results from Acrylamide Mutagenicity Studies." American Cyanamid Company, Wayne, NJ. August 13, 1982.

(8) Bull, R.J. *et al.* "Acrylamide as a Tumor Initiator in the Mouse Skin." Toxicology, 2(1): 103, 1982.

(9) Bull, R.J. *et al.* "Carcinogenic Properties of Acrylamide in the Mouse Skin and Lung Adenoma Assays." Abstract #333 of 1983 Annual Conference found in the Toxicologist, Vol. 3, No. 1, January, 1983.

(10) "Contact Report with R.J. Bull." U.S. Environmental Protection Agency, Health Effects Research Laboratory, Cincinnati, OH. January 14, 1983.

(11) Maurissen, J.P.J., *et al.* "Effects of Acrylamide Monomer on Sensory Thresholds in Monkey." Abstract #402 of 1982 Annual Conference found in the Toxicologist, Vol. 2, No. 1, January, 1982.

(12) Merigan, W.H., *et al.* "Visual Indices of Acrylamide Neurotoxicity in Primates." Abstract #401 of 1982 Annual Conference found in the Toxicologist, Vol. 2, No. 1, January, 1982.

(13) U.S. Environmental Protection Agency. "Preregulatory Assessment, Disposition Document for Acrylamide." (See Public Docket for this action.)

(14) U.S. Environmental Protection Agency "Preregulatory Assessment, Acrylamide Disposition Document Update." (See Public Docket for this action.)

VI. Public Record

EPA has established a public record for this testing decision, docket number [OPTS–47003C] which is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Rm. E–107, 401 M Street, SW., Washington, D.C. 20460. The record includes the following information:

(1) **Federal Register** notice containing the designation of acrylamide to the Priority List.

(2) **Federal Register** notice of proposed decision not to require testing.

(3) Communications (public, intra-agency, and interagency) consisting of non-confidential memoranda and letters, contact reports of telephone conversations, and meetings.

(4) Public comments on the ITC report and proposed decision not to require testing.

(5) Published and unpublished data.

(Sec. 4(a) TSCA (Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601))

Dated: June 7, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–20112 Filed 7–30–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-00051; TSH-FRL-2643-4]

Health Effects and Physical Chemistry Testing Guidelines; Organization for Economic Cooperation and Development Chemicals Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of certain health effects testing guidelines for genotoxicity and a physical chemistry guideline which have been developed by the Organization for Economic Cooperation and Development (OECD). Interested persons are requested to review these guidelines and provide comments regarding their relevance to hazard assessment and technical merit to the EPA. Comments will be used in redrafting the proposed guidelines into final OECD guidelines.

DATE: Comments should be received by September 30, 1984.

ADDRESSES: Written comments should be addressed to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should bear the identifying Document Control Number OPTS-00051. All written comments filed in response to this notice will be available for public inspection in the OTS Reading Room E-107, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The reports will be available for review in the OTS Reading Room at the address given above and in all EPA Regional Offices. See **SUPPLEMENTARY INFORMATION** for a list of those locations.

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: (800-424-9065), In Washington: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: An initial goal of the Chemicals Program was the mutual acceptability of testing data, which depends on consistency in testing methodology or agreed-upon testing guidelines. Already an initial series of guidelines as developed by OECD Expert Groups, an Updating Panel, and a national review process have been agreed upon. Data developed in one country in accordance with OECD Test Guidelines and Good Laboratory Practices will be acceptable in other OECD member states for assessment purposes. Those Test Guidelines can be purchased from the OECD Publication Centre, Suite 1207, 1750 Pennsylvania Ave., NW, Washington, D.C. 20006 (202-725-1876).

Additional guidelines are presently being developed and submitted to the OECD Updating Panel by member countries. After an initial review by the Updating Panel, these guidelines are made available for member country comment. The proposed guidelines now available for comment are: Genetic Toxicology: *In vitro* Sister Chromatid Exchange Assay; Genetic Toxicology: *Saccharomyces cerevisiae*, Gene Mutation Assay; Genetic Toxicology: *S. cerevisiae*, Mitotic Recombination; Genetic Toxicology: *S. cerevisiae*, Mitotic Aneuploidy; and Physical-Chemical Properties: Partition Coefficient (N-octanol/water): High Performance Liquid Chromatography. Proposed guidelines (including these announced today) and revisions to previous guidelines are to be managed via the OECD Updating Program.

The EPA, as the U.S. lead for interaction with the OECD Updating Panel, has established an Ad Hoc Review and Editing Group to coordinate U.S. input for such activities. The group is currently chaired by Dr. William Farland, Deputy Director, Health and Environmental Review Division, Office of Toxic Substances, USEPA. Members of the group include Dr. Theodore Farber, Food and Drug Administration, providing additional Government science perspective; Dr. Robert Moolenaar, Dow Chemical, representing the chemical industry perspective; Dr. Ellen Silbergeld, Environmental Defense Fund, representing the public interest group perspective; Dr. Thomas Shellenberger, National Association of Life Sciences Industries (NALSI), representing contract testing laboratory perspective; and others from interested EPA program offices.

This Ad Hoc Group is responsible for assuring that the guidelines are distributed for comment to their constituencies in the United States. Members of the Group may be contacted directly for copies of guidelines under review. The Group will also review and summarize the comments into a report to the OECD. If deemed necessary by the Group, a panel of U.S. experts will be convened and will be asked to provide input for the formulation of the coordinated U.S. comments to be submitted to the OECD, a copy of which will be filed in the public record. Similar reviews will take place in other countries. Based on the national comments, the OECD Updating Panel may convene an ad hoc International Expert Group to conduct a final revision and resubmit to the Updating Program in early 1985. If necessary, further public reviews can be held. When considered ready, guidelines will then be submitted to the Chemicals Program and OECD Council for adoption. Finalization of these guidelines, if appropriate, is expected in late 1985.

EPA Headquarters in Washington, D.C., and the following locations will have copies of the guidelines available for public inspection:

1. Environmental Protection Agency, Region I Library, John F. Kennedy Federal Bldg., 22nd Floor, Government Center, Boston, MA 02203, (617-223-7210).

2. Environmental Protection Agency, Region II Library, Federal Bldg., Room 900, 26 Federal Plaza, New York, NY 10278, (212-264-2525).

3. Environmental Protection Agency, Region III Library, Curtis Bldg., 2nd Floor, Sixth and Walnut Sts., Philadelphia, PA 19106, (215-597-9800).

4. Environmental Protection Agency, Region IV Library, 2nd Floor, Courtland Street Entrance, 345 Courtland St., NE., Atlanta, GA 30365, (404-881-4727).

5. Environmental Protection Agency, Region V Library, Kluczynski Bldg., 14th Floor, 230 South Dearborn St., Chicago, IL, 60604, (312-353-2000).

6. Environmental Protection Agency, Region VI Library, First International Bldg., 1201 Elm St., Dallas, TX 75207, (214-767-2600).

7. Environmental Protection Agency, Region VII Library, 1st Floor, 324 East Eleventh St., Kansas City, MO 64106, (214-374-5493).

8. Environmental Protection Agency, Region VIII Library, 1st Floor, 1860, Lincoln St., Denver, CO 80295, (303-837-3895).

9. Environmental Protection Agency, Region IX Library, 6th Floor, The Fremont Center, 215 Fremont St., San Francisco, CA 94105, (415-974-8153).

10. Environmental Protection Agency, Region X Library, 11th Floor, Park Place Bldg., 1200 Sixth Ave., Seattle, WA 98101, (206-442-5810).

It is suggested that interested persons telephone ahead to be certain of the visiting hours at those locations:

(Sec. 4, 90 Stat. 2006 (15 U.S.C. 2603)

Dated: July 23, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-20103 Filed 7-30-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB–FRL–2643–5]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held in Conference Room 3906–3908 Mall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C., on August 16–17, 1984. The meeting will begin at 9:00 a.m. and last until approximately 5:00 p.m. each day.

THe agenda for the meeting will include continued Committee review of a probabilistic methodology for analyzing water quality effects of urban runoff; and a discussion of Agency reviews of criteria for banning wastes from landfills, and of the protocols for setting alternative concentrations limits for releases to Ground Water from existing landfills.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382–4126. Public comment will be accepted at the meeting. Written comment will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comment must contact Mr. Torno prior to August 9, 1984, in order to be placed on the agenda.

In order to minimize any inconvenience due to EPA visitor control procedures, persons wishing to attend are requested to call (202) 382–2552, so that they may be included on a roster that will be prepared for the building security guards. Attendees are also requested to enter the building at the West Tower entrance.

Dated: July 24, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84–20101 Filed 7–30–84; 8:45 am]

BILLING CODE 6560–50–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. Chapter 35).

Type: Extension of OMB #3067–0103.

Title: FEMA Nuclear Power Plant Alerting and Notification System: Public Telephone Survey.

Abstract: The Federal Emergency Management Agency with subcontractor, International Energy Associates Limited (contract #31–109–38–6934), shall randomly telephone survey the residents within the Emergency Planning Zone (EPZ) of 35 nuclear power plants as stipulated in Appendix 3 of NUREG 0654/FEM–REP–1. From an approximate sample of 750 households, between 250 and 350 residences will be voluntarily surveyed, following the standardized questionnaire.

Type of Respondents: Individuals or Households.

Number of Respondents: 7,500.

Burden Hours: 495.

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, Federal Plaza Center, 500 C Street, S.W., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection package should be sent to Mike Weinstein, Desk Officer, OMB, Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–20092 Filed 7–30–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

Queen City Savings and Loan Association, Seattle, Washington; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. section 1729 (c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Queen City Savings and Loan Association, Seattle, Washington, on July 24, 1984.

Dated July 26, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 20078 Filed 7–30–84; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Thru-Container International, Inc., One Industrial Park Road, Hammond LA 70401

Officers: Donald E. Rowe, President; Socia J. Krueger, Vice President; William Stendeback, Vice President; Harold E. Kleinhenz, Vice President; Raymond M. Kenny, Vice President; Harold J. Norton, Treasurer; Andrew J. Van Leeuwen, Assistant Treasurer; Douglas M. Robinson, Secretary; and Doris W. Miller, Assistant Secretary

James William Ghedi dba Ghedi International, 3103–B Manor Road, Austin, TX 78723

McGovern International, Inc., 3014 Mecom Rd., Houston, TX 77205

Officer: Thomas Martin McGovern, President

Gerry D. Medeiros, P.O. Box 8505, Cargo Bldg. #8, San Francisco International Airport, San Francisco, CA 94128

Carlos J. Bengochea dba Riverside Forwarding, 2220 SW., 123rd Court, Miami, FL 33175

By the Federal Maritime Commission.

Dated: July 26, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–20216 Filed 7–30–84; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing and regulations of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Address	Date revoked
2592	Maritime Freight Brokers, Inc.	June 5, 1984.
2736	Gerald Leroy Bakke dba International Trans Shippers.	July 12, 1984.
2617	McHue Freight Forwarding, Inc.	July 15, 1984.
2114-R	Trans Container Line, Inc	July 22, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-20176 Filed 7-30-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Deposit Guaranty 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 August 20, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.,* Jackson, Mississippi; to engage *de novo* through its subsidiary Deposit Financial Services, Inc., Jackson, Mississippi, in making and servicing loans or other extensions of credit for its own account or for the account of others; rendering investment or financial advice; leasing personal or real property; acting as insurance agent or broker with respect to life, accident and health insurance related to extension of credit by the bank holding company system; provide management consulting to depository institutions; performing appraisals of real estate; and arranging commercial real estate equity financing.

2. *Totalbank Corporation of Florida,* Miami, Florida and indirectly its parents Ballerton Corporation, N.V., a Netherlands Antilles corporation, and Millford, N.A., a Netherlands Antilles corporation, propose to engage through Totalbank Leasing Corp., Miami, Florida, in making leases of personal property and acting as broker, agent, or advisor in leasing such property.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank Holding Company, Inc.,* Harvey, North Dakota; to engage *de novo* through its subsidiary National Insurance Agency, Inc., Harvey, North Dakota; in general insurance agency activities in a community with a population not exceeding 5,000. Company will service the Harvey, North Dakota trade area, which encompasses a radius of approximately 45 miles from Harvey, North Dakota.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *CG Bancorp,* Cottage Grove, Oregon; to engage in community development activities by providing a building for community use as a live theatre.

Board of Governors of the Federal Reserve System, July 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-20080 Filed 7-30-84; 8:45 am]

BILLING CODE 6210-01-M

Mid-Tennessee Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 22, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Mid-Tennessee Bancorp, Inc.,* Ashland City, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Ashland City Bank & Trust Company, Ashland City, Tennessee.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *SCB Bancorp, Inc.,* Decatur, Illinois; to become a bank holding company by acquring 100 percent of the voting shares of Soy Capital Bank and Trust Company, Decatur, Illinois.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Montgomery Bancshares, Inc.,* Jonesburg, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Jonesburg State Bank, Jonesburg, Missouri.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Elmwood Financial Services, Inc.*, Elmwood, Wisconsin; to become a bank holding company by acquiring 92.7 percent of the voting shares of First State Bank, Elmwood, Wisconsin.

2. *Stevenville Bancshares, Inc.*, Billings, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Con-West, Inc., Billings Montana. This one bank holding company will be dissolved upon consummation so that Applicant will directly own 100 percent of First State Bank of Stevensvilled, Stevensville, Montana.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Broadway Bancshares, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares of Broadway National Bank-Westplex, Bexar County, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve Systems, July 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-20252 Filed 7-30-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve extensions of information collections.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Acquisition Policy (202-523-4799).

SUPPLEMENTARY INFORMATION: 1. *Purpose.*

a. *Women-owned Business.* This requirement enables agencies to assess their women-owned business programs. Respondent 9,094; responses 90,940; hours 364.

b. *Small Business Representation.* This information will be used to assess agencies' small business programs and to ensure that contracts are properly awarded. Respondents 22,000; responses 1,100,000; hours 3,300.

c. *Labor Surplus Area Requirements.* This collection requires firm competing for contracts that are set-aside for labor surplus area (LSA) concerns or require subcontracting with LSA concerns to provide information regarding their expenditures under these programs. Respondents, responses, 652; reporting/recordkeeping hours 978.

d. *Small Disadvantaged Business Representation.* Information from this collection is used by the Government to ensure that an appropriate percentage of Government contracts are awarded to disadvantaged firms. Respondents 9,094; responses 90,940; hours 637.

2. *Obtaining copies of proposals.* Copies of these proposals may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3007, GSA Building, Washington, DC 20405 (202-566-0666).

Dated: July 23, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-20207 Filed 7-30-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 49 FR 15139, April 17, 1984), is amended to reflect the following changes within the National Cancer Institute: (1) Abolish the Carcinogenesis Intramural Program (HNC36), and the Carcinogenesis Extramural Program (HNC37) in the Division of Cancer Etiology (HNC3); (2) establish the Biological Carcinogenesis Program (HNC38), and the Chemical and Physical Carcinogenesis Program (HNC39) in the Division of Cancer Etiology (HNC3); (3) revise the functional statement in the Division of Cancer Etiology to reflect the changes outlined above; (4) change the title of the Epidemiology and Biometry Program (HNC33) to the Epidemiology and Biostatistics Program (HNC33) in the Division of Cancer Etiology; (5) revise the functional statement for the Division of Cancer Prevention and Control (HNC4); (6) abolish the Immunology Intramural Research Program (HNC22) in the Division of Cancer Biology and Diagnosis (HNC2); and (7) revise the functional statement of the Intramural Research Program (HNC24) in the Division of Cancer Biology and Diagnosis (HNC2). The proposed changes will: (1) Allow for a better coordinated and more efficient research program by integrating both intramural and extramural research in each program area in the Division of Cancer Etiology which, in turn, will improve scientific information exchange by facilitating intraprogram communication between intramural and extramural areas of research and enhance program management and planning abilities in the Division of Cancer Etiology; (2) clarify the major areas of research concentration in the retitled Epidemiology and Biostatistics Program in the Division of Cancer Etiology; (3) reflect the addition of functional responsibility for a geographically-based cancer data reporting system and allied biometric research to the assigned functions of the Division of Cancer Prevention and Control; (4) recognize the lack of a functional and research distinction between the Immunology Intramural Research Program and Intramural Research Program in the Division of Cancer Biology and Diagnosis by abolishing the Immunology Intramural Research Program and transferring its research responsibilities to a reconstituted Intramural Research Program; and (5) reflect the changes outlined above in the new functional statements for the Biological, and Chemical and Physical Carcinogenesis Programs in the Division of Cancer Etiology and in the revised functional statement for the Intramural Research Program in the Division of Cancer Biology and Diagnosis.

Sec. HN-B, Organizations and Functions is amended as follows: (1) Under the heading *National Cancer Institute (HNC), Division of Cancer Etiology (HNC3),* delete the titles and statements for *Carcinogenesis Intramural Program (HNC36),* and the *Carcinogenesis Extramural Program (HNC37)* in their entirety.

(2) Under the heading *Division of Cancer Etiology (HNC3),* insert titles and statements for the *Biological Carcinogenesis Program (HNC38),* and the *Chemical and Physical Carcinogenesis Program (HNC39)* as follows:

Biological Carcinogenesis Program (HNC38). (1) Plans, develops, directs and evaluates a national extramural and

intramural research program in which the role of biological agents, genetic sequences, viral genes, and combinations of viral and cellular genes in carcinogenesis is investigated; supports efforts to isolate and analyze proteins responsible for transformation, to identify genetic sequences coding for these proteins, to investigate transforming growth factors and mechanisms of transformation, and to study the role of RNA- and DNA-containing viruses in certain forms of cancer; (2) develops improved management methods and practices, and maintains liaison with intramural and extramural scientists, as well as various extramural organizations and scientists; (3) assists in fostering new research and resource programs based on intramural and extramural research requirements and new research leads; and (4) assists in the allocation of resources and establishes program priorities for these activities.

Chemical and Physical Carcinogenesis Program (HNC39). (1) Plans, develops, directs and evaluates a national extramural and intramural program of basic and applied research in which agents known or suspected to have carcinogenic and/or tumor promoting activity are evaluated from the standpoint of mechanism of action, metabolism, interactions with biological important macromolecules, and related areas; supports basic research involving the development of effective agents to prevent or reverse the process of carcinogenesis; (2) develops improved management methods and practices and maintains liaison with intramural and extramural scientists; (3) assists in fostering new research and resource programs based on extramural and intramural research requirements and new research leads; and (4) assists in the allocation of resources and establishes program priorities for these activities.

(3) Under the heading *Division of Cancer Etiology (HNC3),* change the title of the *Epidemiology and Biometry Program (HNC33)* to the *Epidemiology and Biostatistics Program (HNC33).*

(4) Under the heading *Division of Cancer Prevention and Control (HNC4),* delete the divisional functional statement in its entirety and substitute the following:

Division of Cancer Prevention and Control (HNC4). (1) Plans and conducts basic and applied research and development, technology transfer, demonstration, education and information dissemination programs to expedite the use of new information relevant to the prevention, detection, and diagnosis of cancer and the pretretment evaluation, treatment, rehabilitation, and the continuing care of cancer patients throughout the country; (2) plans, directs, and coordinates the support of research on cancer prevention and control at cancer centers, community hospitals, and through organ systems programs; (3) coordinates a number of geographically-based cancer reporting systems and applies statistical, analytic, and quantitative methods to monitor progress toward cancer control in the United States; (4) supports cancer research training, clinical education, continuing education and career development in cancer prevention and control; (5) administers programs for the support of construction, alteration, renovation, and equipping of extramural research facilities; and (6) coordinates program activities with other divisions, institutes, or Federal and State agencies and establishes liaison with professional and voluntary health agencies, cancer centers, labor organizations, cancer organizations, and trade associations.

(5) Under the heading *Division of Cancer Biology and Diagnosis (HNC2),* delete the title and statement for the *Immunology Intramural Research Program (HNC22)* in its entirety.

(6) Under the heading *Division of Cancer Biology and Diagnosis (HNC2),* delete the functional statement for the *Intramural Research Program (HNC24)* in its entirety and substitute the following:

Intramural Research Program (HNC24). (1) Plans, directs, coordinates and evaluates a program of basic research on cancer biology, immunology, cell biology and diagnosis; (2) establishes program priorities, allocates resources, integrates the projects of the various branches, evaluates program effectiveness and represents program area in management and scientific decision making meetings within the Institute; and (3) advises the Division Director, the Institute Director, and other Institute staff of intramural research and areas of science of interest to the Institute.

Dated: July 12, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 84-20091 Filed 7-30-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-50224]

Alaska; Proposed Withdrawal and Opportunity for Public Meeting

On July 7, 1982, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Cape Fanshaw Natural Area, Tongass National Forest

Copper River Meridian

T. 54 S., R. 75 E., "A 600-acre tract located on the Petersburg Ranger District, Tongass National Forest, Alaska, at approximate latitude 57°11' N. and longitude 133°30' W., facing Fanshaw Bay, bounded by Cape Fanshaw, Whitney Island, and the Storm Islands in the south end of Stephens Passage. An unsurveyed portion of the Tongass National Forest, USGS Topographic Map, Sumdum A-5 Quadrangle, projected T. 54 S., R. 75 E., Copper River Meridian, portions of Sections 3, 4, 9, and 10."

The area described contains 600 acres near Cape Fanshaw, Alaska.

The purpose of the proposed withdrawal is to reserve minerals and to protect an undisturbed natural area for research and educational purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the

application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands.

All communications in connection with this proposed withdrawal should be addressed to the Chief, Branch of Lands, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 84-20205 Filed 7-30-84; 8:45 am]

BILLING COLDE 4310-JA-M

[W-81072]

Conveyance Sale of Public Land in Lincoln County, WY

Notice is hereby given that pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1982), Gulf Oil Corportation has purchased and received a patent for the following described public land in Lincoln County, Wyoming:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 117 W.,
Sec. 14, E½, SW¼NW¼, and SW¼.
Containing 520.00 acres.

Dated: July 24, 1984.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-20208 Filed 7-30-84; 8:45 am]

BILLING CODE 4310-22-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., July 11, 1984. Sixth Principal Meridian

T. 13 N., R. 112 W.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel North, through R. 112 W., a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of certain sections, T. 13 N., R. 112 W., Sixth Principal Meridian, Wyoming, Group No. 405, was accepted June 20, 1984.

T. 14 N., R. 112 W.

The plat representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of certain sections, T. 14 N., R. 112 W., Sixth Principal Meridian, Wyoming, Group No. 405, was accepted June 20, 1984.

T. 13 N., R. 113 W.

The plat representing the dependent resurvey of the east boundary Fort Bridger Military Reservation from Angle Point No. 75 to Angle Point No. 86, the Fourteenth Guide Meridian West, through T. 13 N., between Rs. 112 and 113 W., a portion of the west boundary, the north boundary, and a portion of the subdivisional lines, T. 13 N., R. 113 W., Sixth Principal Meridian, Wyoming, Group No. 405, was accepted June 20, 1984.

T. 14 N., R. 113 W.

The plat representing the dependent resurvey of the east boundary Fort Bridger Military Reservation, from Angle Point No. 63 to Angle Point No. 75, the Fourteenth Guide Meridian West, through T. 14 N., between Rs. 112 and 113 W., a portion of the west boundary, the north boundary, and the subdivisional lines, T. 14 N., R. 113 W., Sixth Principal Meridian, Wyoming, Group No. 405, was accepted June 20, 1984.

T. 15 N., R. 113 W.

The plat representing the dependent resurvey of the east boundary Fort Bridger Military Reservation, from Angle Point No. 52 to Angle Point No. 63, the Fourteenth Guide Meridian West, through T. 15 N., between Rs. 112 and 113 W., portions of the west and boundaries, and the subdivisional lines, T. 15 N., R. 113 W., Sixth Principal Meridian, Wyoming, Group No. 405, was accepted June 20, 1984.

These surveys were executed to meet certain administrative needs of the Bureau.

SUMMARY: The plats of survey of the following decribed lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., July 19, 1984. Wind River Meridian.

T. 1 S., R. 1 E.

The plat representing the dependent resurvey of portions of the Wind River Meridian (west boundary), Wind River Base Line (north boundary), south boundary, subdivisional lines and subdivision of certain sections, and the survey of the subdivision of certain sections and Parcels A and B of section 3, T. 1 S., R. 1 E., Wind River Meridian, Wyoming, Group No. 376, was accepted July 17, 1984.

T. 1 S., R. 2 W.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines and subdivision of certain sections, and the survey of a portion of the subdivision of certain sections and Parcels A and B in section 12, T. 1 S., R. 2 W., Wind River Meridian, Wyoming, Group No. 376, was accepted July 17, 1984.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

Sixth Principal Meridian

T. 42 N., R. 113 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 17 and 18, T. 42 N., R. 113 W., Sixth Principal Meridian, Wyoming, Group No. 437, was accepted July 17, 1984.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: July 19, 1984.

Richard L. Oakes,

Chief Cadastral Surveyor.

[FR Doc. 84-20211 Filed 7-30-84; 8:45 am]

BILLING CODE 4310-22-M

[CA-14378]

California Desert District; Realty Action; Noncompetitive Sale of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action—Noncompetitive (Direct) sale of public lands in San Bernardino County, California: CA-14378.

SUMMARY: The following described parcel has been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value.

San Bernardino Meridian

T. 4 N., R. 7 W.,
Sec. 35, SW¼NW¼.

The lands aggregate 40 acres in San Bernardino County. The parcel is being offered at direct sale to the Sheep Creek Water Company. The Sheep Creek

Water Company has maintained authorized reservoir and pipeline improvements on the parcel since 1918.

The sale will be made on or about October 1, 1984. The appraised fair market value of the parcel is $38,000.

Because of the tracts isolated location within a large area of private lands, it is difficult and uneconomic to manage as part of the public lands, and is not suitable for transfer to another Federal department or agency. Sale of the parcel to the Sheep Creek Water Company would serve important public objectives in the form of assuring continued control of an essential part of the existing community water system. Existing improvements on the parcel are an integral part of a project of public importance, and speculative bidding would jeopardize future economic viability and control of the project. There is a need to recognize a legitimate, historical use (construction, use, and maintenance of authorized reservoir and pipeline improvements), which would be threatened if the parcel were purchased by other than the existing authorized user.

Sale of the parcel is consistent with land use planning decisions. There is no conflict with local plans and zoning. The public interest would be served by sale of the parcel.

The terms and conditions applicable to the sale are:

1. All minerals in the land will be reserved to the United States (43 U.S.C. 1979).

2. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale, including the planning document. (California Desert Plan), environmental assessment, and land report is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the California Desert District Manager at the above address. Any adverse comments will be evaluated by the BLM California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior, and the required payment requested from the Sheep Creek Water Company. Such payment, in full, shall be in accordance with 43 CFR 1822.1–2 and 2711.3–1(f).

The land will not be offered for sale for at least 60 days after the date of this notice.

Dated: July 19, 1984.

H.W. Reicken,

Acting District Manager.

[FR Doc. 84–20028 Filed 7–30–84; 8:45 am]

BILLING CODE 4310–40–M

Filing of Plat of Survey; Oregon

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on July 5, 1984.

Willamette Meridian

T. 26 S., R. 3 W.,
Accepted June 22, 1984;
T. 33 S., R. 7 W.,
Accepted June 15, 1984;
T. 28 S., R. 8 W.,
Accepted June 22, 1984;
T. 26 S., R. 12 W.,
Accepted June 22, 1984;
T. 40 S., R. 7 E.,
Accepted June 15, 1984;
T. 1 S., R. 11 E.,
Accepted June 22, 1984;
T. 20 S., R. 29 E.,
Accepted June 15, 1984.

The above-listed plats represent dependent resurveys, subdivisions, and a corrective dependent resurvey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: July 23, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–20203 Filed 7–30–84; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Oil and Gas and Sulphur; Operations in the Outer Continental Shelf, ODEC Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that ODECO Oil & Gas Company, Operator of the Ship Shoal Block 113 Field Federal Unit Agreement No. 14–08–001–2931, submitted on July 18, 1984, a proposed supplemental development operations coordination document describing the activities it proposes to conduct on the Ship Shoal Block 13 Field Federal Unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Luisiana 70002

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: July 24, 1984.

John L. Rankin,

Regional Manager,

Gulf of Mexico Region.

[FR Doc. 84–20074 Filed 7–30–84; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Diapir Field Oil and Gas Lease Sale 87

Correction

In FR Doc. 84–19421 beginning on page 29726 in the issue of Monday, July 23, 1984, make the following correction on page 29734:

The photographed material appearing on the left-hand side of the page was only partially printed. It should have appeared as follows:

NR 5-2	705-717, 749-761, 794-815, 838-859, 886-889, 891-903, 929-930, 932-934, 938-947, 969, 973-978, 982-991.
NR 5-3	35-44, 81-86.
NR 5-4	1, 2, 4-5, 8-11, 16-23, 46-48, 54-57, 60-67, 97-111, 148-155, 191-194, 197, 199, 228-230, 232, 238, 241-242, 273-276, 286-288, 318-320, 331-332, 362-367, 373-376, 407-412, 414, 416-417, 452-459, 496-500.
NR 6-1	814-824, 858-871, 902-916, 946-961, 990-1007.
NR 6-3	22-41, 66-87, 110-132, 154-176, 198-220, 241-246, 249-264, 285-291, 294-308, 329-334, 337-352, 373-379, 382-396, 422-440, 469-470, 478-484, 522-528, 568-572, 613-616, 659-660.
NR 6-4	89-90, 133-139, 177-184, 221-228, 265-272, 309-316, 353-360, 397-404, 441-448, 485-492, 529-536, 573-580, 617-624, 661-668, 711-712.

Eastern Blocks - Fall
August 1 to October 31

Official Protraction Diagram	Blocks Included
NR 6-4	185, 229-233, 273-280, 317-326, 361-372, 405-420, 449-464, 493-508, 537-552, 581-596, 625-640, 669-684, 713-728, 757-772, 802-816, 847-860, 893-902, 940-944, 986 and 987.
NR 7-3	397-399, 441-451, 485-500, 529-545, 573-590, 617-635, 661-684, 705-728, 749-772, 793-816, 844-860, 890-904, 935-948, 981-992.
NR 7-4	705-707, 749-754, 793-798, 837-842, 881-886, 925-929, 969-973.
NR 7-5	15-25, 60-69, 105-113, 150-157, 196-201, 242-245, 287-289.
NR 7-6	1-4, 45-48, 89-91, 133-135, 177-179, 221-222, 265-266, 309.

17

BILLING CODE 1505-01-M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. App. 1 § 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, August 17, 1984.

The Commission was established pursuant to Pub. L. 91-383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The meeting will convene at Park Headquarters at 1:30 P.M. to discuss: Status of Off-Road Vehicle Use.

The meeting is open to the public. It is expected that 30 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663, telephone (617) 349-3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, So. Wellfleet, Massachusetts.

Dated: July 24, 1984.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 84-20150 Filed 7-30-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 20, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 15, 1984.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Los Angeles, *American Trona Corporation Building*, Pacific Ave.

COLORADO

Pueblo County

Pueblo vicinity, *Butler House*, 6916 Broadacre Rd.

CONNECTICUT

Hartford County

East Hartford, *Gilman-Hayden House*, 1871 Main St.

ILLINOIS

Adams County

Clayton vicinity, *Lewis Round Barn (Round Barns in Illinois TR)*, NW of Clayton

Christian County

Assumption, *Illinois State Bank Building*, 201 N. Chestnut St.

Cook County

Chicago, *Hyde Park-Kenwood Historic District (Boundary Increase)*, 821–829 and 816–826 E. 49th St.
Lemont vicinity, *St. James Catholic Church and Cemetery*, 106th St. and Archer Ave.

Jo Daviess County

Galena vicinity, *Wenner, Charles, House*, Rocky Rd.

Sangamon County

Chatham vicinity, *Caldwell Farmstead*, IL 4
Springfield, *Maid-Rite Sandwich Shop*, 118 N. Pasfield St.

KENTUCKY

Campbell County

Newport, *Wiedemann, Charles, House*, 1102 Park Ave.

MAINE

York County

Kennebunkport, *Cape Arundel Summer Colony Historic District*, Roughly bounded by Chick's Creek, Ocean Ave., S. Main St., Endcliff Rd., and Walkers Point

MASSACHUSETTS

Middlesex County

Marlborough, *Cotting, John, House*, 74 Main St.
Newton, *Claflin Schoo*, 110–112 Washington Park

Norfolk County

Sharon, *Stoughtonham Furnace Site*, 195 Furnace St.

NEVADA

Carson City (Independent City)
Wabuska Railroad Station, S. Carson St.

Lincoln County

Pioche, *Brown's Hall-Thompson's Opera House*, N. Main St.

Lyon County

Yerington, *Yerington Grammar School*, 112 N. California St.

OKLAHOMA

Adair County

Stilwell, *Adair County Courthouse (County Courthouses of Oklahoma TR)*, Division St.

Alfalfa County

Cherokee, *Alfalfa County Courthouse (County Courthouses of Oklahoma TR)*, Grand Ave.

Beaver County

Beaver, *Beaver County Courthouse (County Courthouses of Oklahoma TR)*, Off U.S. 270

Beckham County

Sayre, *Beckham County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Blaine County

Watonga, *Blaine County Courthouse (County Courthouses of Oklahoma TR)*, N. Weigle St.

Bryan County

Durant, *Bryan County Courthouse (County Courthouses of Oklahoma TR)*, 4th Ave. and Evergreen St.

Carter County

Ardmore, *Carter County Courthoused (County Courthouses of Oklahoma TR)*, 1st and B Sts., SW

Cimarron County

Boise City, *Cimarron County Courthouse (County Courthouses of Oklahoma TR)*, Cimarron Ave.

Cotton County

Waltes, *Cotton County Courthouse (County Courthouses of Oklahoma TR)*, 301 N. Broadway

Craig County

Vinita, *Craig County Courthouse (County Courthouses of Oklahoma TR)*, 214 W. Canadian Ave.

Creek County

Sapulpa, *Creek County Courthouse (County Courthouses of Oklahoma TR)*, 222 E. Dewey Ave.

Dewey County

Taloga, *Dewey County Courthouse (County Courthouses of Oklahoma TR)*, Broadway and Ruble St.

Ellis County

Arnett, *Ellis County Courthouse (County Courthouses of Oklahoma TR)*, Town Square
Camargo vicinity, *Carr, George, Ranch House (Ranching Properties in Northwestern Oklahoma TR)*, NW of Camargo

Garfield County

Enid, *Garfield County Courthouse (County Courthouses of Oklahoma TR)*, W. Broadway

Grant County

Medford, *Grant County Courthouse (County Courthouses of Oklahoma TR)*, W. Guthrie St.

Greer County

Mangum, *Greer County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Harmon County

Hollis, *Harmon County Courthouse (County Courthouses of Oklahoma TR)*, W. Hollis St.

Harper County

Buffalo, *Harper County Courthouse (County Courthouses of Oklahoma TR)*, Elm, Maple, 1st, and 2nd Sts. SE

Haskell County

Stigler, *Haskell County Courthouse (County Courthouses of Oklahoma TR)*, 202 E. Main St.

Jackson County

Altus, *Jackson County Courthouse (County Courthouses of Oklahoma TR)*, Main St. and Broadway

Jefferson County

Waurika, *Jefferson County Courthouse (County Courthouses of Oklahoma TR)*, N. Main St.

Kay County

Newkirk, *Kay County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square
Ponca City vicinity, *Big V Ranch House (Ranching Properties in Northwestern Oklahoma TR)*, Off OK 156

Kiowa County

Hobart, *Kiowa County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

LeFlore County

Poteau, *LeFlore County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Logan County

Guthrie, *Logan County Courthouse (County Courthouses of Oklahoma TR)*, 301 E. Harrison St.

Love County

Marietta, *Love County Courthouse (County Courthouses of Oklahoma TR)*, 100 S. 4th St.

Major County

Fairview, *Major County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Marshall County

Madill, *Marshall County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

McClain County

Purcell, *McClain County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

McIntosh County

Eufaula, *McIntosh County Courthouse (County Courthouses of Oklahoma TR)*, 110 N. 1st St.

Murray County

Sulphur, *Murray County Courthouse (County Courthouses of Oklahoma TR)*, Wyandotte Ave.

Muskogee County

Muskogee, *Muskogee County Courthouse (County Courthouses of Oklahoma TR)*, 216 State St.

Noble County

Perry, *Noble County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Nowata County

Nowata, *Nowata County Courthouse (County Courthouses of Oklahoma TR)*, 229 N. Maple St.

Okfuskee County

Okemah, *Okfuskee County Courthouse (County Courthouses of Oklahoma TR)*, 3rd and W. Atlanta

Okmulgee County

Okmulgee, *Okmulgee County Courthouse (County Courthouses of Oklahoma TR)*, 300 W. 7th St.

Osage County

Pawhuska, *Osage County Courthouse (County Courthouses of Oklahoma TR)*, 6th and Grandview Sts.

Pawnee County

Pawnee, *Pawnee County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Payne County

Stillwater, *Payne County Courthouse (County Courthouses of Oklahoma TR)*, 607 S. Husband St.

Pittsburg County

McAlester, *Pittsburg County Courthouse (County Courthouses of Oklahoma TR)*, Washington Ave.

Pontotoc County

Ada, *Pontotoc County Courthouse (County Courthouses of Oklahoma TR)*, 12th and Broadway

Pottawatomie County

Shawnee, *Pottawatomie County Courthouse (County Courthouses of Oklahoma TR)*, 300 N. Broadway

Roger Mills County

Cheyenne, *Roger Mills County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square

Seminole County

Wewoka, *Seminole County Courthouse (County Courthouses of Oklahoma TR)*, S. Wewoka St.

Texas County

Guymon, *Texas County Courthouse (County Courthouses of Oklahoma TR)*, 319 N. Main St.

Tillman County

Frederick, *Tillman County Courthouse (County Courthouses of Oklahoma TR)*, Gladstone and Main Sts.

Washita County

Cordell, *Washita County Courthouse (County Courthouses of Oklahoma TR) Courthouse Square*

RHODE ISLAND

Providence County

Lincoln, *Ballou House (Lincoln MRA)*, Albion Rd.
Lincoln, *Elliott-Harris-Miner House (Lincoln MRA)*, 1406 Old Louisquisset Pike
Lincoln, *Jenckes House (Lincoln MRA)*, 1730 Old Louisquisset Pike
Lincoln, *Jenckes House (Lincoln MRA)*, 81 Jenckes Hill Rd.
Lincoln, *Lime Kilns (Lincoln MRA)*, Off Louisquisset Pike, Sherman and Dexter Rock Rds.
Lincoln, *Old Ashton Historic District (Lincoln MRA)*, Lower River Rd. and Blackstone Canal towpath
Lincoln, *Pullen Corner School (Lincoln MRA)*, Angell and Whipple Rds.
Lincoln, *Saylesville Historic District (Lincoln MRA)*, Roughly bounded by Memorial Ave., Scotts Ponds, Industrial Circle, Smithfield Ave., and Woodland Court

TENNESSEE

Davidson County

Nashville, *Bennie-Dillon Building*, 702 Church St.
Whites Creek, *Whites Creek Historic District*, Whites Creek Pike and Old Hickory Blvd.

Maury County

Columbia, *Columbia Commercial Historic District*, Roughly bounded by 7th, 8th, Woodland, and High Sts.
Columbia, *Rally Hill*, 319 W. 8th St.

Shelby County

Memphis, *Greenlaw Addition Historic District*, Roughly bounded by Bethel, Thomas, 7th, Auction, and 2nd Sts.
Memphis, *Medical Arts Building and Garage*, 248 Madison Ave. and 11 N. 4th St.

TEXAS

El Paso County

El Paso, *Old Bnai Zion Synagogue*, 906 N. El Paso St.

Gillespie County

Enchanted Rock Archeological District, (also in Llano County)

Travis County

Austin, *Batts, Judge Robert Lynn, House*, 1505 Windsor Rd.

Young County

Graham, *Street, Spencer Boyd, Houses*, 800 and 804 Third St.

VIRGINIA

Hampton (Independent City)

Clark, Reuben, House, 125 S. Willard Ave.

Richmond (Independent City)

Richmond Academy of Medicine, 1200 E. Clay St.

Albermarle County

Crossroads, *Crossroads Tavern*, VA 692

Culpeper County

Lignum vicinity, *Madden's Tavern*, VA 610

Gloucester County

Zanoni vicinity, *White Hall*, VA 663

Madison County

Madison, *Madison County Courthouse Historic District*, Main St.

Northumberland County

Reedville, *Reedville Historic District*, VA 644 at VA 722

Orange County

Hampstead Farm Archeological District,

Rockingham County

Dayton, *Dayton Historic District*, Roughly bounded by Main, Mason, Walnut, Summit, and Bowman Sts.

Shenandoah County

Strasburg, *Strasbury Historic District*, Roughly bounded by RR tracks, 3rd, High, and Massanutten Sts.

WISCONSIN

Taylor County

Westboro vicinity, *Mondeaux Dam Recreation Area*, Roughly bounded by Mondeaux River and Forest Rd. 106

[FR Doc. 84-20151 Filed 7-30-84; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public oficials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, Washington, D.C. 20240, Attention: Chief of Registration, (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

We are presently requesting comments on the proposed boundary for Kathio Site located at Vineland, Mille Lacs, Minnesota:

The boundary includes all of Mille Lacs-Kathio State Park plus Kathio Point (the land in Secs. 27 and 28, T. 43 N., R. 27 W.) and Sec. 25 and the E½ of Sec. 26, T. 42 N., R. 27 W. The boundary encloses the 17 known sites in this

vicinity. The boundary includes only those sites from early maps which are known to exist at the present. It should be mentioned that there are several other known sites of importance on the shores of Mille Lacs Lake relating to the Woodland and early historic periods in central Minnesota, but they have not been included within landmark boundaries because they are isolated examples in Garrison and Crow Wing Counties, some distances from the landmark district.

We are presently requesting comments on the proposed boundary for Fort Concho Historic District located at San Angelo, Tom Green County, Texas:

Beginning at the northeast corner of E. Washington Drive and S. Oaks Streets, the boundary proceeds north along the east side of S. Oaks Street to the southeast corner of E. Avenue B, then east to the southeast corner of School Street, then north approximately 200 feet, then east approximately 600 feet to the A. T. & S. F. railroad spur, then southeast and south along the western rail of the tracks to the south side of E. Avenue D, then east approximately 400 feet, then south approximately 125 feet, then west approximately 225 feet, then south approximately 150 feet, then west to the A. T. & S. F spur, then south along the west rail for approximately 150 feet, then west to the east side of Burgess Street, then north approximately 85 feet, then west along the north side of E. Washington Drive to the northeast corner or E. Washington Drive and S. Oaks Street to the point of beginning.

[FR Doc. 84-20152 Filed 7-30-84; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-200 (Preliminary)]

Radial Ply Tires for Passenger Cars From the Republic of Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: July 20, 1984.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-200 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of new (not including recapped) pneumatic radial tires of rubber or plastics, for passenger cars, provided for in item 772.51 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carpenter, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0399.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 20, 1984, by The Armstrong Rubber Co., Cooper Tire & Rubber Co., The Firestone Tire & Rubber Co., The B.F. Goodrich Co., and The Goodyear Tire & Rubber Co. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by September 4, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of documents

The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions

Any person may submit to the Commission on or before August 15, 1984, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on August 13, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. Parties wishing to participate in the conference should contact Robert Carpenter (202-523-0399), not later than August 9, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection

A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: July 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-20202 Filed 7-30-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-199X)]

Illinois Central Gulf Railroad Co.—Abandonment and Discontinuance Exemption—in Massac County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment of a 0.98-mile segment and discontinuance of service over a 1.22-mile segment by Illinois Central Gulf Railroad Company in Massac County, IL from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, subject to employee protection conditions.

DATES: This exemption shall be effective on August 30, 1984. Petitions for reconsideration must be filed by August 20, 1984. Petitions for stay must be filed by August 10, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-43 (Sub-199X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: John H. Doeringer, 233 N. Michigan Ave., Chicago, IL 60601.

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

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

Decided: July 24, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-20081 Filed 7-30-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30494]

Pioneer Industrial Railroad Co., Inc.—Exemption; Issuance of Stock

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Pioneer Industrial Railroad Co., Inc. from the requirements of 49 U.S.C. 11301 for the issuance of up to $1 million in no par value preferred stock, and up to $2 million in no par value common stock.

DATES: The exemption will be effective on August 30, 1984. Petitions for stay must be filed by August 10, 1984. Petitions for reconsideration must be filed by August 20, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30494 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Guy L. Brenkman, President, Pioneer Industrial Railroad Co., Inc., P.O. Box 3525, Peoria, IL 61614.

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

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

Decided: July 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-20082 Filed 7-30-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30493]

Pioneer Railroad Properties Ltd.—Exemption; Issuance of Securities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Pioneer Railroad Properties Ltd. from the requirements of 49 U.S.C. 11301 for the issuance of (1) up to $3 million of limited partnership units and (2) up to $3 million in notes.

DATES: This exemption will be effective on August 30, 1984. Petitions for reconsideration must be filed by August 20, 1984. Petitions for stay must be filed by August 10, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30493 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Guy L. Brenkman-General Partner, Pioneer Railroad Properties Ltd., P.O. Box 3525, Peoria, IL, 61614.

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

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

Decided: July 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-20083 Filed 7-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Chambers County, Alabama. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: July 27, 1984.

Carol E. Dinkins,

Acting Attorney General of the United States.

[FR Doc. 84-20414 Filed 7-30-84; 12:22 pm]

BILLING CODE 4410-01-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.

Extension

Mine Safety and Health Administration
Training for Mine Rescue Teams
1219–0077
Monthly
Businesses or other for profit; small businesses or organizations
800 respondents; 1,800 hours

Requires each team member to receive a specified amount of training prior to serving on a mine rescue team. Records of the training received by each team member is required to be on file at the mine rescue station.

Alternative Mine Rescue Capability for Small and Remote Mines and Mines with Special Mining Conditions
1219–0078
On occasion
Businesses or other for profit; small businesses or organizations
25 respondents; 50 hours

Provides that if an underground mine is small and remote or is operating under special mining conditions, the operator may apply for permission to provide alternative mine rescue capability.

Collection of Information in Current Rules

Mine Safety and Health Administration
Notification of Commencement of Operations and Closing of Mines
MSHA–426
On occasion
Businesses or other for profit; small businesses or organizations
4,000 respondents; 450 hours

Requires operators of metal and nonmetal mines to notify MSHA of openings and closings of mines.

Signed at Washington, D.C. this 26th day of July 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–20241 Filed 7–30–84; 8:45 am]
BILLING CODE 4510–43–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 16, 1984–July 20, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,135; Manheim Contracting Co., Elizabeth, NJ

Affirmative Determinations

TA–W–15,231; Jaynie Manufacturing, Inc., Nanty Glo, PA

A certification was issued covering all workers separated on or after February 7, 1983 and before February 20, 1984.

TA–W–15,214; Amax Specialty Metals Corp., Newark, NJ

A certification was issued covering all workers separated on or after February 6, 1983 and before May 4, 1984.

TA–W–15,215; Amax Specialty Metals Corp., Florham Park, NJ

A certification was issued covering all workers separated on or after February 6, 1983 and before May 4, 1984.

TA–W–15,215A; Amax Specialty Metals Corp., Orangeburg, SC

A certification was issued covering all workers separated on or after February 6, 1983 and before May 4, 1984.

TA–W–15,188; Marposs Gauges Corp., Madison Heights, MI

A certification was issued covering all workers excluding those engaged in employment related to the company's imports separated on or after January 23, 1983 and before January 1, 1984.

TA–W–15,189; Marposs Gauges Corp., Troy, MI

A certification was issued covering all workers excluding those engaged in employment related to the company's imports separated on or after January 12, 1983 and before January 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period July 16, 1984–July 20, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal, business hours or will be mailed to persons who write to the above address.

Dated: July 24, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-20242 Filed 7-30-84; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on July 28, 1984.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Entended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period acutally terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on January 22, 1984, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on July 7, 1984, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending on July 28, 1984.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on July 26, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 84-20243 Filed 7-30-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-112; Exemption Application No. D-3934 et al.]

Grant of Individual Exemptions; O. C. Tanner Co. et al.

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 Employment 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.

O. C. Tanner Company Retirement and Savings Plan, O. C. Tanner Company Sales Representatives Retirement and Savings Plan, O. C. Tanner Manufacturing Retirement and Savings Plan (collectively, the Plans) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 84-112; Exemption Application Nos. D-3934, D-3935 and D-3936]

Exemption

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 to a series of loans by the Plans to the O. C. Tanner Company, involving up to 25% of each Plan's assets, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in arm's length transactions with unrelated parties.

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 June 8, 1984 at 49 FR 23957.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Chatham Steel Corporation Profit-Sharing Plan and Trust (the Plan) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 84–113; Exemption Application No. D–4114]

Exemption

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 to the loan of $500,000 by the Plan to Chatham Steel Corporation, the Plan sponsor, for a period not to exceed 25 years, provided the terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

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 May 25, 1984 at 49 FR 22147.

For Further Information Contact: Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Central States, Southeast and Southwest Areas Pension Fund (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption (PTE) 84–114; Exemption Application No. D–5093 and Revocation of PTE 77–11]

Exemption and Revocation of Exemption

The Department hereby grants a temporary new exemption that would revoke PTE 77–11 (42 FR 54041, October 7, 1977) and would replace certain portions of PTE 77–11.*

Under this exemption, for the temporary period described below, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the arrangement by the Equitable Life Assurance Society of the United States and Victor Palmieri and Company Incorporated for the provision of supplemental services (described in Part V of PTE 77–11) on behalf of the Plan.

In addition, for the temporary period described below, 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 (D) of the Code, shall not apply to the following:

(A) The adjustment and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property, as described in Part VIII of PTE 77–11.

(B) New transactions between the Plan and certain non-fiduciary parties in interest and disqualified persons, as described in Part IX of PTE 77–11 and as extended by PTE 83–57.

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 April 17, 1984 at 49 FR 15165.

Effective Dates: This exemption will be effective beginning January 20, 1984. It will expire with respect to each investment manager on the earlier of (1) January 20, 1985, or (2) when the investment manager ceases to have responsibility for the management of Plan assets under its investment management contract with the Plan that became effective on January 20, 1984. In addition, the revocation of PTE 77–11 will be effective with respect to transactions taking place after 30 days following the date the notice of revocation is published 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.)

Greer and Alexander Pension Plan (the Plan) Located in Rocky Mount, Virginia

[Prohibited Transaction Exemption 84–115; Exemption Application No. D–5139]

Exemption

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 June 15, 1984, to the contribution to the Plan by Greer and Greer A Professional Corporation of a percentage interest in an undivided one third interest in certain real property located in and around Roanoke County, Virginia, provided the contribution is valued at its fair market value on the date contributed.

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 June 15, 1984 at 49 FR 24829.

Effective Date: This exemption is effective June 15, 1984.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

Lindquist & Vennum Profit Sharing Retirement Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 84–116; Exemption Application No. D–5212]

Exemption

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 a series of loans by the Plan to Lindquist & Vennum over a five year period, the aggregate amount of such loans not to exceed 25% of Plan assets, provided that the terms and conditions of such transactions are at least as favorable to the Plan as those obtainable by the Plan in arm's length transactions with unrelated parties.

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 June 8, 1984 at 49 FR 23963.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

Maynard N. Levenick, M.D., a Medical Corporation, Defined Benefit Pension Plan (the Plan) Located in Pasadena, California

[Prohibited Tranaction Exemption 84–117; Exemption Application No. D–5341]

Exemption

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 acquisition by the Plan of an undivided one-half interest in a parcel of real property located at 575 West California Boulevard, Pasadena, California (the Property) from Dr. and Mrs. Maynard N. Levenick for $75,000 in cash, provided such amount is not greater than the fair market value of the one-half interest in the Property on the date of the sale.

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 June 15, 1984 at 49 FR 24830.

*Part IX of PTE 77–11 was extended by the Department by the granting of PTE 83–57 (48 FR 14091, April 1, 1983).

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) 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 dispostive 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 26th day of July 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–20201 Filed 7–30–84; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies and Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 1984. The groups or fields represented are as follows: Employee organizations, employers (maintaining or contributing to multiemployer plans), corporate trust field, investment management, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to the Secretary of Labor, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210. Recommendations must be delivered or postmarked on or before August 31, 1984. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, telephone number and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C. this 25th day of July 1984.

Robert A. G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84–20079 Filed 7–30–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (National Services Section) to the National Council on the Arts will be held on August 20–21, 1984 from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: July 24, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–20206 Filed 7–30–84; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Ocean Sciences Research; 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 Ocean Sciences Research.

Date and time: August 21, 22, and 23, 1984, 9:00 am to 6:00 pm each day.

Place: Rooms 523, 628, 1141, and 1224, National Science Foundation, 1800 G Street, N.W., Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Robert E. Wall, Head, Ocean Sciences Research Section, Room 611, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357–7924.

Purpose of meeting: To provide advice and recommendations concerning support of research in Oceanography.

Agenda: To review and evaluate reseach 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. 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 determination by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

July 26, 1984.

[FR Doc. 84–20121 Filed 7–30–84; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Postponement of Meeting

The DOE/NSF Nuclear Science Advisory Committee meeting scheduled for August 5, 1984, has been postponed until later this year. A new meeting notice will be published in the **Federal Register** when a date has been set.

The August meeting notice appeared in the **Federal Register** on Friday, July 20, 1984, in Volume 49, No. 141, Page 29492.

Dated: July 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–20120 Filed 7–30–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–413]

Catawba Nuclear Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–24 to the Duke Power Company, the North Carolina Electric Membership Corporation, and the Saluda River Electric Cooperative, Inc. (the licensees) for the Catawba Nuclear Station, Unit 1 (the facility). The license authorizes loading of fuel into the reactor vessel and the conducting of certain mechanical and electrical tests which must be done before the reactor achieves criticality.

The Catawba Nuclear Station, Unit 1, is a pressurized water reactor located in York County, South Carolina, approximately 6 miles north of Rock Hill, South Carolina. The license is effective as of its date of issuance and shall expire when superseded by another license or license amendment.

The application for the license complies with the standards and requirements of the Atomic Energy act of 1954, as amended (the Act) and the Commission's regulations. Issuance of this license has been authorized by the Atomic Safety and Licensing Board by its Memorandum and Order (Authorizing Issuance of a License to Load Fuel and Conduct Certain Precritical Testing) dated May 30, 1984. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating licensed was published in the **Federal Register** on June 25, 1981 (46 FR 32974).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details in respect to this action, see (1) Facility Operating License NPF–24 complete with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated March 15, 1983; (3) the Commission's Safety Evaluation Report, dated February 1983 (NUREG–0954), and Supplements 1, 2 and 3; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Final Environmental Statement, dated January 1983 (NUREG–0921); (6) the Environmental Report and supplements thereto; and (7) the ASLB Memorandum and Order (Authorizing Issuance of a License to Load Fuel and Conduct Certain Precritical Testing) dated May 30, 1984.

These items are available at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of Facility Operating License NPF–24 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG–0954) and the Final Environmental Statement (NUREG–0921) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492–9530.

Dated at Bethesda, Maryland, this 18th day of July 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84–20179 Filed 7–30–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumers Power Co., (Big Rock Point Plant); Exemption

I

Consumers Power Company (the licensee) is holder of Facility Operating License No. DPR–6 which authorizes operation of the Big Rock Point Plant (the facility) at steady-state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of one boiling water reactor (BWR) located at the licensee's

site in Charlevoix County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.48(c)(4) of 10 CFR Part 50 requires a licensee to complete, if necessary, the alternative shutdown capability at a nuclear power plant according to the schedule detailed in the rule. The schedule in the rule calls for installation to be complete before startup after the earliest of the following events commencing 180 days or more after NRC approval of the design of the alternative shutdown capability:

(1) The first refueling outage;

(2) A planned outage lasting 60 days or more; or

(3) An unplanned outage lasting 120 days or more.

By letter dated March 8, 1983, the NRC staff transmitted a Safety Evaluation to the licensee which concluded that alternative shutdown capability was necessary for the control room, the electrical equipment room, the exterior cable penetration room, and the containment electrical penetration area at the Big Rock Point Plant and approved the licensee's conceptual design of that capability.

The 1984 refueling outage at the Big Rock Point Plant was scheduled to begin in September 1984. However, the plant was shut down on May 31, 1984 due to leakage in the condensate system. At that time, the licensee decided to refuel to correct fuel leakage which was experienced before the shutdown. This refueling outage which began on May 31, 1984 (3–4 months early) was the first refueling outage commencing 180 days or more after the NRC staff's March 8, 983 Safety Evaluation. Therefore, 10 CFR 50.48(c)(4) would require installation of the alternative shutdown capability at the Big Rock Point Plant before startup from this outage.

By letter dated June 1, 1984, the licensee requested an exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for installation of the alternative shutdown capability to the end of the 1985 refueling outage at the Big Rock Point Plant. The letter gives the following reasons why the installation cannot be completed by the end of the 1984 outage:

(1) Final design details of the alternate shutdown system are not complete;

(2) Procurement lead time for some equipment may be as long as 52 weeks; and

(3) Actual installation will take more than 6 months.

During the Big Rock Point Integrated Assessment which was begun as part of the NRC's Systematic Evaluation Program, the licensee committed to complete the alternative shutdown capability by the end of the 1985 refueling outage. In the "Integrated Plant Safety Assessment Systematic Evaluation Program for the Big Rock Point Plant," NUREG–0828, published May 1984, the NRC staff concluded that this commitment was acceptable.

By letters dated July 12, and July 23, 1984, the licensee described the compensatory measures taken to provide an acceptable level of alternative shutdown capability until the alternate shutdown system is installed. For those fire areas of the plant which require modifications that will be delayed by the schedular extension, the licensee considered interim measures to ensure availability of the following post-fire shutdown functions: Reactivity control, primary system makeup, decay heat removal, process monitoring and support systems. The licensee has implemented interim procedures to be used to achieve hot shutdown following a fire in the control room, the electrical equipment room, the exterior cable penetration room, or the containment electrical penetration room which could potentially affect cable trays, electrical switchgear, or control panels. The licensee has also installed automatic sprinkler heads in the exterior cable penetration room as a compensatory measure in addition to the fire protection modifications already in place in the subject fire areas.

All four subject fire areas have smoke detection systems. The electrical equipment room has an automatic fire suppression system. Manual fire suppression systems are available in the control room and containment electrical penetration room. Fire brigade response time for the containment electrical penetration room is a few minutes. In the containment electrical penetration area, the cables of the reactor depressurization system are covered with a fire protective wrap.

The interim procedure requires a reactor scram, actuation of the emergency condenser, and closure of the main steam isolation valve (MSIV) from the control room. The manual reactor scram provides the reactivity control function and the emergency condenser provides initial decay heat removal for achieving hot shutdown. For the interim, actuation of the emergency condenser and closure of the MSIV is dependent upon operator actions prior to the postulated fire damaging the circuits for these components. Multiple circuit failures would be required to cause maloperation of these valves after the operator actions have been taken. If the emergency condenser were rendered inoperable, the reactor depressurization system and core spray system could be used to achieve hot shutdown. For primary system makeup, the control rod drive (CRD) pump could be utilized. The licensee has provided an interim procedure outlining the necessary repairs if the control and/or power circuits to the CRD pumps are damaged by a fire in the above mentioned areas. As indicated in the staff's Safety Evaluation dated March 8, 1983, the CRD pumps would not be needed for nine hours based on conservative asumptions. Additionally, the fire water system via core spray system piping could provide primary system makeup.

For the long term decay heat removal, the licensee has committed to provide interim procedures outlining the repairs necessary to achieve cold shutdown. The interim procedures will be implemented 60 days following startup from the present refueling outage. These interim procedures will outline the necessary repairs including procurement of material if the control and/or power circuits to the shutdown cooling and reactor cooling water systems are damaged. The ability to effect these repairs is contingent upon an electrical containment penetration which is sized for power cable remaining undamaged by the fire. There are several electrical penetrations which are sized for power cable. Any one of these penetrations could be used to make repairs to provide power to the CRD pumps, the shutdown cooling system pumps, and the reactor cooling water system pumps. One such penetration on the left side in the 6 x 8 array of electrical penetrations is separated from the rest of the power-size penetrations by approximately 14 feet and the two power-size penetrations in the lower right corner of the array are enclosed by lightweight radiant energy shields. This combination of features provides reasonable assurance that at least one power-size penetration could be protected from fire damage by prompt fire brigade response.

If all of the penetrations are destroyed, a means of achieving cold shutdown does exist without making repairs to the shutdown and reactor cooling system cables. Cold water could be added to the primary system by the CRD pumps or the fire water system. Warm water would then be bled off

through the normal cleanup system blowdown path. This method would eventually reduce primary system temperature below 212°F (cold shutdown). However, the use of the shutdown and reactor cooling systems is the preferred method of achieving cold shjutdown if it is available.

The process monitoring function will be provided by mechanical gauges located inside containment for steam drum and reactor vessel level (narrow range) and primary system pressure. Also, emergency condenser shell-side level is available via a sight-glass connected to the condenser.

The diesel-driven fire pump and the emergrency diesel generator which provide the support function for safe shutdown are independent of the fire areas identified above and thus are available.

Based on the above, the staff has coincluded that the licensee has provided acceptable interim post-fire shutdown capability for the control room, the electrical equipment room, the exterior cable penetration room, and the containment electrical penetration room to support the requested schedular exemption. Therefore, the staff has concluded that schedular exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of June 1, 1984, 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 Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completion of altlernative shutdown capability at the Big Rock Point Plant until the end of the 1985 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (July 20, 1984, 49 FR 29493).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 25th day of July 1984.

For the Nuclear Regulatory Commission.

Edson G. Case,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-20180 Filed 7-30-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

Consumers Power Company (the licensee) is holder of Facility Operating License No. DPR-6 which authorizes operation of the Big Rock Point Plant (the facility) at steady state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of one boiling water reactor (BWR) located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

10 CFR 50.49(g) requires final environmental qualification of electrical equipment within the scope of the rule by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. Electrical equipment within the scope of the rule includes equipment required for safe shutdown or accident mitigation. The refueling outage which began on May 31, 1984 is the second refueling outage at the Big Rock Point Plant after March 31, 1982. Therefore, final qualification is required to be complete at the Big Rock Point Plant before restart from the 1984 refueling outage.

By letter dated June 29, 1984, the licensee requested an extension to the schedule defined in the rule until November 30, 1985. The NRC staff informed the licensee that adequate information to justify an extension to November 30, 1985 had not been presented. The NRC staff also informed the licensee that adequate information to justify a schedule exemption to March 31, 1985 has been presented. On the basis of this information, the licensee asked that the extension request be considered a request for schedular exemption to March 31, 1985.

The 1984 refueling outage was scheduled to begin in September 1984. However, the plant was forced to shut down on May 31, 1984 by leakage in the condensate system and because of fuel leakage problems the licensee made the decision to refuel early. The June 29, 1984 letter explains the process by which the licensee intends to achieve final qualification of the equipment for which final qualification has not been achieved. Consumers Power Company concluded that this process, including additional testing and analysis, equipment procurement and installation, cannot be completed by the end of the 1984 refueling outage.

The qualification process includes performance of an aging program to address the aging and qualified life aspects of environmental qualification. This program is underway and is scheduled for completion by the end of September 1984. The licensee anticipates that the program will indicate that some of the equipment can not be properly qualified and will, therefore, require replacement with qualified equipment. Therefore, it would be sometime after September 1984 before the equipment could be procured and installed. Some equipment such as cables have already been identified to require additional qualification testing or replacement. Neither the additional testing or procurement and installation of the replacement cable could be accomplished before the end of the 1984 refueling outage.

This process was reviewed and approved by the NRC staff in NUREG-0828, "Integrated Plant Safety Assessment, Systematic Evaluation Program for the Big Rock Point Plant," dated May 1984. The June 29, 1984 letter along with a letter dated July 18, 1984 updates the justifications for continued operation for the equipment for which final qualification has not been achieved.

The NRC staff has reviewed the justification for continued operation submitted by the licensee for each piece of equipment for which final qualification has not been achieved. The staff concludes that these justifications are acceptable since they are based on the criteria listed below which are essentially the same as those contained in 10 CFR 50.49(i).

a. The safety function can be accomplished by some other designated equipment that is qualified, and failure of the principal equipment as a result of the harsh environment will not degrade other safety functions or mislead the operator.

b. Partial test data that does not demonstrate full qualification, but provides a basis for concluding the equipment will perform its function. If it cannot be concluded from the available data that the equipment will not fail after completion of its safety function, then that failure must not result in significant degradation of any safety function or provide misleading information to the operator.

c. Limited use of administrative controls over equipment that has not been demonstrated to be fully qualified. For any equipment assumed to fail as a result of the accident environment, that

failure must not result in significant degradation of any safety function or provide misleading information to the operator.

Therefore, the NRC staff has concluded that the proposed exemption to 10 CFR 50.49(g) delaying the deadline for final qualification at the Big Rock Point Plant until March 31, 1985 should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of June 29, 1984, is authorized by law and will not endanger life or property or the common defense and security, and it otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.49(g) such that the deadline for final environmental qualification of electrical equipment within the scope of the rule be delayed until March 31, 1985 for the Big Rock Point Plant.

A Notice of Environmental Assessment and Finding of No Significant Impact regarding this exemption was published in the **Federal Register.**

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 25th day of July 1984.

For the Nuclear Regulatory Commission.

Edson G. Case,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-20181 Filed 7-30-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Company; Correction; Order Confirming Commitments to Supplement 1 to NUREG-0737

On June 22, 1984 (49 FR 25723), an Order issued by the U.S. Nuclear Regulatory Commission (NRC) was published in the **Federal Register.** This Order confirms commitments made by the Virginia Electric and Power Company for Post-TMI related issues involving the North Anna Power Station, Units No. 1 and No. 2, which is located in Louisa County, Virginia.

The July 1, 1985 completion date having the Technical Support Center fully functional and appearing on Page 2 of the Attachment to the Order, has been changed to "July 31, 1985 except for data communications which follows SPDS schedule."

For additional details, see the NRC letter to the licensee dated July 24, 1984.

Dated at Bethesda, Maryland this 24th day of July, 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 84-20178 Filed 7-30-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14054; 811-2989]

Allocated Deposit Annuity Account and Eagles' National Life Insurance Co.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8 (f) of the Investment Company Act of 1940, to declare by order on its own motion that Allocated Deposit Annuity Account ("Account") 406 Rosemont Garden, Lexington, Kentucky 40503, has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account: Was organized in the state of Kentucky on December 27, 1979; and filed Form N-8A with the Commission on January 10, 1980, to register as a separate account of Eagles' National Life Insurance Company, as a unit investment trust. The Account's registration statement on Form S-6 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m. do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-20188 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14045; File No. 812-5881]

Bankers National Life Insurance Company, et al.; Filing of Application for an Order Granting Exemptions

July 24, 1984.

Notice is hereby given that Bankers National Life Insurance Company (the "Company"), Bankers National Variable Account B (the "Variable Account"), a separate account of the Company registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, and BNL Securities Inc., the principal underwriter of the Variable Account (collectively "Applicants"), 1559 Littleton Road, Parsipany, New Jersey 07054, filed an application on June 26, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 26(a) and 27(c)(2) of the Act, to the extent necessary to permit transactions described in the application. All interested persons are referred to the application for the complete representations of the Applicants, which are summarized below, and are referred to the Act for a statement of relevant provisions.

Applicants have previously applied for and obtained an order of exemption with respect to various operations of the Variable Account. The sole purpose of this application is to allow the variable annuity contracts issued from the Variable Account to include an expense risk charge. The contracts are being modified by post-effective amendment to provide for this charge in connection with the Company's decision to replace the current 6.50% front-end sales charge on purchase payments with a contingent deferred sales load ("CDSL"). Contractowners who purchased contracts prior to the effective date of the post-effective amendment will continue to be subject to the 6.50% sales charge for all purchase payments made on or after such effective date and will not be subject to the CDSL or the expense risk charge.

Applicants propose that they be granted an exemption from sections 26(a) and 27(c)(2) to deduct an expense risk charge equal on an annual basis to .50% of the average daily net asset value of the Variable Account. The Company guarantees that the contract

administrative charge will not exceed a certain amount per year, that the transfer processing fee will not exceed a certain amount per transfer, that no partial surrender processing fee will be imposed and that no additional fees will be imposed for the purpose of compensating the Company for administrative services rendered to the Variable Account.

Applicants state that they have reviewed publicly available information about similar industry products, and based on this review, they have concluded that the expense risk charge is reasonable in amount as determined by industry practice with respect to comparable products and consistent with the protection of investors standard set forth in section 6(c). Applicants will maintain at the Company's Administrative Office and make available to the Commission a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey.

Applicants acknowledge that the expense risk charge may result in a profit and that any such profit may be used to meet the Company's excess distribution costs and related expenses. Applicants further represent that they have concluded that this proposed distribution financing arrangement has a reasonable likelihood of benefitting the Variable Account and its contractowners and they will maintain and make available to the Commission a memorandum setting forth the basis for this representation. Applicants also state that the variable Account will invest only in funds which undertake to have a board of directors with a disinterested majority formulate and approve any plan pursuant to Rule 12B–1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–20189 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14060; 811–3511]

Farm Bureau Life Insurance Co., Separate Account A; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that Separate Account A of Farm Bureau Life Insurance Company ("Account") 5400 University Avenue, West Des Moines, Iowa 50265, has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account filed Form N–8A with the Commission on July 7, 1982, to register as a separate account of Farm Bureau Life Insurance Company as a management investment company. The Account's registration statement on Form N–1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20192 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23375; 70–6956]

Pennsylvania Electric Co.; Proposed Sale of Hydroelectric Generating Plant

July 25, 1984.

Pennsylvania Electric Company ("Penelec"), Johnstown, Pennsylvania; an electric utility subsidiary of General Public Utilities Corporation ("GPU"), a registered holding company, has filed with this Commission, an application-declaration pursuant to sections 9, 10, and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder.

Penelec proposes to sell to American Hydro Power Company ("Hydro"), a nonaffiliate, the Warrior Ridge property ("Warrior Ridge"), which was formerly a hydroelectric generating plant. As of December 31, 1983, the net book cost to Penelec of Warrior Ridge was approximately $85,741. The original undepreciated cost of Warrior Ridge was approximately $602,849. In addition, Penelec has charged to construction work in progress a total of $390,627, representing expenditures for preliminary engineering studies on station restoration, structural modifications and additions and the preparation of specifications for new turbines.

Hydro is a Pennsylvania general partnership, which intends to obtain a license from the FERC to operate Warrior Ridge as a hydroelectric station, if Hydro does not qualify for an exemption therefrom. Hydro plans to restore the plant to commercial operation (with a capacity of at least 1500 KW) on or before September 1986.

On Junuary 3, 1984, Penelec and Hydro signed an agreement which provided that Hydro would pay $350,000 to Penelec by the 120th day after Warrior Ridge is placed into commercial service, but in no event will the payment be made later than September 30, 1986. Hydro's obligation is to be evidenced by a promissory note to Penelec. The Conduit and Foundation Corporation, which is the parent of C&F Hydro Corporation, one of the partners in Hydro will also execute the promissory note as guarantor of the obligation of Hydro. Penelec is also to receive a sum equal to 25% (within 15 days of Hydro's receipt) of any amounts obtained by Hydro from the Electric Power Research Institute ("EPRI") if EPRI awards Hydro a grant for a field evaluation of a small hydroelectric plant using modular components.

Under the agreement, Penelec will purchase from Hydro all the electricity produced from Warrior Ridge for a 20

year period at the initial rates of 9.67 cents per KWH during on peak hours and 4.83 cents per KWH during off peak hours. Although these rates exceed the rates currently charged to the GPU companies under the Pennsylvania-New Jersey-Maryland ("PJM") interconnection agreement, the GPU companies (including Penelec) being net purchasers from PJM, it is expected that at some time during the 20 year energy purchase period, such rates will be less than those charged by PJM. To that end, the parties will establish a "recapture pool", to which payment made by Penelec in excess of the prevailing PJM rate will be credited and against which payments made by Penelec below the prevailing PJM rate will be debited. (The agreement also provides for capacity credits and debits to the pool.) The net credit balance will bear interest at the rate of return allowed Penelec by the Pennsylvania Public Utility Commission (currently 10.91%), and will be settled at the end of the 20 year period or any earlier termination under the agreement. To the extent that payments credited to the recapture pool are charged to Penelec's customers as energy costs, the proceeds, if any, received by Penelec at termination of the recapture pool will be credited to Penelec's customers as a reduction of energy cost. Hydro has agreed to arrange for a letter of credit or surety bond to guarantee payment to Penelec. If and when the net credit balance of the recapture pool is reduced to zero, Penelec will then pay for electricity produced at Warrior Ridge at the prevailing PJM rate, less a discount of between 5% and 10% depending upon when, during the 20 year term, the balance of the pool is reduced to zero.

Penelec believes this proposed transaction will be favorable to Penelec, its stockholders and its customers in that it will enable Penelec to avoid the cost of maintaining, rehabilitating or removing the existing facility, and to realize a modest pre-tax gain (over its net book value) for Warrior Ridge. It also expects that the electricity it receives from Hydro will be at rates which, over a 20 year period, will be competitive with those available from P-J-M.

The fees and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $15,325. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of the application-declaration, as amended, has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 23281), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied:

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-20191 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14059; 811-3401]

Shearson American Express Variable Annuity Income Fund, Inc.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that Shearson/American Express Variable Annuity Income Fund, Inc. ("Fund") 2 World Trade Center, New York, New York 10048, has ceased to be an investment company, thereby causing the registration of the Fund to cease to be in effect.

Information contained in Commission files indicates that the Fund: Was organized in the State of Maryland on January 13, 1982; and filed Form N-8A with the Commission on February 22, 1982, to register as a management investment company to provide a funding medium for contracts issued by life insurance companies which are part of the Fireman's Fund Group (Fireman's Fund American Life Insurance Company and Fireman's Fund American Life Insurance Company of New York). The Fund's registration statement on Form N-1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc 84-20193 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13165]

Union Tank Car Co.; Application and Opportunity for Hearing

July 24, 1984.

Notice is hereby given that Union Tank Car Company (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of The First National Bank of Chicago ("First National") under three existing indentures, one of which has been heretofore qualified under the Act, and the proposed successor trusteeship of First National under two other existing indentures, one of which has been previously qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First National from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application, to the

Commission and after opportunity for hearing thereon, that the trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

(1) First National is presently acting as trustee under the Applicant's Series 16 Equipment Trust Agreement dated as of June 1, 1979, which qualified under the Act and, Series C–1 Deed of Trust and Mortgage dated as of September 15, 1974, and Series P–1 Equipment Trust Agreement dated as of April 1, 1974, neither of which have been qualified under the Act. The aggregate principal amount of Series C–1 First Mortgage Sinking Fund Equipment Notes outstanding as of May 31, 1984, being $15,345,000 and the aggregate principal amount of Series 16 and P–1 Equipment Trust Certificates outstanding as of May 31, 1984, being $50,050,000 and $3,200,552, respectively.

(2) The Northern Trust Company ("Northern"), which presently serves as trustee for Applicants Series 4 Equipment Trust Agreement dated as of June 1, 1979 which was qualified by the Act, and the Applicants Series P–2 Equipment Trust Agreement dated December 1, 1978, not qualified under the Act, has indicated its intention to resign as trustee on an appropriate date subsequent to July 15, 1984. The aggregate principal amount of Series 4 Equipment Trust Certificates outstanding as of May 31, 1984, was $6,265,000 and the aggregate amount of the Series P–2 Equipment Trust Certificates outstanding as of May 31, 1984, was $52,940,000.

(3) The Applicant desires to appoint First National as successor trustee for the Series 4 and Series P–2 Equipment Trusts and First National has indicated its agreement to so act.

(4) The Equipment Trust Certificates (or, in the case of Series C–1, the First Mortgage Sinking Fund Equipment Notes) issued under the Series 4, Series 16, Series C–1, Series P–1 and Series P–2 Trust Agreements are each secured by a separate lot of identified railroad cars so that, should First National, as the successor trustee for the Series 4 or Series P–2 Equipment Trusts or as the trustee for the Series 16, Series C–1 or Series P–1 Equipment Trusts, have the occasion to proceed against the security of any one of these Equipment Trusts, such action would not affect the security, or the use of any security, under the other Equipment Trusts. Thus, the existence of the other trusteeships should in no way inhibit or discourage the trustee's action.

(5) The Applicant is not in default under any of its Equipment Trust obligations.

The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than August 23, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20450. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–20194 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–13170]

Union Tank Car Co; Application and Opportunity for Hearing

July 24, 1984.

Notice is hereby given Union Tank Car Company (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Bankers Trust Company ("Bankers") under an existing Equipment Trust Agreement heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under another proposed Equipment Trust Agreement.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

(1) Applicant, a Delaware Corporation, proposes to issue and sell approximately $50,000,000 principal amount of Equipment Trust Certificates, Series P–3 to be issued under an Equipment Trust Agreement dated as of June 15, 1984, between the Applicant and Bankers as trustee.

(2) As of May 31, 1984, the Applicant has outstanding $9,596,000 principal amount of its Equipment Trust Certificates, Series 7, issued under an Equipment Trust Agreement dated as of May 1, 1971, between the Applicant and Bankers as trustee, qualified under the Act.

(3) The Equipment Trust Certificates issued under the Series 7 Trust Agreement and the proposed Series P–3 Equipment Trust Certificates for which it is proposed Bankers shall act as trustee, are each secured by a separate lot of identified railroad cars so that, should Bankers have the occasion to proceed against the security under either one of the Equipment Trusts, such action would not affect the security, or the use of any security, under the other Equipment Trust. Thus, the existence of the other trusteeship should in no way inhibit or discourage the trustee's action.

(4) The applicant is not in default under any of its Equipment Trust obligations.

(5) Such differences as exist between the two Equipment Trust Agreements are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under either of said Equipment Trust Agreements.

The applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than August 23, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-20195 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14051; (811-3356)]

United Investors Money Market Fund, Inc.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that United Investors Money Market Fund, Inc. ("Fund"), 2400 Pershing Road, Crown Center, P.O. Box 1343, Kansas City, Missouri 64141, has ceased to be an investment company, thereby causing the registration of the Fund to cease to be in effect.

Information contained in Commission files indicates that the Fund: was organized in the state of Maryland on November 24, 1981; and filed Form N-8A with the Commission on December 23, 1981, to register as a management investment company to provide a funding medium for contracts issued by United Investors Money Market Variable Account. The Fund's registration statement on Form N-1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shriley E. Hollis,

Assistant Secretary.

[FR Doc 84-20196 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14052; (811-3360)]

United Investors Selective Bond Fund, Inc.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that United Investors Selective Bond Fund, Inc. ("Fund"), 2400 Pershing Road, P.O. Box 1343, Crown Center, Kansas City, Missouri 64141 has, ceased to be an investment company, thereby causing the registration of the Fund to cease to be in effect.

Information contained in Commission files indicates that the Fund: was organized in the state of Maryland on November 24, 1981; and filed Form N-8A with the Commission on December 23, 1981, to register as a management investment company to provide a funding medium for contracts issued by United Investors Selective Bond Fund Variable Account of United Investors Life Insurance Company. The Fund's registration statement on Form N-1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shriley E. Hollis,

Assistant Secretary.

[FR Doc 84-20197 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

July 24, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Purolator Courier Corporation
Common Stock, $1.00 Par Value (File No. 7-7713)

The L.E. Myers Co. Group
Common Stock, $11.00 Par Value (File No. 7-7714)

Caressa Group, Inc.
Common Stock, $0.50 Par Value (File No. 7-7715)

CalFed Inc.
Common Stock, $1.00 Par Value (File No. 7-7716)

These securities are listed and registered on one or more other national

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 10, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-20190 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14058; (811-3345)]

AmericAN Plan Variable Account and Anchor National Life Insurance Co.; Proposal To Terminate Registration

July 25, 1984.

In the matter of AmericAN Plan Variable Account and Anchor National Life Insurance Co., 2202 East Camelback, Phoenix, Arizona 85016.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that AmericAN Plan Variable Account ("Account") has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account: was organized in the State of California on June 25, 1981; and filed Form N-8A with the Commission on December 9, 1981 to register as a separate account of Anchor National Life Insurance Company as a management investment company. The Account's registration statement on Form N-1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-20218 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23376; (70-6996)]

Georgia Power Co.; Proposal for Pollution Control Financing; Exception From Competitive Bidding

July 25, 1984.

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to section 6(b), of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Georgia proposes to finance the costs of the acquisition, construction, installation, and equipping of certain pollution control facilities ("Facilities") for use in connection with one or more of its plants located in various counties in the State of Georgia. The Development Authority ("Authority") of each such county will issue its revenue bonds ("Revenue Bonds") for the purpose of making loans to Georgia to finance the facilities at the plant located in its county.

It is presently estimated that the aggregate principal amount of Revenue Bonds to be issued by the Authorities pursuant to this proposal will not exceed $400,000,000. While the actual amount of Revenue Bonds to be issued by each Authority has not yet been determined, such amount will be based upon the cost of the Facilities located in its county.

Georgia proposes to enter into a Loan Agreement with the Authority relating to each issue of the Revenue Bonds. Under the Agreement, the Authority will loan to Georgia the proceeds of the sale of the Authority's Revenue Bonds, and Georgia will issue a non-negotiable promissory note ("Note"). Such proceeds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee ("Trust Indenture"), pursuant to which such Revenue Bonds are be issued and secured, and will be applied by Georgia to payment of the "Cost of Construction" of the Facilities.

The Note will provide for payments to be made at the times and in amounts corresponding to the payments with respect to the principal of, premium, if any, and interest on the Revenue Bonds wherever and in whatever manner they become due.

The Trust Indenture will provide that the Revenue Bonds issued thereunder will be redeemable: (i) At any time on or after a date not later than 10 years from the date of issuance (or the date on which the Revenue Bonds begin to bear interest at a fixed rate, if such Revenue Bonds bear interest initially at a fluctuating rate), in whole or in part, at the option of Georgia, initially with a premium of up to 3% of the principal amount and declining by not less than ½ of 1% annually thereafter and (ii) in whole, at the option of Georgia, in certain other cases of undue burdens or excessive liabilities imposed with respect to the related Facilities, their destruction or damage beyond practicable or desirable repairability or condemnation or taking by eminent domain, or if operation of the related plant is enjoined and Georgia determines to discontinue operation thereof, such redemption of all such outstanding Revenue Bonds to be at the principal amount thereof plus accrued interest, but without premium. It is proposed that the Revenue Bonds will mature from one to 30 years from the first day of the month in which they are initially issued and may, in the case of a maturity of 15 to 30 years and if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the issue prior to maturity.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Georgia to purchase the Revenue Bonds from time to time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Georgia also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to Federal Income Tax. Also in

the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Georgia also may be required to indemnify the bondholders against any other additions to interest, penalties, and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Georgia's first mortgage bonds outstanding under the indenture dated as of March 1, 1941, between Georgia and Chemical Bank, as Trustee ("Indenture Trustee"), as supplemented and amended, ("Mortgage") which ratings Georgia has been advised may be thus attained, Georgia may determine to secure its obligations under the Note by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") in principal amount either: (i) Equal to the principal amount of the Revenue Bonds (bearing interest at a rate or rates equal to the interest rate or rates to be borne by the related Revenue Bonds) or (ii) equal to the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period (noninterest bearing). Such series of Collateral Bonds will be issued under an indenture supplemental to the Mortgage ("Supplemental Indenture") to be dated as of the first day of the month in which the Collateral Bonds are to be issued and delivered, will mature on the maturity date of such Revenue Bonds, and will be non-transferable by the Trustee.

As an alternative to or in conjunction with Georgia's securing its obligations through the issuance of the Collateral Bonds, Georgia may cause an irrevocable Letter of Credit of a bank ("Bank") to be delivered to the Trustee. The Letter of Credit would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of and accrued interest on the Revenue Bonds when due. Pursuant to a separate agreement with the Bank, Georgia would agree to pay to the Bank on demand all amounts that are drawn under the Letter of Credit, as well as certain fees and expenses. Such delivery of the Letter of Credit to the Trustee would obtain for the Revenue Bonds the benefit of a rating equivalent to the credit rating of the Bank. In the event that the Letter of Credit is delivered to the Trustee as an alternative to the issuance of the Collateral Bonds, Georgia may also convey to the Authority a subordinated security interest in the Facilities or other property of Georgia as further security for Georgia's obligations under the Agreement and the Note. Such subordinated security interest would be assigned by the Authority to the Trustee.

As a further alternative to, or in conjunction with, securing its obligations under the Agreement and Note, and in order to obtain a "AAA" rating for the Revenue Bonds by Standard and Poor's Corporation, Georgia may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such series of the Revenue Bonds. Such insurance policy would extend for the term of the related Revenue Bonds and would be non-cancelable by the insurance company for any reason. A non-refundable, one-time insurance premium for the policy would be fully paid by Georgia at the time the policy is issued. In addition, Georgia may be obligated to make payments of certain specified amounts into separate escrow funds and to increase the amounts on deposit in such funds under certain circumstances. The amount in each escrow fund would be payable to the insurance company as indemnity for any amounts paid pursuant to the related insurance policy in respect of principal of or interest on the related Revenue Bonds.

If, due to insufficiency of coverage or for other reasons, Georgia is unable or determines not to issue the Collateral Bonds or to deliver the Letter of Credit to the Trustee or to cause an insurance policy to be issued, the Revenue Bonds would be issued without the benefit of such security. In that event Georgia may convey to the Authority a subordinated security interests in the Facilities or other property of Georgia as security for its obligations under the Note. Such subordinated security interests would be assigned by the Authority to the Trustee. Alternatively, Georgia also may guarantee the payment of the principal of, premium, if any, and interest on the Revenue Bonds.

It is contemplated that the Revenue Bonds will be sold by the Authority pursuant to arrangements with one or more purchasers or underwriters. In accordance with the laws of the State of Georgia, the interest rate to be borne by the Revenue Bonds will be fixed by the Board of Directors of the Authority and will be either a fixed rate or a rate which will fluctuate in accordance with a specified prime or base rate or rates, which fluctuating rate may be convertible to a fixed rate. If Collateral Bonds are issued, such a fluctuating rate will not exceed a specified maximum rate or fall below a specified minimum rate.

Georgia has requested that the Notes and Collateral Bonds be excepted from the requirements of Rule 50 as inappropriate because they are to be issued and pledged solely to evidence and secure Georgia's obligations to the Authorities and no public offering of the Notes and Collateral Bonds is to be made.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 20, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and service a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-20219 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14057; (811-3230)]

NN Providence Variable Account and NN Providence Life Insurance Co.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that NN Providence Variable Account ("Account") has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account: was organized in the state of Rhode Island on July 20, 1981; and filed Form N-8A with the Commission on July 24, 1981, to register as a separate account of NN Providence Life Insurance Company, Suite 200, 1412 Atwood Ave., P.O. Box 7046, Johnston, Rhode Island 02919, as a management investment company. The

Account's registration statement on Form N–1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of any attorney-at-law, by certificate), shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20220 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21169; SR–NASD–84–19]

National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

July 24, 1984.

The National Association of Securities Dealers, Inc., ("NASD") 1735 K Street, NW. Washington, D.C. 20006, submitted on July 17, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thaereunder, to amend section A of Part IV of Schedule D of the NASD's bylaws with respect to fees for last sale information in NASDAQ/National Market System ("NMS") Securities. The rule change indefinitely defers a fee increase for last sale information in NMS Securities that becomes effective automatically on the first day of the month after the number of NMS Securities exceeds 1,000 securities.[1] The NASD explains that the fee increase is unnecessary because the number of subscribers underlying the revenue projections has continued to exceed the NASD's expectations, resulting in surplus funds from this service category. Accordingly, the per terminal monthly charge for this information will remain $7.50 rather than $10.00 as scheduled.

Interested persons are invited to submit written comments concerning the submission within 21 days after the date of publication in the Federal Register. Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. SR–NASD–84–19.

Copies of the submission and all related items other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities associations and in particular, the requirements of section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that, absent accelerated approval, the fee increase automatically will become effective on August 1, 1984.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[2]

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20228 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14053 (811–2985)]

Pooled Deposit Annuity Account and Eagle's National Life Insurance Co.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that Pooled Deposit Annuity Account ("Account") has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account was organized in the state of Kentucky on December 27, 1979 and filed Form N–8A with the Commission on January 10, 1980, to register as a separate account of Eagle's National Life Insurance Company, 406 Rosemont Garden, Lexington, Kentucky 40503, registered as a unit investment trust. The Account's registration statement on Form S–6 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20221 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14061; (811–3402)]

Shearson American Express Variable Annuity Growth Fund, Inc.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that Shearson/American Express Variable Annuity Growth Fund, Inc. ("Fund"), 2 World Trade Center, New York, New York 10048, has ceased to be an investment company, thereby causing the registration of the Fund to cease to be in effect.

Information contained in Commission files indicates that the Fund: was organized in the state of Maryland on January 13, 1982; and filed Form N–8A with the Commission on February 22,

[1] As of July 17, 1984, there were 1,006 NMS Securities.

[2] 17 CFR 200.30–3(a)(12).

1982, to register as a management investment company to provide a funding medium for contracts issued by life insurance companies which are part of the Fireman's Fund Group (Fireman's Fund American Life Insurance Company, and Fireman's Fund American Life Insurance Company of New York). The fund's registration statement on Form N–1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20222 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14056; (811–3357)]

United Investors Variable Account and United Investors Life Insurance Co.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that United Investors Variable Account (formerly United Investors Selective Bond Variable Account) ("Account"), has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account: was organized in the state of Missouri on December 8, 1981; and filed Form N–8A with the Commission on December 23, 1981, to register as a separate account of United Investors Life Insurance Company, One Crown Center, P.O. Box 1441, Kansas City, Missouri 64141, as a unit investment trust. The Account's registration statement on Form S–6 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20223 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14055; (811–3358)]

United Investors Money Market Variable Account and United Investors Life Insurance Co.; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that United Investors Money Market Variable Account ("Account") has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates tht the Account: was organized in the state of Missouri on June 30, 1981; and filed form N–8A with the Commission on December 23, 1981, to register as a separate account of United Investors Life Insurance Company, One Crown Center, P.O. Box 1441, Kansas City, Missouri 64141, as a unit investment trust. The Account's registration statement on Form S–6 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–20224 Filed 7–30–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14050; (811–3370)]

Unity Variable Account I; Proposal To Terminate Registration

July 25, 1984.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940, to declare by order on its own motion that Unity Variable Account I ("Account"), One Unity Plaza, Syracuse, New York 13215, has ceased to be an investment company, thereby causing the registration of the Account to cease to be in effect.

Information contained in Commission files indicates that the Account: was organized in the state of New York on March 24, 1981; and filed Form N–8A with the Commission on January 6, 1982, to register as a separate account of Unity Mutual Life Insurance Company, as a management investment company. The Account's registration statement on Form N–1 was declared abandoned on March 12, 1984 pursuant to Rule 479 of the Securities Act of 1933, as amended.

Notice is further given that any interested person wishing to request a hearing on this matter may, not later than September 7, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Account at the address stated above. Proof of service (by affidavit or,

in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-20225 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21171; File No. SR-NYSE-84-24]

Self-Regulatory Organizations; Proposed Rule Change By New York Stock Exchange, Inc., Relating to Market Data Service Rates

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The text of the proposed rule change is as follows. Additions italicized; deletions [bracketed].

MONTHLY CHARGES FOR

NYSE Bond Ticker [1]		
—Cont'l USA First Unit [3]	$271.00	
—Additional Unit	$246.00	
NYSE Bond Ticker Display [1] [3]		
—Cont'l USA First Unit [2] [4]	$89.00	
—Additional Unit [3]	$4.85	
Delayed Prices Service [1]		
—Cont'l USA—*via leased lines*	$296.00	
—*Cont'l USA—via satellite*	*$100.00*	[296.00]

NOTES:

[1] Charges are "per location" and do not include one time installation, relocation and other miscellaneous charges where applicable, which are generally a direct pass through from communications common carriers to subscribers.

[2] Applies to all locations presently serviced. Rate for new locations may be higher.

[3] Charges by vendor furnishing equipment are in addition to these charges.

[4] Only one first unit charge applies in an office subscribing to units from two or more vendors.

[5] Plus charges, if any, for interconnecting facilities required in connection with additional units.

NOTE: The new rate is to be effective September 15, 1984.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*

The purpose of the proposed rule change is to establish a fee for delayed prices service in the continental United States when the delayed prices ticker signal is transmitted via satellite. A distinction is made between leased-line transmission and satellite transmission based upon the difference in the common carrier charges to the Exchange for providing the transmissions.

(2) *Statutory Basis*

The basis under the 1934 Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The proposed rule change also relates to section 6(b)(5) of the 1934 Act in that the Exchange's recovery of its costs with respect to its electronic dissemination of equity last sale prices on a delayed basis enables the Exchange to make available such prices. This serves to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 21, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 25, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-20227 Filed 7-30-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0231]

NCNB Venture Corp.; Issuance of License To Operate as a Small Business Investment Company

On April 10, 1984, a notice was published in the **Federal Register** (49 FR 14232), stating that an application had

been filed by NCNB Venture Corporation. One NCNB Plaza, Charlotte. NC 28255, with the Small Business Administration (SBA) for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1984)).

Interested parties were given until the close of business April 25, 1984, to submit their written 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, and after having considered the application and all other information, SBA issued License No. 04/04–0231, on July 19, 1984, to NCNB Venture Corporation to operate as an SBIC.

(Catalog of Federal Domestic Assistance program No. 59.011, Small Business Investment Companies)

Date: July 25, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–20212 Filed 7–30–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2159]

New York; Declaration of Disaster Loan Area

Queens County in the State of New York constitutes a disaster area because of damage caused by heavy rains and flooding which occurred on June 30, and July 7, 1984. Applications for loans for physical damage may be filed until the close of business on September 24, 1984, and for economic injury until the close of business on April 25, 1985, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, N.J. 07410, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 215906 for physical damage and for economic injury the number is 619500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–20213 Filed 7–30–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2160]

Nebraska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 19, 1984, I find that the County of Howard in the State of Nebraska constitutes a disaster loan area because of damage from severe storms and tornadoes beginning on or about April 25, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on September 17, 1984, and for economic injury until April 19, 1985, at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Grand Prairie, Texas 75051, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this diseaster is 216012 for physical damage and for economic injury the number is 619600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 1984.

Robert L. Belloni,

Acting Deputy Assoiciate Administrator for Disaster Assistance.

[FR Doc. 84–20185 Filed 7–30–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0232]

NCNB SBIC Corp.; Issuance of License To Operate as a Small Business Investment Company

On April 10, 1984, a notice was published in the **Federal Register** (49 FR 14232), stating that an application had been filed by NCNB SBIC Corporation, One NCNB Plaza, Charlotte, NC 28255, with the Small Business Administration (SBA) for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)).

Interested parties were given until the close of business April 25, 1984, to submit their written 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, and after having considered the application and all other information, SBA issued License No. 04/04–0232, on July 19, 1984, to NCNB SBIC Corporation to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 26, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–20184 Filed 7–30–84; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 09/09–0347]

Norton Capital; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107–102 (1984)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: Norton Capital.

Address: 635 Barbara Drive, Hillsborough, California 94010.

Partners and Manager of Norton Capital Limited Partnership are:

Name and Position

Leal F. Norton, 835 Barbara Drive, Hillsborough, California 94010; General Partner; 0.5% as General Partner; 39.5% as Limited Partner

Imogene F. Norton, 835 Barbara Drive, Hillborough, California 94010; General Partner; 0.5% as General Partner; 39.5% as Limited Partner

The applicant, a Limited Partnership, with its principal place of business at 635 Barbara Drive, Hillsborough, California 94010, will begin operations with $1,000,000 paid-in capital and paid-in surplus.

The applicant will conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment. Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice should be published in a newspaper of general circulation in the Hillsborough, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 25, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-20183 Filed 7-30-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. (09/12-0147)]

Wells Fargo Investment Co.; Surrender of License

Notice is hereby given that Wells Fargo Investment Company, 475 Sansome Street, San Francisco, California 94111, incorporated under the laws of the State of California has surrendered its License No. 09/12-0147, issued by the Small Business Administration on January 6, 1969.

Wells Fargo Investment Company has complied with all the conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the Regulations promulgated thereunder, the surrender of the license of Wells Fargo Investment Company is hereby accepted and it is no longer licensed to operate as a small business investment company, effective July 18, 1984.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 23, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-20186 Filed 7-30-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted To OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7316, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0493
Form Number: IRS Form 6522
Type of Review: Revision
Title: Volunteer Assistance Card

OMB Reviewer: Norman Fumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: July 25, 1984.

Joseph Maty,

Departmental Reports Management Office.

[FR Doc. 84-20187 Filed 7-30-84; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Availability of Annual Report

Notice is hereby given that the Annual Report of the Veterans Administration Advisory Committee on Readjustment Problems of Vietnam Veterans for calendar year 1983 has been issued.

The report summarizes activities of the Committee on matters related to the review, discussion, and evaluation of issues related to readjustment problems being experienced by some Vietnam veterans. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Readjustment Counseling Service, Assistant Director, Administration and Development (10B/RC), Room 846, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: July 24, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-20077 Filed 7-30-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 148
Tuesday July 31, 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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	Item
Federal Deposit Insurance Corporation	1
Legal Services Corporation	2
Merit Systems Protection Board	3
Interstate Commerce Commission	4

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:06 a.m. on Thursday, July 26, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a financial assistance package for Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois.

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 practicale; that the public interest did not require consideration of the matter in a meeting open to the public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor, of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Dated: July 26, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,
Deputy Executive Secretary.

[FR Doc. 84-20249 Filed 7-27-84; 11:03 am]
BILLING CODE 6714-01-M

2

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: August 3, 1984 meeting to be commenced at 7:00 p.m. is cancelled.

PLACE: Key Bridge Marriott, Potomac Ballroom, 1401 Lee Highway, Arlington, Virginia.

STATUS OF MEETING: Open.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272-4040.

DATE ISSUED: July 27, 1984.

Donald P. Bogard,
President.

[FR Doc. 84-20318 Filed 7-27-84; 8:45 am]
BILLING CODE 6820-35-M

3

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 9:30 a.m., Thursday, August 9, Thursday, August 16 and Monday, August 27, 1984.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

STATUS: Closed.

MATTERS to be Considered:

1. *Thomas J. Griffin* v. *Department of the Army*, MSPB Docket No. CH07528210163;
2. *Montine B. Callaway* v. *Department of the Army, MSPB Docket No. PH04328310029;*
3. *Jack L. Larrimore* v. *Department of the Treasury*, MSPB Docket No. AT04328310090;
4. *Leroy Sandland* v. *General Services Administration*, MSPB Docket No. PH04328310205;
5. *Lenwood L. Buggie* v. *Department of Health and Human Services*, MSPB Docket No. NY04328210249;
6. *Dze K. Kao* v. *Department of the Army*, MSPB Docket No. SE04328310109;
7. Moses B. Sanchez v. *Department of the Air Force*, MSPB Docket No. DE04328310102;
8. Janet Hill v. *Department of Health and Human Services*, MSPB Docket No. DC04328310306.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Paula Latshaw, Acting Secretary, (202) 653-7200.

For the Board:

Dated: July 26, 1984, Washington, D.C.

Paula A. Latshaw,
Acting Secretary.

[FR Doc. 84-20250 Filed 7-27-84; 11:03 am]
BILLING CODE 7400-01-M

4

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 9:30 a.m., Tuesday, August 7, 1984.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Avenue, NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: FY 1986 Budget.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,
Secretary.

[FR Doc. 84-20383 Filed 7-30-84; 10:25 am]
BILLING CODE 7035-01-M

federal register

Tuesday
July 31, 1984

Part II

Environmental Protection Agency

40 CFR Part 15

Administration of the Clean Air Act and the Clean Water Act With Respect to Federal Contracts, Loans, and Grants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 15

[OE-FRL-2530-3]

Administration of the Clean Air Act and the Clean Water Act With Respect to Federal Contracts, Loans, and Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is responsible for implementing several suspension and debarment programs. This action is to revise 40 CFR Part 15, the regulation that establishes a special air and water enforcement-related suspension and debarment program. Commonly referred to as the "contractor listing program", this program makes a facility ineligible for contracts, grants, or loans issued by an Executive Branch agency if the facility has a record of poor compliance with Federal clean air or clean water standards. EPA is revising 40 CFR Part 15 to ensure that the program established by this regulation is consistent with existing legal requirements and is more easily understood.

DATE: Comments must be received on or before September 14, 1984.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number G–84–01, U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Docket Number G–84–01, containing supporting information used in developing the proposed standard, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M St., SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Room 3219 (LE–130A), 401 M St. SW., Washington, D.C. 20460. Telephone: (202) 475–8785.

SUPPLEMENTARY INFORMATION: Section 306 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) and Section 508 of the Clean Water Act (33 U.SC. 1251 *et seq.*), as implemented by Executive Order 11738 (38 FR 25161, September 12, 1973) authorize EPA to establish procedures for ensuring that Executive Branch agencies conduct their procurement and assistance programs in a manner consistent with the President's responsibilty of ensuring compliance with the Clean Air Act (CAA) and the Clean Water Act (CWA).

On April 16, 1975,, EPA promulgated 40 CFR Part 15 to provide procedures for ensuring that Executive Branch agencies conduct their procurement and assistance programs in accordance with the President's responsibility for ensuring compliance with CAA and CWA standards. 40 CFR Part 15 accomplishes this by establishing the List of Violating Facilities, a list of facilities which are ineligible for any nonexempt contract, grant, or loan issued by an Executive Branch agency. 40 CFR Part 15 provides procedures for placing a facility on this list because of a criminal conviction under section 113(c)(1) of the CAA or section 309(c) of the CWA or because of a record of continuing or recurring noncompliance with CAA or CWA standards. 40 CFR Part 15 also provides procedures for removing a facility from the list where there is sufficient indication that the CAA or CWA noncompliance problems at the facility have been or are being corrected.

The purposes of this revision to 40 CFR Part 15 are:

—To conform the language of the regulation more closely with statutory authority.

—To make even more certain that EPA provides adequate procedural due process for facilities which are candidates for placement on the discretionary List of Violating Facilities. The revision does not provide for a formal evidentiary hearing. Instead, it provides for fairness and flexibility through an informal proceeding.

—To improve readability and make the regulatory requirements easier to understand.

—To reflect EPA organizational changes made since the regulation was promulgated.

The most noteworthy revisions include:

—Making automatic the listing of facilities that gave rise to criminal convictions under section 113(c)(1) CAA and section 309(c) CWA as required by those statutes.

—Adding as a basis for discretionary listing facilities with continuing or recurring violations which have been the subject of enforcement action under sections 113(d), 120, 167, 204, 205, 211, and 303 of the CAA, and

—Stating more explicitly the procedural opportunities which EPA will afford facilities party to listing or removal actions.

Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This is not a major regulation because it will not entail a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions.

Regulatory Flexibility Act

EPA has determined, pursuant to the Regulatory Flexibility Act, that this regulation will not have a significant economic impact on a substantial number of small entities because the decision to "list" any facility is made on a case-by-case basis.

List of Subjects in 40 CFR Part 15

Administrative practice and procedure, Air pollution control, Government contracts, Grant programs—environmental protection, Loan programs—environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 16, 1984.

William D. Ruckleshaus,

Administrator.

Part 15 is revised to read as follows:

PART 15—ADMINISTRATION OF THE CLEAN AIR ACT AND THE CLEAN WATER ACT WITH RESPECT TO CONTRACTS, GRANTS, AND LOANS

Subpart A—Administrative Matters

Sec.
15.1 Policy and Purpose.
15.2 Scope.
15.3 Administrative responsibility.
15.4 Definitions.
15.5 Exemptions.

Subpart B—Procedures for Placing a Facility on the List of Violating Facilities

15.10 Mandatory listing.
15.11 Discretionary listing.
15.12 Notice of filing of recommendation to list and opportunity to have a listing proceeding.
15.13 Listing proceeding.
15.14 Review of the Case Examiner's decision.
15.15 Effective date of discretionary listing.
15.16 Notice of listing.

Subpart C—Procedures for Removing a Facility From the List of Violating Facilities

15.20 Removal of a mandatory listing.
15.21 Removal of a discretionary listing.
15.22 Request for removal from the List of Violating Facilities.
15.23 Request for removal hearing.

Sec.
15.24 Removal hearing.
15.25 Request for review of the decision of the Case Examiner.
15.26 Effective date of removal.
15.27 Notice of removal.

Subpart D—Agency Coordination

15.30 Agency responsibilities.
15.31 Agency regulations.
15.32 Contacting the Assistant Administrator.
15.33 Investigation by the Assistant Administrator prior to awarding a contract, grant, or loan.
15.34 Referral by the Assistant Administrator to the Department of Justice.

Subpart E—Miscellaneous

15.40 Distribution of the List of Violating Facilities.
15.41 Reports.

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; Executive Order 11738 of September 10, 1973 (38 FR 28161).

Subpart A—Administrative Matters

§ 15.1 Policy and purpose.

(a) It is the policy of the Federal Government to improve and enhance environmental quality. This regulation is issued to ensure that each agency in the Executive Branch of the Federal Government empowered to enter into contracts for the procurement of goods, materials, or services or to extend Federal assistance by way of grant, loan, or contract undertakes such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Clean Water Act. (b) This regulation establishes the List of Violating Facilities, procedures for placing a facility on the List of Violating Facilities, removing a facility from the List of Violating Facilities, and procedures for ensuring that agencies in the Executive Branch of the Federal Government undertake their procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Clean Water Act.

§ 15.2 Scope.

(a) This regulation applies to all agencies in the Executive Branch of the Federal Government which award contracts, grants, or loans. This regulation also applies to contractors and subcontractors and to recipients of funds under grants and loans. The debarment or suspension that results from a mandatory or discretionary listing is facility specific and does not apply to other facilities of the same company.

(b) This regulation only applies to contracts, grants, or loans involving the use of facilities located inside the United States.

(c) The rights and remedies of the Government hereunder are not exclusive and do not affect any other rights or remedies provided by law.

§ 15.3 Administrative responsibility.

(a) Except for the power to issue rules and regualtions, the Assistant Administrator for Enforcement and Compliance Monitoring and the General Counsel are delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Administrator of the Environmental Protection Agency under Executive Order 11738.

(b) The Assistant Administrator and the General Counsel are authorized to redelegate the authority conferred by this regulation.

§ 15.4 Definitions.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her designee.

Agency means any department, agency, establishment, or instrumentality in the Executive Branch of the Federal Government, including corporations wholly owned by the Federal Government which award contracts, grants, or loans.

Air Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Air Pollution Control Agency means any agency which is defined in section 302(b) or section 302(c) of the Air Act.

Applicant means any person who has applied but has not yet received a contract, grant, or loan and includes a bidder or proposer for a contract which is not yet awarded.

Assistant Administrator means the Assistant Administrator for Enforcement and Compliance Monitoring, United States Environmental Protection Agency, or his or her successor.

Borrower means any recipient of a loan as defined below.

Case Examiner means and EPA official familiar with pollution control issues who is designated by the Assistant Administrator to conduct a listing or removal proceeding and to determine whether a facility will be placed on the List of Violating Facilities or removed from such list.

Clean air standards means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Air Act, an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act or an approved implementation procedure under section 112(d) of the Air Act.

Clean water standards means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is established pursuant to the Water Act or contained in a permit issued to a discharger by the United States Environmental Protection Agency, or by a State under an approved program, as authorized by section 402 of the Water Act, or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act.

Compliance means compliance with clean air standards or clean water standards. For the purpose of these regulations, compliance also shall mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the United States Environmental Protection Agency, or an air or water pollution control agency, in accordance with the requirements of the Air Act or the Water Act and regulations issued pursuant thereto.

Contract means any contract or other agreement made with an Executive Branch agency for the procurement of goods, materials, or services (including construction), and includes any subcontract made thereunder.

Contractor means any person with whom an Executive Branch agency has entered into, extended, or renewed a contract as defined above, and includes subcontractors or any person holding a subcontract.

Facility means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations owned, leased, or supervised by an applicant, contractor, grantee, or borrower to be used in the performance of a contract, grant, or loan. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility, except where the Assistant Administrator determines that independent facilities are co-located in one geographic area.

General Counsel means the General Counsel of the U.S. Environmental Protection Agency, or his or her designee, and successor.

Governor means the governor or principal executive officer of each State.

Grant means any grant or cooperative agreement awarded by an Executive Branch agency including any subgrant or subcooperative agreement awarded

thereunder. This includes grants-in-aid, except where such assistance is solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*

Grantee means any person with whom an Executive Branch agency has entered into, extended, or renewed a grant, subgrant, or other assistance agreement defined under "grant" above.

List of Violating Facilities means a list of facilities which are ineligible for any agency contract, grant or loan.

Listing Official means an EPA official designated by the Assistant Administrator to maintain the List of Violating Facilities.

Listing proceeding means an informal hearing conducted by the Case Examiner held to determine whether a facility should be placed on the List of Violating Facilities.

Loan means an agreement or other arrangement under which any portion of a business, activity, or program is assisted under a loan issued by an agency and includes any subloan issued under a loan issued by an agency.

Person means any natural person, corporation, partnership, unincorporated association, State or local government, or any agency, instrumentality, or subdivision of such government or any interstate body.

Recommendation to list means a written request which has been signed and sent by a recommending person to the Listing Official asking that EPA place a facility on the List of Violating Facilities.

Recommending person means a Regional Administrator, the Associate Enforcement Counsel for Air or the Associate Enforcement Counsel for Water (or their successors), the Assistant Administrator for Air and Radiation or the Assistant Administrator for Water (or their successors), a Governor, or a member of the public.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territories of the Pacific Islands.

Water Act means the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

Water pollution control agency means any agency which is defined in section 502(1) or section 502(2), 33 U.S.C. 1362 (1), (2), of the Water Act.

§ 15.5 Exemptions.

(a)(1) *Transactions of $100,000 and under.* Except as provided in § 15.5(b) below, contracts, grants, and loans not exceeding $100,000 are exempt from these regulations. This exemption includes contracts for indefinite quantities as long as the purchaser has reason to believe that the amount to be ordered in any year under such an agreement will not exceed $100,000.

(2) *Assistance to abate, control, or prevent environmental pollution.* Except as provided in section 15.5(b) below, a contract, grant, or loan will be exempt from these regulations when the principal purpose of a contract, grant, or loan is to assist a facility or facilities to comply with any Federal, State, or local law, regulation, limitation, guideline, standard, or other requirement relating to the abatement, control or prevention of environmental pollution.

(b) The exemptions in § 15.5(a) do not apply where work under the contract is to be performed at a facility that has been placed on the List of Violating Facilities on the basis of a criminal conviction under section 113(c)(1) of the Air Act or section 309(c) of the Water Act, and the person convicted owns, supervises, or leases the facility.

(c) *Authority of Agency Head to Grant Exemptions*—(1) *Individual exemptions.* Where an Agency head determines that it is in the paramount interest of the United States to enter into, renew, or extend a contract, grant, or loan in connection with any facility that is on the List of Violating Facilities, he or she may exempt the agreement from the provisions of this regulation for a period of one year. The Agency head granting the exemption shall notify the Assistant Administrator of the exemption as soon before or after granting the exemption as may be practicable. The justification for such an exemption, or any renewal thereof, shall fully describe the purpose of the contract, grant, or loan and shall show why the paramount interest of the United States requires the exemption.

(2) *Class exemptions.* Where an agency head determines that it is in the paramount interest of the United States for the agency to enter into, extend, or renew any class of contracts, grants, or loans, he or she may exempt the class of agency contracts, grants, or loans from the provisions of this regulation by rule or regulation after consultation with the Administrator.

Subpart B—Procedures for Placing a Facility on the List of Violating Facilities

§ 15.10 Mandatory listing.

The Listing Official must place a facility on the List of Violating Facilities if the facility which gave rise to the conviction is owned, leased, or supervised by any person who has been convicted of a criminal offense under section 113(c)(1) of the Air Act or section 309(c) of the Water Act. The mandatory listing is automatically effective upon conviction.

§ 15.11 Discretionary listing.

(a) The Listing Official must place a facility on the List of Violating Facilities if there is a final agency action under §§ 51.12(d), 15.14(c), or 15.14(d) which determines that there is a record of continuing or recurring noncompliance with clean air standards or clean water standards at the facility recommended for listing and that:

(1) A federal court has convicted any person under section 113(c)(2) of the Air Act if that person owns, leases, or supervises a facility recommended for listing;

(2) A state or local court has convicted any person of a criminal offense on the basis of noncompliance with clean air standards or clean water standards if that person owns, leases, or supervises a facility recommended for listing;

(3) A federal, state, or local court has issued an injunction, order, judgment, decree, or other form of civil ruling as a result of noncompliance with clean air or clean water standards at a facility recommended for listing;

(4) The facility has violated any administrative order issued under section 113(a), 113(d), 167, and 303 of the Air Act or section 309(a) of the Water Act has been violated, if the violator owns, leases, or supervises a facility recommended for listing;

(5) EPA has issued a Notice of Noncompliance under Section 120 of the CAA as a result of noncompliance at the facility; or

(6) EPA has filed an enforcement action in court under sections 113(b), 167, 204, 205, or 211 of the Air Act or section 309(b) of the Water Act due to noncompliance with clean air standards or clean water standards at the facility recommended for listing.

(b) A recommendation to list from a recommending person initiates the process for discretionary listing. A recommendation to list must contain:

(1) The name, address, and telephone number of the person filing the recommendation;

(2) A description of the facility alleged to be in noncompliance with clean air standards or clean water standards, including the name and address of the facility;

(3) A description of the alleged continuing or recurring noncompliance, including any available data and any other pertinent information supporting the allegation of noncompliance; and

(4) A description of the criminal, civil, or administrative action or conviction under § 15.11 (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) which is pertinent to the facility and the alleged continuing or recurring noncompliance.

(c) The Listing Official shall review each recommendation to list to ensure it complies with all of the requirements under § 15.11(b). If there is a deficiency in a recommendation the Listing Official must return it to the recommending person for correction. If there is no deficiency in the recommendation to list, the Listing Official shall transmit the recommendation to the Assistant Administrator. The Assistant Administrator, in his or her discretion, may

(i) Decline to proceed, or

(ii) Designate a Case Examiner in accordance with § 15.12(a), or

(iii) Decide to list the facility in accordance with § 15.12(d).

(d) A recommending person may withdraw a recommendation to list at any time before the conclusion of the listing proceeding. The recommending person should withdraw the recommendation to list if the conditions which gave rise to the recommendation to list have been corrected or if the facility recommended for listing is on a plan for compliance which has been approved by either the Assistant Administrator or the recommending person and which will ensure that the condition(s) which gave rise to recommendation to list will be corrected.

§ 15.12 Notice of filing of recommendation to list and opportunity to have a listing proceeding.

(a) The Listing Official shall send to the facility named in the recommendation to list written notice that a recommendation that the facility be placed on the List of Violating Facilities has been filed with the Listing Official and has been transmitted to the Assistant Administrator. Within twenty (20) working days of the receipt of the notice, any person who owns, leases, or supervises the facility may request the Assistant Administrator to designate a Case Examiner to hold a listing proceeding to determine the propriety of the proposed listing.

(b) If a listing proceeding is requested, the Listing Official shall schedule a listing proceeding and notify in writing the recommending person and the person requesting the listing proceeding of the date and time of the listing proceeding.

(c) The Listing Official shall respond to any requests from the recommending person and the person requesting the listing proceeding concerning the procedures for discretionary listing.

(d) If there is no timely request for a listing proceeding under § 15.12(b) above, the Listing Official will place the facility named in the recommendation to list on the List of Violating Facilities on the basis of discretionary listing if, upon reviewing the recommendation to list and any other available information, the Assistant Administrator determines that there is a record of continuing or recurring noncompliance with clean air standards or clean water standards at the facility recommended for listing and the requisite criminal, civil, or administrative enforcement action has been taken or criminal conviction has occurred. Such a determination by the Assistant Administrator constitutes final agency action.

§ 15.13 Listing proceeding.

(a) *No listing proceeding for mandatory listing.* Mandatory listing is effective upon conviction and no listing proceeding will be provided when a facility is listed on the basis of mandatory listing. For purposes of updating the List of Violating Facilities, the Associate Enforcement Counsel for Criminal Enforcement shall notify the Listing Official of the conviction as soon as it occurs.

(b) *Listing proceeding for discretionary listing.* (1) A listing proceeding for discretionary listing shall be conducted in an informal manner without formal rules of evidence or procedure. The recommending person and the person requesting the listing proceeding under § 15.12(a) above may be represented by legal counsel, present oral and written evidence relevant to the proposed listing, and, with the approval of the case examiner, may call, ask questions of, and cross-examine witnesses, except to the extent any testimony would prematurely reveal sensitive enforcement information which the government may legally withhold or would unduly extend the proceedings in light of the usefulness of any additional information likely to be produced. The Case Examiner may take official notice of facts, law, and any other information available to him or her. The Case Examiner may also request any party to supplement the record by submitting additional information.

(2) The listing proceeding shall be transcribed, and EPA shall make available a transcribed record of the proceeding to any person, at cost upon request.

(3) To demonstrate an adequate basis for listing a facility, the recommending person must show by a preponderance of the evidence that there is a record of continuing or recurring noncompliance at the facility named in the recommendation to list and that the requisite enforcement action has been taken.

(c) *Case Examiner's decision.* Not later than thirty (30) working days after conclusion of the listing proceeding and any supplementation of the record, the Case Examiner shall issue a written decision on whether or not to list the facility based on the record of the listing proceeding and shall file that decision with the Listing Official.

(d) *Notification of Case Examiner's decision.* The Listing Official shall notify in writing the recommending person and the person who requested the listing proceeding under § 15.12(a) of the Case Examiner's decision and of the opportunity to request the General Counsel to review the Case Examiner's decision under § 15.14.

§ 15.14 Review of the Case Examiner's decision.

(a) Within twenty (20) working days after the Case Examiner's decision, the party adversely affected may file with the Listing Official a written request asking the General Counsel to review the Case Examiner's decision. The request to review the Case Examiner's decision must contain:

(1) A statement of the case and the facts involved in the recommendation to list;

(2) A statement of the issues presented by the recommendation to list; and

(3) A statement showing why the decision of the Case Examiner is not correct based on the record of the listing proceeding considered as a whole.

(b) The party adversely affected may raise on review only those issues raised before the Case Examiner, unless the General Counsel determines that there is good cause to include consideration of any new issues.

(c) If the Listing Official receives a timely request for review of the Case Examiner's decision, the General Counsel shall review the record of the listing proceeding to determine if the decision of the Case Examiner is correct based on the record of the listing proceeding considered as a whole. As soon as practicable after receiving the request for review, the General Counsel shall issue a final decision in writing which is based on this determination and explains the basis for the final decision. The General Counsel's decision shall constitute final agency action. The General Counsel shall file the decision with the Listing Official.

(d) The Case Examiner's decision constitutes a final agency action for purposes of discretionary listing unless a timely request for review of the Case Examiner's decision is filed with the Listing Official in accordance with § 15.14(a).

§ 15.15 Effective date of discretionary listing.

(a) Discretionary listing is effective immediately upon the issuance of a final agency action filed with the Listing Official to place the facility recommended for listing on the List of Violating Facilities, or upon the failure to file a timely written request for a listing proceeding under § 15.12(d).

(b) Discretionary listing remains effective until a removal occurs under § 15.26.

§ 15.16 Notice of listing.

(a) *Mandatory listing.* The Listing Official shall send written notice to the facility which shall state that the facility has been placed on the List of Violating Facilities on the basis of mandatory listing and the effective date of such listing.

(b) *Discretionary listing.* The Listing Offficial shall send written notice to the recommending person and any person who requested a listing proceeding informing them of the effective date of the discretionary listing. The Listing Official shall send written notice to the facility if no listing proceeding was requested.

(c) **Federal Register** *notice.* The Listing Official shall publish the effective date of the placement of the facility on the List of Violating Facilities in the **Federal Register** in accordance with § 15.40.

Subpart C—Procedures for Removing a Facility From the List of Violating Facilities

§ 15.20 Removal of a mandatory listing.

When the Listing Official has placed a facility on the List of Violating Facilities on the basis of mandatory listing under § 15.10, the facility shall remain on the List of Violating Facilities until the Assistant Administrator certifies that the condition giving rise to mandatory listing has been corrected.

§ 15.21 Removal of a discretionary listing.

(a) When the Listing Official has placed a facility on the List of Violating Facilities on the basis of discretionary listing under § 15.11, the Listing Official shall remove the facility from the List of Violating Facilities as provided below:

(1) If the conviction, decree, order, judgment, or other form of civil ruling or finding which formed the basis for discretionary listing under § 15.11(a) has been reversed or otherwise modified to remove the basis for discretionary listing;

(2) If the Assistant Administrator has determined that the condition(s) which gave rise to discretionary listing have been corrected; or

(3) Automatically after one year of a discretionary listing under § 15.11(a)(4), (a)(5), or (a)(6), unless before the expiration of the one-year period a basis for mandatory listing arises under § 15.10 or a basis for discretionary listing arises under § 15.11 (a)(1), (a)(2), or (a)(3).

(b) The Listing Official shall remove a facility from the List of Violating Facilities at the direction of the Assistant Administrator if the facility is on a plan for compliance which has been approved by the Assistant Administrator and which ensure that the condition(s) which gave rise to discretionary listing will be corrected.

§ 15.22 Request for removal from the List of Violating Facilities.

(a) The original recommending person or any person who owns, leases, or supervises a facility that is on the List of Violating Facilities may file with the Listing Official a request to remove the facility from the List. This request must set forth the proposed basis for removal from the List under §§ 15.20 or 15.21.

(b) The Assistant Administrator shall review the request for removal and shall issue a decision as expeditiously as practicable after receiving the request as to whether the facility will be removed from the List of Violating Facilities.

(c) The Listing Official shall send written notice to the person requesting removal informing that person of the Assistant Administrator's decision concerning removal and of the opportunity to request a removal hearing under section 15.23 if the Assistant Administrator denies the request for removal.

§ 15.23 Request for removal hearing.

(a) Within twenty (20) working days after the Assistant Administrator denies a request for removal from the List of Violating Facilities, the facility or the original recommending person may file with the List Official a written request for a removal hearing under § 15.24.

(b) If a timely request for a removal hearing under § 15.23(a) is not filed, any person who may make a request for removal under § 15.22(a) may file a new request for removal under § 15.22(a) if a new basis for removal under §§ 15.20 or 15.21 arises at a later date.

§ 15.24 Removal hearing.

(a) A removal hearing shall be conducted by a Case Examiner designated by the Assistant Administrator. The person requesting the removal hearing must demonstrate at the removal hearing by a preponderance of the evidence that a basis for removal is present.

(1) The person requesting the removal hearing and the Agency may be represented by legal counsel, present oral and written evidence relevant to the proposed removal, and, with the approval of the Case Examiner, call, ask questions of, and confront witnesses to the extent it is relevant to the issue of removal and to the extent that any additional information produced will be useful in light of the additional time such procedures will take.

(2) The removal hearing shall be transcribed and a transcribed record of the proceeding shall be made available to the owner, operator, or lessee of the facility or to any person represented at the hearing at cost upon request.

(b) The Federal, State, or local authority responsible for the enforcement of clean air standards or clean water standards with respect to the listed facility may participate in the removal hearing.

(c) The Case Examiner's decision concerning removal shall be based solely upon the record in the removal hearing.

(d) The Listing Official shall send written notice to the person requesting the removal hearing and the Federal, State, or local authority responsible for the enforcement of clean air standards or clean water standards with respect to the listed facility, informing them of the decision of the Case Examiner and of the opportunity to request the Administrator to review the Case Examiner's decision under § 15.25.

§ 15.25 Request for review of the decision of the Case Examiner.

(a) Within twenty (20) working days of the date of the Case Examiner's decision under § 15.24, the party adversely affected by the Case Examiner's decision may file with the Listing Official a request for the Administrator to review the Case Examiner's decision. The request shall contain:

(1) A statement of the issues presented by the request for removal;

(2) A statement of the case and the facts involved in the request for removal; and

(3) A statement showing why the decision of the Case Examiner is not

correct based upon the record of the removal hearing considered as a whole.

(b) Upon receiving a timely request for review of the removal hearing, the Administrator shall review the record of the removal hearing to determine if the decision of the Case Examiner is correct based upon the record of the removal hearing considered as a whole. As soon as practicable after receiving the request for review, the Administrator shall issue a final decision in writing which shall be based on this determination and shall set forth the reasons for the decision.

The decision shall constitute final agency action.

(c) If a timely request asking the Administrator to review the Case Examiner's decision under § 15.25(a) is not filed, the Case Examiner's decision constitutes final agency action at the expiration of such period.

(d) If the request for removal is denied upon review, any person who may file a request for removal under § 15.22(a) may file a new request for removal under § 15.22(a) if a new basis for removal under §§ 15.20 or 15.21 arises at a later date. The new request shall set forth the new basis claimed for removal.

§ 15.26 Effective date of removal.

(a) *Mandatory listing.* Removal of a facility placed on the List of Violating Facilities on the basis of mandatory listing shall be effective immediately upon the certification by the Assistant Administrator that the condition(s) which gave rise to the mandatory listing under § 15.10 has been corrected, or upon the issuance of a final agency action filed with the Listing Official to remove the listed facility from the List of Violating Facilities under §§ 15.24 or 15.25.

(b) *Discretionary listing.* Removal of a facility placed on the List of Violating Facilities on the basis of discretionary listing shall be effective immediately upon the expiration of one year under § 15.21(a)(3) or upon the Assistant Administrator's decision to remove the listed facility based upon a timely written request for removal under § 15.22(a), or upon the issuance of a final agency action filed with the Listing Official to remove the listed facility from the List of Violating Facilities under §§ 15.24 or 15.25.

(c) **Federal Register** notice. The Listing Official shall publish the effective date of the removal of the facility from the List of Violating Facilities in the **Federal Register** in accordance with § 15.40.

§ 15.27 Notice of removal.

The Listing Official shall send written notice to the recommending person and any person who made a timely written request for removal under § 15.22(a) informing them of the effective date of the removal of the facility from the List of Violating Facilities. The Listing Official shall publish the effective date of the removal in the **Federal Register** in accordance with § 15.40.

Subpart D—Agency Coordination

§ 15.30 Agency responsibilities.

Each agency shall take appropriate steps to ensure that all officers and employees whose duties include ensuring that all agency contracts, grants, and loans are in compliance with applicable requirements are familiar with the requirements set forth in Executive Order 11738, this regulation, 48 FR 42102 (Sept. 19, 1983), and 49 FR 8834 (Mar. 8, 1984).

§ 15.31 Agency regulations.

(a) Any agency responsible for promulgating contract, grant, and loan regulations, shall ensure that its regulations require every non-exempt agency contract, grant, and loan and every subagreement issued thereunder to include the following provisions:

(1) A promise by the contractor, grantee, or borrower that he or she will not use any facility on the List of Violating Facilities in the performance of any nonexempt contract, grant, or loan.

(2) A promise by the contractor, grantee, or borrower that he or she will notify the awarding agency if a facility he or she intends to use in the performance of the contract, grant, or loan is on the List of Violating Facilities or has been recommended to be placed on the List of Violating Facilities.

(3) A promise by the contractor, grantee, or borrower that in the performance of the contract, grant, or loan, he or she will comply with all requirements of the Air Act and the Water Act, including the requirements of section 114 of the Air Act and section 308 of the Water Act, and all applicable clean air standards and clean water standards.

§ 15.32 Contacting the Assistant Administrator.

(a) Any agency employee whose duties include ensuring that all agency contracts, grants, and loans are in compliance with applicable requirements, shall promptly report to his or her agency head, or the designee of the agency head, any condition which may involve noncompliance with clean air standards or clean water standards at any facility that is being used, or will be used in an agency contract, grant, or loan. The report shall include at a minimum the following information:

(1) The name, telephone number, and agency of the employee discovering the condition.

(2) The name of the facility at which the condition exists.

(3) A description of the condition.

(4) The contract, grant, or loan the agency has issued or may issue, extend, or renew to the facility at which the condition exists.

(b) The agency head, or his or her designee, shall transmit any reports made under § 15.32(a) to the Assistant Administrator as soon as practicable, after he or she receives the report. In response to the report, the Assistant Administrator shall take any action that is consistent with the policy and purpose of this regulation.

§ 15.33 Investigation by the Assistant Administrator prior to awarding a contract, grant, or loan.

(a) If the Assistant Administrator is notified under § 15.32(b) that a condition which may involve noncompliance with clean air standards or clean water standards exists at a facility that is or may be used in the performance of any nonexempt agency contract, grant, or loan, the Assistant Administrator may, after consultation with the awarding agency involved, request that the award, extension, or renewal of the nonexempt contract, grant, or loan be withheld for fifteen (15) working days to determine if a basis exists for placing the facility on the List of Violating Facilities under §§ 15.10 and 15.11.

(b) If the Assistant Administrator requests that an award, extension, or renewal of a contract, grant, or loan be withheld under § 15.33(a), the awarding agency shall comply with the Assistant Administrator's request unless it determines that the delay is substantially contrary to the best interest of the government. The awarding agency shall promptly notify the Assistant Administrator of any such determination.

(c) At the end of the fifteen (15) day working period, the Assistant Administrator shall notify the awarding agency and the applicant of the results of any investigation undertaken under § 15.33(a).

§ 15.34 Referral by the Assistant Administrator to the Department of Justice.

The Assistant Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever the Assistant Administrator becomes aware of a breach of any provision

required to be included in a contract, grant, or loan under § 15.31.

Subpart E—Miscellaneous

§ 15.40 Distribution of the List of Violating Facilities.

The List of Violating Facilities shall be transmitted to the General Services Administration and published in the **Federal Register** on or about February 1 and August 1 of each year, and updated in the **Federal Register** as necessary to reflect changes to the list as they occur. The list shall contain the following information:

(a) The name of each facility on the List;

(b) The location of the facility;

(c) The basis for the listing;

(d) The effective date of the listing; and

(e) Any removal of any facility from the List.

§ 15.41 Reports.

(a) *Agency reports.* Each Agency head will report each exemption granted under § 15.5(b) to the Administrator. Reports should be made by November 1 of each year and should indicate all exemptions granted during the previous fiscal year.

(b) *Reports by the Administrator.* (1) The Administrator shall report annually to the President on the measures he or she has taken toward implementing the purpose and intent of section 306 of the Air Act, section 508 of the Water Act, Executive Order 11738, and this regulation, including but not limited to the progress and problems associated with such implementation.

(2) The Administrator shall notify the President and the Congress annually of all exemptions granted or in effect under § 15.5 during the preceding year.

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federal register

Tuesday
July 31, 1984

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 15, 16, 17, and 25

Requirements for Approval of Explosives and Sheathed Explosive Units, Water Stemming Bags, Electric Detonators and Blasting Units; Extension of Comment Period; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 15, 16, 17, and 25

Requirements for Approval of Explosives and Sheathed Explosive Units, Water Stemming Bags, Electric Detonators and Blasting Units; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: In response to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's preproposal drafts of approval requirements for explosives and sheathed explosive units, water stemming bags, electric detonators and blasting units.

DATE: Written comments must be received on or before September 24, 1984.

ADDRESS: All comments should be sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On June 5, 1984, MSHA announced the availability of preproposal draft regulations that would establish new specifications and procedures for approving explosives and sheathed explosive units, water stemming bags, electric detonators and blasting units for use in underground mines (49 FR 23281). A public conference to discuss the preproposal drafts was held on July 11, 1984, in Pittsburgh, Pennsylvania, and the period for written comments on the drafts was set to close on August 10, 1984.

Requests for extension of the comment period were specifically made for the preproposal draft regulations on explosives and electric detonators, Parts 15 and 17. However, because the four preproposal drafts, Parts 15, 16, 17 and 25, were made available together and all relate to the use of explosives, the comment period for each of these preproposal drafts is extended until September 24, 1984.

In addition to requesting an extension of the comment period, representatives of the manufacturers of explosives and electric detonators requested an opportunity to meet with MSHA to clarify technical matters raised by the preproposal drafts. This issue was raised during the July 11 public conference. Particularly, these manufacturers indicated the need to meet with the Agency in a non-public setting because their questions involved proprietary information relating to their unique manufacturing processes.

MSHA believes that the free exchange of information at this early stage in the rulemaking process is vital to achieving appropriate and technically sound regulations for the approval of explosives and detonators. The Agency also recognizes the manufacturers' need to maintain the confidentiality of information that directly relates to their unique manufacturing process. MSHA, therefore, will be meeting separately with these manufacturers during the comment period. In addition, the Agency will consider requests to meet with other interested persons during the comment period to the extent similar issues of confidentiality are involved. All requests for a meeting must be made in writing to the address provided for comments.

Consistent with the principles of rulemaking and in order to preserve the integrity of this process, all information gathered during these meetings that forms the basis for substantive changes in the preproposal drafts will be included in the rulemaking record and fully discussed in the preamble to the proposed regulations. MSHA believes that this can be done in a general fashion, without revealing proprietary information.

Dated: July 25, 1984.

Thomas J. Shepich,

Deputy Assistant Secretary for Mine Safety and Health.

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federal register

Tuesday
July 31, 1984

Part IV

Department of Energy

10 CFR Part 1047

Defense Programs; Limited Arrest Authority and Use of Force By Protective Force Officers; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

10 CFR Part 1047

Defense Programs; Limited Arrest Authority and Use of Force By Protective Force Officers

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing regulations which formulate its policy concerning the making of arrests and associated use of force by all Federal and contractor employees of the DOE engaged in security duties. Under section 161.k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201.k), certain DOE and DOE contractor protective personnel are authorized to carry firearms and to make arrests without warrant for any offense against the United States committed in their presence or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing the felony. However, their arrest authority is specifically limited by the statute to enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission (NRC) or a contractor of the DOE or NRC or (2) any provision of the Atomic Energy Act that may subject an offender to a fine, imprisonment, or both. The purpose of this proposed policy is to insure that protective force personnel at DOE facilities exercise such arrest authority, including the use of force, to effect an arrest or apprehend a suspect in a manner consistent with both DOE's security objectives and recognized legal standards. DOE protective force personnel are presently performing under an arrest and use of force policy, established by an internal agency directive, that is substantially identical to the policy proposed in the rulemaking.

DATES: Written comments must be received by 4:00 p.m., September 7, 1984.

Hearing dates and times:

Washington, D.C. Hearing: 9:30 a.m.—August 10, 1984
Denver Hearing: 9:30 a.m.—August 14, 1984
San Francisco Hearing: 9:30 a.m.—August 16, 1984
Atlanta Hearing: 9:30 a.m.—August 21, 1984
Pittsburgh Hearing: 9:30 a.m.—August 23, 1984.

Requests to speak at a hearing must be received by 4:00 p.m. of the following dates:

Washington, D.C. Hearing: August 7, 1984
Denver Hearing: August 10, 1984
San Francisco Hearing: August 13, 1984
Atlanta Hearing: August 17, 1984
Pittsburgh Hearing: August 20, 1984.

A list of speakers will be available and speakers selected to participate in the hearing will be notified by 4:00 p.m. on the following dates:

Washington, D.C. Hearing: August 9, 1984
Denver Hearing: August 13, 1984
San Francisco Hearing: August 15, 1984
Atlanta Hearing: August 20, 1984
Pittsburgh Hearing: August 22, 1984.

Fifteen copies of speakers' statements must be received by DOE no later than 4:00 p.m. on the following dates:

Washington, D.C. Hearing: August 9, 1984
Denver Hearing: August 13, 1984
San Francisco Hearing: August 15, 1984
Atlanta Hearing: August 20, 1984
Pittsburgh Hearing: August 22, 1984.

ADDRESSES: Written comments should be submitted to: Martin J. Dowd, Department of Energy, Defense Programs, DP-343, Germantown, Washington, D.C. 20545, (301) 353-4642.

Requests to speak at any of the five hearings and requests for the lists of speakers should be submitted to: Martin J. Dowd, Department of Energy, Defense Programs, DP-343, Germantown, Washington, D.C. 20545, (301) 353-4642.

The hearing locations are:

Washington, D.C. Hearing: Forrestal Building, 1000 Independence Avenue SW, Washington, D.C. 20585, Room GJ-015, Contact: Martin J. Dowd, Defense Programs, DP-343, Office of Safeguards and Security, U.S. Department of Energy, Washington, D.C. 20545, (301) 353-4642

Denver Hearing: Federal Building, 1961 Stout Street, Denver, Colorado 80294, Room 244, Contact: Jerry Bellows, U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, Colorado 80421, (303) 497-2026

San Francisco Hearing: Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102, Room 12136, Contact: Carol Powell, Information Services, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612, (415) 273-6398

Atlanta Hearing: Richard B. Russell Federal Building, 755 Spring Street, Atlanta, Georgia 30307, Storm Auditorium, Contact: J.M. Gaver, External Affairs, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801, (803) 725-2762

Pittsburgh Hearing: Williams S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222, Contact: C.K. Gaddis, Pittsburgh Naval Reactors Office, U.S. Department of Energy, P.O. Box 109, West Mifflin, PA, 15122, (412) 462-7307.

Speakers should submit their statements to the appropriate contact person by the date listed above.

FOR FURTHER INFORMATION CONTACT: Martin J. Dowd, Department of Energy, Defense Programs, DP-343, Germantown, Washington, DC 20545, (301) 353-4642. Jo Ann Williams, Department of Energy, Office of General Counsel, Room 6B-256, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Comment Procedures
IV. Procedural Requirements

I. Background

Congress enacted the Atomic Energy Act in 1954 (42 U.S.C. 2011 *et seq.*), declaring it "to be the policy of the United States that * * * the development, use, and control of atomic energy shall be * * * subject at all times to the paramount objective of making the maximum contribution to the common defense and security," (42 U.S.C. 2011). Congress specifically found that "[t]he development, utilization and control of atomic energy for military and for all other purposes are vital to the common defense and security," and that "[s]ource and special nuclear material, production facilities, and utilization facilities, are affected with the public interest, and regulation * * * of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public," (42 U.S.C. 2012 (a), (e)). Responsibility for such "regulation" of Government-owned nuclear facilities and nuclear weapons is vested in the Secretary of Energy. (42 U.S.C. 7151). In this capacity, the Secretary is empowered "to effectuate the policies set forth above by providing for * * * a program for Government control of the possession, use, and production of atomic energy and special nuclear materials * * * to make the maximum contribution to the common defense and security." (42 U.S.C. 2013(c)).

The nation-wide nuclear program administered by the Secretary of Energy principally is conducted at nuclear facilities owned by the Federal government. Most of these facilities,

however, are operated under contracts with private industry. Because of the nature of the material, equipment, data and personnel found at these facilities, each facility must be afforded a high degree of physical security. Such security is provided, in part, by the uninterrupted presence of armed DOE or DOE contractor protective force officers.

The increasing threat of terrorist activities at sites where nuclear materials and weapons are located presents a real and present danger in these times. DOE's armed security force is the first line of human defense against terrorist or other assault on this nation's nuclear facilities, weapons, materials and technologies.

II. Discussion

Based on DOE's assessment of its security capabilities and on the increasing threat of terrorist, paramilitary, criminal and other threatening activity, DOE has determined that formalization of a uniform policy on arrest and associated use of force by protective personnel armed pursuant to section 161.k. of the Atomic Energy Act will enhance the common defense and security.

Section 161.k. of the Atomic Energy Act of 1954 authorizes DOE and DOE contractor security personnel to make arrests without warrent for (1) laws regarding the property of the United States in the custody of the DOE, NRC, or a contractor of the DOE or NRC or (2) any provision of the Atomic Energy Act that may subject an offender to a fine, imprisonment or both. This Notice of Proposed Rulemaking specifies those provisions of the Atomic Energy Act and Title 18, United States Code, that DOE believes should be enforced by its protective personnel.

Eight offenses from Chapter 18 Enforcement of the Atomic Energy Act are enumerated. These five felonies and three misdemeanors pertain to the unlawful dissemination of Restricted Data, classified atomic energy information, and to criminal acts against facilities, equipment, materials and other property of the DOE. Twenty offenses from Title 18, United States Code, have been identified. These fifteen felonies and five misdemeanors proscribe criminal acts, such as theft, arson, and sabotage, against Federal property, including DOE property.

The Notice of Proposed Rulemaking also sets out procedures that protective force personnel are to follow in making arrests. A protective force officer is authorized to make an arrest for any of the felonies enumerated in the proposed rules if the offense is committed in his or her presence or if he or she has reasonable grounds to believe that the individual to be arrested has committed or is committing the felony. In the case of a misdemeanor, the officer may only make an arrest if the offense is committed in his or her presence. The proposed rules also provide guidance on techniques including the officer's announcement of his authority; questioning of arrested persons; and searches and seizure of evidence.

DOE is concerned that its protective personnel only use that degree of force that is necessary and justified in making an arrest, preventing the escape of an offender, or apprehending an offender. The proposed rules establish those circumstance under which the use of physical force is justified and restrictions applicable to its use.

A protective force officer is authorized to use deadly force under conditions of extreme necessity as a last resort only under the following five circumstances:

(1) To protect himself or herself from imminent danger of death or serious bodily harm; (2) to prevent serious offenses against persons; (3) to prevent the theft, sabotage, or unauthorized control of a nuclear weapon or nuclear explosive device; (4) to prevent the theft or sabotage of a significant quantity of special nuclear material or any other inherently dangerous property; or (5) to apprehend or prevent the escape of a person who has committed an offense specified in (2) through (4); or who is escaping by use of a weapon or explosive or who otherwise indicates that he or she is about to endanger human life, or to inflict serious bodily injury to another unless apprehended without delay.

The proposed rules also set forth DOE's policy on legal defense of Federal and contractor employees who make arrests or use force in the performance of thier security duties. The Department of Justice will be requested to defend Federal employees if a claim or legal action is brought against such officers as a result of their conduct when performing arrest duties within the scope of their employment in a reasonable and justificable manner. The Government will pay for any financial liability found against a Federal protective force officer if that person was performing duties within the scope of employment in a reasonable and justifiable manner as determined by DOE. It is Government policy to defend or have an employing contractor defend any contractor protective force officer if a claim or legal action is brought against the officer as a result of that officer's conduct when performing arrest duties within the scope of employment in a reasonable and justifialbe manner. The Government will pay any financial liability found against any contractor employee if, in the judgment of DOE, that officer was performing arrest duties within the scope of employment in a reasonable and justifiable manner.

III. Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this Notice.

Comments should be identified on the outside of the envelope and on the documents themselves, with the designation, "Arrest Authority", Docket No. DP–2. Fifteen copies should be submitted.

All comments received on or before September 7, 1984 and all other relevant information, will be considered by DOE before taking further action on this Notice of Proposed Rulemaking.

All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy as well as fifteen copies from which the information claimed to be confidential has been deleted. DOE shall make the final determination regarding any such claim of confidentiality. This procedure is set forth in 10 CFR 1004.11 (44 FR 1980, Jan. 8, 1979).

DOE will hold several public hearings on these proposed rules. DOE has chosen the following locations because DOE believes it will afford an opportunity to the greatest number of affected persons to participate in the hearing process. The hearing locations, dates, and times are listed in the **ADDRESSES** and **DATES** section of this Notice.

Any person who has an interest in the proposed regulations, or who is a representative of a group or class of persons which has an interest in them may make a written request for an opportunity to make an oral presentation. Such a request to speak at a hearing should be addressed to the appropriate person listed in the **ADDRESSES** section of this Notice, and must be received by 4:00 p.m., local time, on the date listed in the **DATES** section of this Notice. A request may also be

hand delivered between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where the person may be reached. Each person selected to be heard at a public hearing will be notified by the date listed in the **DATES** section of this Notice. Those persons selected to be heard should submit fifteen copies of their statement to the hearing location the last working day preceding the hearing. If a person cannot provide fifteen copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak.

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. They will not be judicial or evidentiary-type hearings. Questions may be asked to speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 a.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing.

IV. Procedural Requirements

A. Review Under Executive Order 12291

This Notice of Proposed Rulemaking was reviewed under Executive Order 12291 (46 FR 12193, Feb. 27, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, these proposed rules were submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rules, unless it determines that the proposed rules will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular proposed rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. The rules proposed in this Notice deal with the arrest authority of DOE protective personnel. The proposed rules' economic impact on small businesses is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities.

C. Environmental Review

DOE has determined that the proposed regulations are not a major Federal action with significant environmental impact, and therefore do not require preparation of an environmental assessment or environment impact statement under the National Environment Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Lists of Subjects in 10 CFR Part 1047

Security Measures, Government contracts.

Authority: Atomic Energy Act, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

In consideration of the foregoing, DOE proposes to add a new Part to Chapter X, Title 10 of the Code of Federal Regulations.

Issued in Washington, D.C. this 24th of July, 1984.

Robert L. Morgan,

Acting Assistant Secretary for Defense Programs.

Part 1047 is proposed to be added to 10 CFR Chapter X to read as follows:

PART 1047—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICES

General Provisions

Sec.

1047.1 Purpose.
1047.2 Scope.
1047.3 Definitions.
1047.4 Arrest Authority.
1047.5 Exercise of Arrest Authority.
1047.6 Use of Physical Force When Making An Arrest.
1047.7 Use of Deadly Force.
1047.8 Legal Defense of Protective Force Officers.
1047.9 Certification.

Appendix A of Part 1047—DOE Protective Force Officer Certification

Authority: Sec. 2201, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); Sec. 7151, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

§ 1047.1 Purpose.

General Provisions

The purpose of this part is to set forth Department of Energy hereinafter "DOE", policy and procedures on the exercise of arrest authority and use of force by protective force personnel.

§ 1047.2 Scope.

This part applies to DOE and DOE contractor protective force personnel armed pursuant to section 161.k. of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) to protect nuclear weapons, special nuclear material, classified matter, and nuclear facilities.

§ 1047.3 Definitions.

(a) "Act" means section 161.k. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201.k.).

(b) "Arrest" means any act, including taking, seizing or detaining a person, that indicates an intention to take a person into custody and that subjects

the person to the control of the person making the arrest.

(c) "Citizen's Arrest" means that type of arrest which can be made by citizens in general and which is defined in the statutory and case law of each state.

(d) "Contractor" means contractors and subcontractors at all tiers.

(e) "Deadly force" means that force which a reasonable and prudent person would consider likely to cause death or serious bodily harm.

(f) "LLEA" means the local law enforcement agencies: city, county, and state.

(g) "Offender" means the person to be arrested.

(h) "Protective Force Officer" means any person authorized by DOE to carry firearms under section 161.k. of the Atomic Energy Act of 1954 for security purposes.

(i) "Reasonable Force" means the minimum amount of force that is necessary to be employed against a person in any given situation depending on the specific conditions encountered.

(j) "Special Nuclear Material" (SNM) means (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which DOE, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

§ 1047.4 Arrest Authority.

(a) Under the Act, the authority of a DOE protective force officer to arrest without warrant is limited to and should be exercised only in the enforcement of:

(1) The following laws regarding property of the United States which is in the custody of the DOE or its contractors:

(i) *Felonies:*

(A) Arson—18 U.S.C. 81—(only applicable to "special maritime and territorial jurisdiction of United States" as defined by 18 U.S.C. 7).

(B) Buildings or property within special maritime and territorial jurisdiction—18 U.S.C. 1363—(only applicable to "special maritime and territorial jurisdiction of United States" as defined by 18 U.S.C. 7).

(C) Civil disorder—18 U.S.C. 231.

(D) Communication lines, stations or systems—18 U.S.C. 1362.

(E) Concealment, removal or mutilation generally—18 U.S.C. 2071.

(F) Conspiracy—18 U.S.C. 371—(violation of this section is a felony if the offense which is the object of the conspiracy is a felony).

(G) Destruction of motor vehicles or motor vehicle facilities—18 U.S.C. 33.

(H) Explosives—18 U.S.C. 844(f).

(I) Government property or contracts—18 U.S.C. 1361—(violation of section is a felony if property damage exceeds $100).

(J) Mail, money or other property of the United States—18 U.S.C. 2114.

(K) Military, naval or official passes—18 U.S.C. 499—(pertains to forging or altering official passes).

(L) Personal property of the United States—18 U.S.C. 2112.

(M) Public money, property, or records—18 U.S.C. 641—(violation of section is a felony if the property value exceeds $100).

(N) Sabotage—18 U.S.C. 2151, 2153–2156.

(O) Violation under Physical Security Convention—18 U.S.C. 831.

(ii) *Misdemeanors:*

(A) Conspiracy—18 U.S.C. 371—(violation of section is a misdemeanor if the offense which is the object of the conspiracy is a misdemeanor).

(B) Explosives—18 U.S.C. 844(g).

(C) Government property or contracts—18 U.S.C. 1361—(violation of section is a misdemeanor if the property damage does not exceed $100).

(D) Official badges, identification cards, other insignia—18 U.S.C. 701—(pertains to the manufacture, sale, and possession of official insignia).

(E) Public money, property or records—18 U.S.C. 641—(violation of section is a misdemeanor if the property valua does not exceed $100).

(2) The following criminal provisions of the Atomic Energy Act:

(i) *Felonies:*

(A) Section 222. Violation of Specific Sections—42 U.S.C. 2272.

(B) Section 223. Violation of Sections Generally. 42 U.S.C. 2273.

(C) Section 224. Communication of Restricted Data—42 U.S.C. 2274.

(D) Section 225. Receipt of Restricted Data—42 U.S.C. 2275.

(E) Section 226. Tampering with Restricted Data—42 U.S.C. 2276.

(ii) *Misdemeanors:*

(A) Section 227. Disclosure of Restricted Data—42 U.S.C. 2277.

(B) Section 229. Trespass Upon Commission (DOE) Installations—42 U.S.C. 2278.

(C) Section 230. Photographing, etc., of Commission (DOE) Installations—42 U.S.C. 2278b.

(b) *Felony Arrests.* A protective force officer is authorized to make an arrest for any felony listed in paragraph (a)(1)(i) or (a)(2)(i) of this section if the offense is committed *in the presence* of the protective force officer or if he or she has *reasonable grounds* to believe that the individual to be arrested has committed or is committing the felony.

(1) "In the presence of" means that the criminal act must have taken place in the physical presence of (under the observation of) the protective force officer. Knowledge of the existence of a criminal violation obtained in any other way (e.g., information from other persons) is not sufficient to permit an arrest under this part of the Act.

(2) "Reasonable grounds" means that, at the moment of arrest, the facts and circumstances within the knowledge of the protective force officer, and of which the protective force officer had reasonably trustworthy information, were sufficient to cause a prudent person to believe that the suspect has committed or was committing the offense.

(c) *Misdemeanor Arrest.* A protective force officer is authorized to make an arrest for any misdemeanor listed in paragraph (a)(1)(ii) or (a)(2)(ii) of this section if the offense is committed in the presence of the protective force officer.

(d) *Other Authority.* The Act does not provide authority to arrest for violations of Federal criminal statutes other than those listed in paragraph (a) of this section or for violations of State criminal statutes. Therefore, arrests for violations of such Federal criminal laws or State laws shall be made by other Federal peace officers (i.e., U.S. Marshals or Federal Bureau of Investigation (FBI) Agents) or by local law enforcement agency (LLEA) officers, respectively, unless:

(1) The protective force officer can make a citizen's arrest for the criminal offense under the law of the State.

(2) The protective force officer is an authorized State police officer or otherwise deputized by the particular State to make arrests for State criminal offenses.

(e) In those locations which are within the "special maritime and territorial jurisdiction of the United States," as defined in 18 U.S.C. 7, the Assimilative Crimes Act (18 U.S.C. 13) adopts the law of the State for any crime under State law not specifically prohibited by Federal statute. The local Office of Chief Counsel shall provide guidance in this matter.

§ 1047.5 Exercise of Arrest Authority.

(a) In making an arrest, the protective force officer should announce his or her authority (e.g., "Security Police"), the offense committed, and take the person into custody. If, in light of the situation, announcing his or her arresting authority and the offense committed would be futile or require a dangerous delay, the

protective force officer may dispense with this requirement.

(b) As a precautionary measure, all persons arrested who are suspected of carrying weapons or other dangerous articles shall be frisked as soon as they are brought under control.

(c) Immediately after the arrest is effected, the arrested person shall be advised of his or her constitutional right against self-incrimination. If, in light of the situation, advising the arrested person of his rights would pose a dangerous delay in containing an incident, then this requirement may be postponed until the immediate danger has passed.

(d) Custody of the person arrested should be transferred to other Federal law enforcement personnel (i.e., U.S. Marshals or FBI) or LLEA personnel, as appropriate, as soon as practicable. The arrested person should not be questioned or required to sign written statements unless:

(1) Failure to obtain information immediately increases the danger to human life (e.g., questioning to locate a bomb).

(2) Questioning is authorized by the U.S. Attorney's Office or Federal agency or LLEA officers responsible for investigating the crime.

(e) Searches for and the seizure of evidence from the arrested person(s) and the immediate area of the arrest may be done without a warrant if incident to a lawful arrest. The search incident to the arrest must be made at the same time and the same place as the arrest. Guidance on the proper conduct and limitations in scope of search and seizures of evidence shall be obtained from the local Office of Chief Counsel.

§ 1047.6 Use of Physical Force When Making An Arrest.

(a) When a protective force officer has the right to make an arrest as discussed above, the protective force officer may use only that physical force which is reasonable and necessary to apprehend and arrest the offender, to prevent the escape of the offender, or to defend himself or herself or a third person from what the protective force officer believes to be the use or threat of imminent use of physical force by the offender. It should be noted that verbal abuse alone by the offender cannot be the basis under any circumstances for use of physical force by a protective force officer.

(b) Protective force officers shall consult the local Office of Chief Counsel for additional, local guidance on use of physical force in making arrests.

§ 1047.7 Use of Deadly Force.

(a) Deadly force is that force which a person uses with the purpose of causing, or which he or she knows or should know, would create a substantial risk of causing, death or serious bodily harm. Its use is justified only under conditions of extreme necessity as a last resort, when all lesser means have failed or cannot reasonably be employed, and only under one or more of the following circumstances:

(1) *Self-defense.* To protect the protective force officer from imminent danger of death or serious bodily harm.

(2) *Serious offenses against persons.* To prevent the commission of a serious offense involving violence and threatening death or serious bodily harm (e.g., arson).

(3) *Nuclear weapons or nuclear explosive devices.* To prevent the theft, sabotage, or unauthorized control of a nuclear weapon or nuclear explosive device.

(4) *Special nuclear material or other inherently dangerous property.* To prevent the theft of or sabotage of a significant quantity of special nuclear material (SNM of a category, type and amount including or exceeding Category II), or any other inherently dangerous property (i.e., property which, in the hands of an unauthorized individual, presents a substantial, potential danger to human life).

(5) *Apprehension.* To apprehend or prevent the escape of a person reasonably believed to: (i) Have committed an offense of the nature specified in paragraphs (a)(1) through (a)(4) of this section; or (ii) by escaping by use of a weapon or explosive or who otherwise indicates that he or she is about to endanger human life, or to inflict serious bodily injury to another unless apprehended without delay.

(b) *Additional Considerations Involving Firearms.* If in any of the circumstances set forth in paragraph (a) of this section, it becomes necessary to use a firearm, the following precautions shall be observed, provided it is possible to do so consistent with the prevention of death or serious bodily harm:

(1) An order to halt shall be given before a shot is fired. Warning shots shall not be fired.

(2) Shots shall not be fired if they are likely to endanger the safety of innocent bystanders.

(3) Shots shall be aimed to disable. However, if circumstances render it difficult to direct fire with sufficient precision to assure that the person will be disabled rather than killed, such circumstances will not preclude the use of a firearm, provided such use is otherwise authorized by this Order.

(4) If a protective force officer who used deadly force is prosecuted, he or she shall be called upon to establish the reasonableness of his or her action. To do this, it will be necessary for him or her to articulate specific facts on which the action was based. Intuitive feelings, general impressions, etc., will not suffice. In deciding whether there are reasonable grounds for any of the instances listed in paragraph (a) of this section, the protective force person should consider the following factors:

(i) The nature of the location where the deadly force is used. This includes the areas where the offender is found and where the offender reasonably may have been. Is it an alarmed nuclear weapons area or an area where SNM is present in Category II or greater quantities and in a form that could be carried away by an individual?

(ii) Reports received from other protective force officers and from other employees which are substantially relied upon before the deadly force was employed.

(iii) The conduct of the offender. Is the offender trying to take hostages as shields? Has the offender been observed carrying a weapon? Is the offender engaged in acts, such as placing an explosive charge, likely to lead to significant damage or injury?

(iv) Events observed. Are alarms sounding? Are there fires? Have explosions been heard?

(v) Is the offender suspected to have SNM in his or her possession?

(vi) Is the offender demonstrating an intent to cause death or inflict great bodily harm? Does the offender appear to have the opportunity to cause death or inflict great bodily harm? Does the offender have the capability to cause death or inflict great bodily harm?

§ 1047.8 Legal Defense of Protective Force Officers.

(a) *Federal Employees.* (1) The Department of Justice will be requested to defend protective force officers who are Federal employees if a claim or legal action is brought against such officers as a result of their conduct when performing arrest duties within the scope of their employment in a reasonable and justifiable manner.

(2) The Government will pay for any financial liability found against any Federal protective force officer if that person was performing duties within the scope of employment in a reasonable and justifiable manner as determined by DOE.

(b) *Contractor or Subcontractor Employees.* (1) It is Government policy to defend, or have an employing contractor defend, any contractor protective force officer if a claim or legal action is brought against the officer as a result of that officer's conduct when performing arrest duties within the scope of employment in a reasonable and justifiable manner.

(2) The contractor shall give the Contracting Officer immediate notice in writing of any action or claim filed against a protective force officer employed by the contractor arising out of the protective force officer's conduct when performing arrest duties.

(3) Except as otherwise directed by the Contracting Officer, in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor or the protective force officer with respect to such action or claim.

(4) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the Contracting Officer's approval, settle any such action or claims: shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the protective force officer's rights and claims (except those against the Government) arising out of any such action or claim against the protective force officer; and if required by the Contracting Officer, shall authorize a representative of the Government to settle or defend any such action or claim and to represent the protective force officer in, or to take charge of, any action.

(i) If the settlement or defense of an action or claim against the protective force officer is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(ii) Where an action against a protective force officer is not covered by a policy of insurance, the contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith and, in such event, the defense of the action shall be at the expense of the Government, provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure through its own fault or negligence.

(5) The Government shall pay any financial liability found against any protective force officer if, in the judgment of DOE, that officer was performing arrest duties within the scope of employment in a reasonable and justifiable manner. DOE's management contractors shall make this policy applicable to any subcontactors who either provide protective force officers or employ protective forces on a contractual basis. DOE's liability under this provision shall be limited to the amount for which appropriated funds are available.

§ 1047.9 Certification.

(a) Appendix A of this part provides the certification which is to be executed by all DOE and contractor personnel authorized to carry firearms and make lawful arrests under section 161.k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201.k.)

Appendix A of Part 1047—DOE Protective Force Officer Certification

This certification acknowledges that the undersigned, ————, in conjunction with official duties as ————, has read and understands the following with respect to the carrying of firearms, and the making of lawful arrests in conjunction with 42 U.S.C. 2201.k.:

1. I am authorized to use firearms if necessary and in accordance with the provisions of 10 CFR Part 1047, Limited Arrest Authority and Use of Force by Protective Force Officers.

2. I will only use firearms in accordance with 10 CFR Part 1047, Limited Arrest Authority and Use of Force by Protective Force Officers.

3. I will be provided legal representation if required in accordance with 10 CFR Part 1047, Limited Arrest Authority and Use of Force by Protective Force Officers.

Signed: ————————————

Witnessed: ————————————

Date: ————————————

[FR Doc. 84-20111 Filed 7-30-84; 8:45 am]

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federal register

Tuesday
July 31, 1984

Part V

Department of Energy

The National Energy Policy Plan: Notice

DEPARTMENT OF ENERGY

The National Energy Policy Plan

AGENCY: Department of Energy.

ACTION: Request for input to National Energy Policy Plan.

SUMMARY: In accordance with Section 801 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy (DOE) is beginning to prepare the fifth biennial National Energy Policy Plan (NEPP–V) to be submitted to the Congress in 1985. To have the benefit of a broad range of public viewpoints in the development of NEPP–V, DOE is soliciting input from all interested parties. Following is the text of the letter the Secretary of Energy has released, requesting public comment.

"The Department of Energy Reorganization Act requires that the President prepare a biennial National Energy Policy Plan (NEPP). As you know, in October 1983, President Reagan submitted the fourth NEPP to the Congress. A copy is enclosed for your review. That policy plan—with a goal of ensuring an adequate supply of energy at reasonable cost—has provided a framework of and focus for the full range of federal energy programs under this Administration.

"The strategies we have pursued under NEPP–IV have been to minimize government intervention in the marketplace and to promote a balanced and mixed energy resource system. As a result, domestic energy production has been increased, imports of insecure supplies of oil have been reduced, energy prices have moderated, and a more reliable, less vulnerable energy system has emerged.

"We are now embarking on preparation of the President's fifth National Energy Policy Plan, to be submitted to the Congress in 1985. This letter is to request your input to that plan.

"You are invited to submit your proposals for strategies, programs, and initiatives that we might consider during preparation of the next National Energy Policy Plan. Your guidance will be critical to continuing the progress we've made in charting the proper energy course for America."

DATE: August 30, 1984.

ADDRESS: Comments should be submitted in writing to Donald Paul Hodel, Secretary of Energy, Department of Energy, Washington, D.C. 20585. Attention: NEPP–V.

FOR FURTHER INFORMATION CONTACT: JoAnn Elferink, Director, Office of Policy Integration, Office of Policy, Planning and Analysis (Telephone 202/252–5680).

SUPPLEMENTARY INFORMATION:

THE NATIONAL ENERGY POLICY PLAN

October 1983

A Report to the Congress Required by Title VIII of the Department of Energy Organization Act (Pub. L. 95–91)

U.S. Department of Energy, Washington, D.C. 20585

Preface

This National Energy Policy Plan is submitted to the Congress as required by section 801 of the Department of Energy Organization Act (Pub. L. 95–91). The technical reports that are referred to in this document will be issued by the Department of Energy after submission of this National Energy Policy Plan.

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I. National Energy Policy: A Summary

The U.S. energy situation today is significantly better than it was in 1981 when the third National Energy Policy Plan was published. Since then,

- Total energy efficiency has increased.
- Domestic energy resources are being developed more effectively.
- Oil prices have declined.
- U.S. dependence on foreign energy sources has diminished.
- The Nation's vulnerability to energy supply disruptions has been reduced markedly, especially through additions to our strategic petroleum reserves and through lower levels of oil imports.

These conditions have resulted from a combination of complex factors, but a principal element in the improved U.S. energy situation has been the implementation of a national energy policy that was first described in the 1981 National Energy Policy Plan. This policy includes a *goal, strategies* for pursuing that goal, and federal *programs* and actions determined by those strategies. It approaches energy as one part of an overall economic policy based on less federal regulation, lower taxes, reduced federal expenditures, and maximum reliance on the private sector to make desisions about the production and consumption of commodities, including energy.

The National Energy Policy Goal

** * * an adequate supply of energy at reasonable costs * * **

The goal of national energy policy is to foster an adequate supply of energy at reasonable costs—a goal on which nearly everyone can agree. However, because judgments about what constitutes "adequate" or "reasonable" vary over time and with circumstances, energy policy realistically cannot attempt to define these terms precisely. Instead, our policy recognizes that "adequate supply" requires a flexibile energy system that avoids undue dependence on any single source of supply, foreign or domestic, and thereby contributes to our national security. The concept of "adequate supply" further implies freedom of choice about the mix and measure of energy needed to meet our industrial, commercial and personal requirements. At the same time, an adequate supply of energy for the United States is not independent of the energy supply circumstances of our allies abroad. The international dimensions of energy security and emergency preparedness are fundamental aspects of the definition of adequate supply for ourselves. Finally, "reasonable costs" suggests economic efficiency and prices that permit residential users to use energy for heating and cooking without being required to alter their lifestyles; and it suggests that commercial and industrial

users will be able to consume energy without reducing their competitiveness in domestic and international markets.

Strategies of National Energy Policy

** * * minimize federal control and involvement * * **

** * * promote a balanced and mixed energy resource system * * **

The strategies adopted by the Administration for achieving our energy policy goal reflect the lessons of history about what has worked to produce the Nation's growth and prosperity. These strategies are:

- To minimize federal control and involvement in energy markets while maintaining public health and safety and environmental quality.
- To promote a balanced and mixed energy resource system.

These strategies will provide economic efficiency. They offer the best possible assurance that individuals and businesses throughout the Nation will have abundant and affordable energy available when, where, and in the forms it is needed.

Economic efficiency is at the heart of the Nation's prosperity. It allows our resources to be allocated according to their optimum value. It ensures maximum possible freedom and opportunity, and it minimizes production and delivery costs. By so doing, it sustains and advances the Nation's social, political, and economic achievements, resulting in a system that is vastly superior to any alternative.

** * * minimize federal control * * **

The record to date of energy markets and the economy, as described in Chapter II of this Plan, demonstrates clearly that economic efficiency does not result from federal intervention and control. Over time, government intervention in the market does not work, primarily because it cannot deal adequately with all the various factors in a system as complex as the Nation's energy system. Further, government intervention creates rigidities that prevent or discourage market forces from adjusting to change and uncertainty and leave no room for technological or economic breakthroughs.

The factors that determine energy supply and demand are changing constantly. As a result, some uncertainty is and will remain an important and unavoidable element in our energy situation. Our national energy policy assumes that no federal actions can eliminate this uncertainty over any extended period of time. In fact, the more the government intervenes in energy markets, the less flexible the system becomes and the less able it is to adjust efficiently—if at all—to changing circumstances. By minimizing federal intervention and thus encouraging flexibility, current policy does not straitjacket the economy to a single approach or to one set of assumptions about our energy future. Instead, it permits individuals and businesses to apply and to react to their respective views of the future and to reap the benefits, as well as bear the risks, of their decisions.

The strategy to promote economic efficiency and to minimize federal intervention does not assume, however, that all forms of government activities should be eliminated. In setting forth our national energy policy, we recognize that protecting the environment, maintaining health and safety standards, and improving energy security are appropriate government responsibilities. Limited control and intervention may be required to reflect nonmonetary costs to society as a whole of energy production and use.

Government actions to control energy prices or to allocate energy supplies in an attempt to protect consumers are certain to fail and are bound to create inequities. If a successful energy policy achieves its goal of fostering an adequate supply of energy at reasonable costs, but does not respond adequately to the income limitations of the poor, society may decide, as ours has, to provide assistance. However, attempts to provide this assistance by restricting prices or allocating energy resources will distort our national energy system while offering inadequate assistance to some and unintended windfalls to others. Therefore, national energy policy reflects our belief that those in need should be assisted directly, *not* as a part of *energy* policy, but rather as part of our national income maintenance policies and programs.

** * * a balanced and mixed energy resource system * * **

Implicit in the goal of an adequate supply of energy at reasonable costs is the strategy of a balanced and mixed energy resource system—a system in which a number of energy resources, including fossil fuels, solar and other renewables, nuclear energy, and conservation combine to meet the Nation's energy requirements. Balance in this context does not imply equality. It means an economically efficient, flexible energy system in which the mix of energy supplies is appropriate to support economic growth and adequate to permit producers and consumers to choose freely among a range of energy options. Balance and diversity avoid undue dependence on any single energy source. Because of our desire for balance and diversity, national energy policy encourages research and development of new and alternative energy technologies that may help ensure adequate supplies long into the future. This encouragement is provided by direct spending, by the deregulation of the prices of competitive fuels, and by a modified tax structure that encourages investment risk-taking and technology innovation, as well as by other means.

Federal Programs and Actions in Energy

Since 1981, federal programs and actions based on the strategies described above have led to substantial progress and a reinvigorated national energy system. The following are some of those programs and actions:

- Price and allocation controls on crude oil and petroleum products have been removed, resulting in increased production of our domestic resources and lower gasoline prices to consumers.
- Federal energy regulations governing other forms of energy have been reviewed, and substantial numbers have been rescinded, withdrawn, or modified, thus eliminating needless and counterproductive federal intervention and its associated costs.
- Congress and the Administration, working cooperatively, obtained passage of the landmark Nuclear Waste Policy Act of 1982, which for the first time provides for a comprehensive national system for safe, permanent disposal of commercial nuclear waste.
- The Department of the Interior has revised substantially the procedures for leasing federal lands and the Outer Continental Shelf to ensure that the Nation's abundant energy resources are made available for exploration and development in accordance with strict environmental rules.
- The amount of oil in the U.S. Strategic Petroleum Reserve has tripled.
- Presidential policy statements have been issued to provide specific guidance for federal action in the areas of nuclear non-proliferation, nuclear energy, and coal exports.
- Federal energy research and development programs have been adjusted to emphasize basic and applied research and development that cannot be carried out by private industry. We have sought to eliminate from federal programs those large-scale demonstration and commercialization activities that are more appropriately designed and

carried out by the private sector. As a result, total federal energy expenditures for research and development have been reduced while federal funding for basic science research has been increased.

- Energy-related environmental regulations have been reviewed to strengthen enforcement standards and to improve public safety. The Clean Water Act requirements and regulations regarding the lead content in gasoline are cases in point.
- U.S. energy consumption has declined and domestic energy production has increased to the point where net oil imports in 1982 fell to 4.3 million barrels per day, or about 13 percent of U.S. energy consumption, compared to the peak level of 8.6 million barrels per day (about 24 percent of energy consumption) in 1977 and 5.4 million barrels per day (about 15 percent of energy consumption) in 1981. These volumes include crude oil imported for the Strategic Petroleum Reserve.

As this National Energy Policy Plan is published, we have emerged from a recession; economic recovery clearly is under way. It is essential that the actions we take on energy and related public issues continue to support these economic improvements. Programs and actions to minimize federal intervention in energy markets and to encourage balance and diversity in our energy resource system will contribute significantly to economic efficiency, continued recovery, and future economic growth. In this connection, three areas of energy programs and actions are particularly important.

Conservation

The first is energy conservation, which ought to be viewed by policymakers, producers, and consumers as a significantly important energy *resource*. That is, energy conservation should be seen as a set of actions that individuals and businesses can take that are cost-effective alternatives to new supply development. Energy conservation actions are often cheaper and easier to undertake, and they often make good business sense. Since the energy price shocks of the 1970s, energy use per dollar of gross national product has declined steadily; and important energy-efficiency improvements have occurred in a host of areas, from automobiles to homes and office buildings and manufacturing processes. These accomplishments, coupled with the stability of energy prices in general and the lowering of world oil prices within the past year, should not obscure the fact that further gains can still be made. Conservation is, and will remain, an important component of the available energy resource mix.

Research and Development

The second area to which increased attention will be paid is basic and applied research and development. Federally sponsored research and development serves two critical purposes. First, it advances the frontiers of our scientific and technical knowledge and provides the fundamental building blocks for technological innovation. Simply stated, we do it because we are better off as human beings and as a Nation for having increased our understanding of nature and matter. Second, federal energy research and development programs support the development of new and alternative energy resources by providing scientific and engineering knowledge for further development outside the federal sector. Federal research and development programs in areas such as solar energy, conservation technologies, enhanced recovery techniques, magnetic fusion, breeder technology, and synthetic fuels are useful precursors to commercialization of the new fuels and technologies needed to foster a balanced and mixed energy resource system over the long term. Once basic and applied research and development have been accomplished, the pace at which new or alternative technologies are commercialized and marketed will be determined not by the federal government, but by entrepreneurs and consumers. The federal government will continue to emphasize the importance of *technology transfer* efforts to ensure that the results of publicly supported research and development are available widely and promptly to the marketplace.

Energy Security

The third critical area of energy programs and actions is that of energy security and international cooperation. U.S. participation in a world market for energy resources, particularly petroleum, demands that a high priority be placed on domestic energy policies and programs in the areas of national and international energy security. Federal programs that focus directly on our preparedness for an energy emergency include the development and continued expansion of the Strategic Petroleum Reserve (SPR), maintenance of the Naval Petroleum Reserve (NPR), emergency response planning, and frequent tests of our ability to respond to a wide range of possible energy emergencies. Domestic energy security is enhanced by a range of other federal energy programs, including oil price deregulation; regulatory reform efforts in natural gas pricing and nuclear licensing; leasing programs for federal lands and the Outer Continental Shelf; enhanced energy trade; and expanded research and development, including cooperative international research efforts.

The United States and its allies coninue to work together to develop effective techniques for improving international energy security. Special emphasis is being placed on diversifying the sources of foreign oil supply and avoiding undue dependence on unreliable sources of energy. Thus, energy trade is likely to be an increasingly important aspect of international energy activity, and the United States ought seek to increase its role as a reliable, cost-competitive energy trade partner. In addition, the United States must remain receptive to new technologies and ideas while continuing to exert its influence to ensure that nuclear non-proliferation, the security of natural gas supplies to Europe, and other issues vital to our national interest are satisfactorily resolved.

Two current legislative initiatives are particularly important to maintaining an energy system that will continue to provide an adequate supply of energy at reasonable costs.

Natural Gas

The first, to which the Administration attaches high energy legislative priority, is the removal of controls on natural gas wellhead prices. Earlier this year, the Administration proposed the Natural Gas Consumer Regulatory Reform Amendments of 1983. This proposal was based on the major principles of (i) ensuring consumer protection for natural gas users, (ii) deregulating natural gas prices at the wellhead by a date certain to capture the benefits of competition in the marketplace, and (iii) adjusting contract provisions entered into in a regulatory environment. Since then, committee action has taken place in both Houses of Congress leading to bills that differ in various ways from the Administration's proposal. The Administration is committed to continued cooperation with Congress to achieve passage of this critically important legislation.

Nuclear Regulation

The second legislative initiative, which exemplifies the principle of protecting public health and safety through appropriate federal regulation, is the Administration's proposed legislation to reform the nuclear

licensing and regulatory process. The proposed reforms will modernize the nuclear regulatory process to reflect the current state of nuclear technology development. Of equal importance, nuclear regulatory reform will enhance public participation in decisionmaking processes, improve nuclear safety, and increase efficiency by reducing wasteful costs and delays attributable to the current regulatory process. As a result, the Administration's proposal will help ensure that decisions about the future use of nuclear energy are consistent with protecting public health and safety, are the result of deliberate choices by local decisionmakers, and are not made by default because of the existing unpredictable and inefficient nuclear regulatory and licensing process.

These and other federal programs and actions in energy are discussed in greater detail in Chapter III of this Plan. Considered as a whole, they manifest our determination to move from an interventionist to a market-based energy policy and a continuation of policy directions set forth in the 1981 National Energy Policy Plan. In the relatively brief, two-year period since that Plan was issued, it is evident that national energy policy has benefited our national economy and consumers by providing stability in energy markets and by relying on the entrepreneurial, competitive, and innovative characteristics of the U.S. economy. Our goal of ensuring an adequate supply of energy at reasonable costs recoghizes that energy is intrinsically interwoven in the economic, industrial, social, and political systems of the United States and the world.

II. Energy Markets and the Economy: The Record to Date

A brief review of the history of energy markets helps establish a perspective for the national energy policy described in this Plan. The strategies that have been adopted by the Administration for pursuing the goal of its national energy policy recognize the importance of the relationship between energy and our overall economy.

Energy plays a dual role in our national economy. Adequate supplies of energy are required to meet the physical requirements for fuel and electricity that allow us to maintain and to increase productivity, communications, mobility, and comfort. Energy prices, on the other hand, affect business and household energy expenditures as well as the overall performance of the economy. Changes in energy prices can affect production costs, wage levels, and, indirectly, interest rates, inflation, and investment decisions. When energy price changes are gradual or anticipated, adjustments by other sectors of the economy occur almost as a matter of course; when they are sudden or unanticipated, their effects may be severely disruptive in the short term. These disruptive effects can be exacerbated by inappropriate government policy reponses such as the government controls on oil markets that were in place during the supply disruptions in 1973–74 and 1979.

Recollections of the "energy crises" of the 1970s may obscure the fact that, although energy is a vital part of an industrial society, it plays a relatively small direct role in total U.S. commercial and economic activity. In 1982, for example, less than 10 percent of U.S. consumer income was spent for gasoline and household fuels. Similarly, energy industries accounted for just over 15 percent of total U.S. industrial investment in new structures and equipment. Energy is a slightly larger component of international trade activity, accounting for 18 percent of total U.S. imports in 1982—compared to 24 percent of total imports in 1977, when oil imports reached 8.6 million barrels per day.

The history of energy in the United States is a record of various fuels and technologies replacing others in response to changes in energy demand, supply, and prices. Such transitions accompanied the Nation's changing technology base, ongoing economic development, and improvements in the quality of life. They occurred without federal controls on energy activity exept for the federal government's regulation of interstate commerce, water development, monopoly powers, and federally owned lands; and while regional impacts varied, transitions in energy markets did not disrupt our national economy.

Before the 1950s, federal involvement in energy consisted largely of hydropower development and taxation policies intended to stimulate domestic oil production. In the mid-1950s, however, federal intervention in energy markets became much more extensive, first with the Supreme Court's 1954 *Phillips Petroleum Co.* v. *Wisconsin* decision, which extended regulation of interestate commerce in natural gas to pricing at the wellhead; and later with a 1959 Executive Order limiting volumes of imported oil—a response to the fact that demand for cheaper imported oil was increasing because domestic oil was more expensive to produce. Natural gas price controls and the oil import quota system continued throughout the 1960s, establishing conditions that would foster difficulties in the oil and natural gas market during the 1970s. Meanwhile, however, the country continued to experience generally falling energy prices, high economic growth, and increasing demand for gas and oil.

As the economy expanded, U.S. demand for oil grew; and the volume of imported oil continued to increase despite the oil import quota system. Relatively cheap imported supplies displaced the development of costlier domestic resoruces. Domestic drilling had begun to decline in the 1950s, and U.S. additions to reserves dwindled from 2 billion barrels per year in the mid-1950s to less than 600 million barrels in 1973. U.S. oil production peaked in 1970; natural gas production peaked in 1973. Oil imports also displaced coal production because utilities and industrial users were turning to oil to meet sulfur emission controls imposed by federal environmental regulations. In the utility sector alone, demand for oil more than tripled between 1967 and 1973. Overall, demand for oil increasingly exceeded domestic production. As a result, oil import quotas became unworkable.

Shortly after the oil import quota system was rescinded in May 1973, the first of two oil supply disruptions occurred. During 1973, 17 percent of U.S. energy supplies—and, more important, 35 percent of crude oil and petroleum products—were imported. The oil embargo that began in October 1973 jolted international and domestic markets. The price of oil from members of the Organization of Petroleum Exporting Counties (OPEC) quadrupled by January 1974. In response to widespread concerns over high prices and inadequate supplies, the Congress and the Administration froze into place existing federal price controls on domestic crude oil and petroleum products in a failed attempt to insulate consumers and the economy from the hardships of price increases. Also established were allocation controls intended to distribute supplies in accordance with perceived requirements.[1]

Oil price and allocation controls had several effects that proved detrimental to the U.S. economy. In the short run, they created the gasoline lines that frustrated the U.S. public. Over the

[1] Phase IV of the Cost of Living Council's wage and price controls with a two-tier price control system for crude oil, was in effect at the time of the October 1973 embargo. The Emergency Petroleum Allocation Act, enacted Novermber 7, 1973 continued Phase IV crude oil price controls and initiated mandatory petroleum allocations and price regulations for most petroleum products.

longer term, they reduced incentives to develop U.S. energy resources by holding domestic crude oil prices below world prices. As a result, total domestic energy production generally stagnated from 1972 through 1978. At the same time, federal policy, which kept prices from rising, employed regulations to limit demand.

Maintaining artificially low oil prices during a period of rapid economic growth led to increased demand for oil. This demand, in turn, could only be met by ever-increasing levels of imports, and these imports, ironically, were subsidized by the federal government by averaging their costs with price-controlled domestic supplies. By 1977, net oil imports increased to almost 8.6 million barrels per day, or 46 percent of total U.S. oil consumption—nearly double net oil imports in 1972. Under free-market conditions, the increased world oil prices would have made domestic petroleum resources more competive and would have stimulated increase exploration and production. For comparison's sake, in 1982, a year after federal price and allocations controls were eliminated, net oil imports were 4.3 million barrels per day—28 percent of total U.S. oil consumption.

The federal government's efforts, begun in 1975, to increase energy supplies by subsidizing development and commercialization of alternative energy technologies led to rapidly increased government expenditures. The situation was a classic example of how government attempts to control one part of the market inevitably create problems in other parts of the market. On the one hand, government controls were holding down the price of conventional fuels, thus ensuring that more expensive alternative energy technologies could not be competitive in the marketplace. On the other hand, rapidly increasing government expenditures to subsidize the demonstration and commercialization of new technologies were intended to accelerate the market penetration of these alternative energy sources.

In early 1979, when the second oil supply disruption occurred following the Iranian revolution, the hazards of government intervention in the market were illustrated graphically again. Despite the fact that neither the 1979 Iranian cutoff nor the 1973 embargo reduced oil imports to the United States by more than 10 percent, regional shortages and long gasoline lines occurred after both events. Federal price and allocation regulations created far greater dislocations than the actual supply losses warranted. The national energy policy initiative that could have been most effective in reducing the effect of the 1979 disruption—that is, the elimination of the price and allocation controls that subsidized higher imports and misdirected gasoline supplies, thereby making gasoline lines inevitable—was not considered to be a viable option. Nor was the Strategic Petroleum Reserve an option: at the beginning of 1979, it contained only 67 million barrels of oil, about a 10-day supply of crude oil imports at the demand level of the time. Moreover, the equipment to remove the oil was not operational

The detrimental effects of federal controls also were felt in natural gas markets. The Supreme Court's 1954 *Phillips* decision effectively had created two markets: a price-controlled interstate system and an intrastate market that was not subject to federal price controls. Because intrastate markets could pay higher prices, much of the Nation's newly found natural gas reserves were dedicated to intrastate sales. The distorting effects of interstate controls became apparent by the mid-1970s, when distributors in the intersate market were unable to purchase sufficient gas at controlled prices to meet consumer demand. Because regulatory practices prevented prices from rising quickly enough to balance supply and demand, some users were denied access to gas supplies. Curtailments peaked in the severe winter of 1976–77 at close to 2 trillion cubic feet of gas and to some it seemed as if the Nation were running out of natural gas. In fact, gas supplies were not running out. Once again, federal price controls had reduced incentives to bring an energy resource into the market. The Natural Gas Policy Act of 1978 made some progress in removing these disincentives by eliminating distinctions between interstate and intrastate markets and by providing production incentives through a complex system that allowed higher prices for gas developed from higher cost resources. But wellhead price controls remained and again have led to a different set of market distortions: increasing gas prices during a period of surplus supplies, disincentives to produce lower cost resources, and severe price disparities among various regions of the country that exceed those expected because of differences in transportation costs.

National energy strategies have been revised significantly in the past two and one-half years. An interventionist approach has been abandoned and replaced with increased reliance on the free market to do what no government agency can do—namely, to promote economic efficiency through innovation, fuel substitution, and development of new technologies.

The flexibility of the market to respond to changed circumstances and their accompanying price signals is illustrated clearly by recent trends in world oil prices. The dramatic oil price increases of the mid- and late-1970s stimulated conservation measures and contributed to the decline in oil demand—a decline further compounded by international recession. At prevailing prices, oil supplies, which were considered "tight" as recently as 1979, actually exceeded demand by mid-1981. The resulting surplus and the elimination of oil market controls combined to help push down the price of oil.

Downward price pressures were first apparent in the spot market. Later, they were confirmed by pricing actions taken by members of the Organization of Petroleum Exporting countries. During 1982, these actions consist primarily of statements relating to production quotas for member countries along with informal discounting from official prices Then, in response to declining world demand—by February 1983 world demand for OPEC oil had fallen to less than 15 million barrels per day, compared to 31 million barrels per day in 1979—OPEC reduced its posted marker crude oil price in March 1983 by 15 percent, from $34 per barrel to $29 per barrel.

The effects of market incentives on U.S. energy production and consumption also have been dramatic. Following the sharp world oil price increases in 1979–80 and the removal of government price and allocation controls on crude oil in 1981, total domestic oil production rose, including the first increase in production from the lower-48 states since 1970. In 1981, drilling and exploration for oil climbed to record levels. The production response from older oil fields was particularly significant, with additions to reserves from older fields more than double the reserve additions from new field discoveries in the 1980–81 period. More recently, lower demand coupled with tax changes and lower prices has caused a decline in the number of rotary rigs drilling exploratory wells, although the number of oil well completions and the total footage of wells drilled in 1982 still exceeded pre-1981 years.

Higher oil prices after 1979 also affected U.S. demand for oil and stimulated increased efficiency in energy use, fuel switching, and other conservation measures. The economy

has proven to be capable of significant improvements in energy efficiency—greater than were foreseen prior to 1979. The rate of energy use per dollar of gross national product fell by 10 percent between 1979 and 1982. U.S. demand for oil declined further as general economic condition turned downward during 1980–82. By the end of 1982, diminished U.S. oil demand result in the lowest level of oil imports since 1972. As economic recovery continues, U.S. demand for energy is expected to increase and thus provide renewed stimulus to domestic energy production, including oil, coal, renewables, and other resources. Some increased demand for oil imports also is expected to accompany economic recovery, however, because of efficiency improvements and fuel switching, imports are not expected to return to their peak levels.

Since 1981, removal of government oil price controls, reduced economic activity, and consumer response to market-determined oil prices have been the major factors determining the Nation's energy situation. The ability of the market to respond to changing economic conditions has been enhanced significantly by a national energy policy that limits the federal role to the functions of establishing the boundaries of national security and public health and safety within which the market operates and of complementing private initiatives through basic research and development and economic management of publicly owned resources.[2]

III. Federal Programs and Actions in Energy

The federal programs and actions described in this chapter of the National Energy Policy Plan are based on the energy strategies adopted by the Administration: to minimize federal control and involvement while maintaining public health and safety and environmental quality, and to promote a balanced and diverse energy resource system that is responsive to both domestic and international market forces and that will protect our national security interests. These strategies and the federal activities to implement them improve economic efficiency. At the same time, they enhance national energy security and allow maximum opportunity for the expression of regional differences in energy resources and requirements.

[2] Additional information is contained in the technical report *Energy Activity and Its Impact Upon the Economy.*

Minimizing Federal Control While Maintaining Public Health and Safety and Environmental Quality

Implementation of a market-based energy policy since 1981 has required significant changes in the federal role in energy. Nowhere are these changes more evident than in the area of federal regulation. Three principal concerns guide federal energy regulation activities: the need to remove price controls where competitive market conditions exist; the need to continue and, as appropriate, to improve protection of the environment and public health and safety; and the need to maintain and ensure a regulatory framework that addresses these concerns in a manner that promotes market efficiency.

Oil and Natural Gas Decontrol

During every year of the past three decades, oil and natural gas have accounted for at least 60 percent—and in some years more than three-fourths—of the primary energy consumed in the United States. As indicated in Chapter II, the oil and gas markets have provided an important laboratory for observing the effects of government intervention and demonstrating the benefits of free-market pricing.

Price and allocation controls on crude oil, which had begun to be phased out in June 1979, were completely removed by Executive Order in January 1981. Thereafter, domestic drilling and oil production increased, arresting a 10-year decline in production in the lower-48 states. The removal of price controls raised incentives to search more intensively for new oil fields and encouraged greater investment in processes to increase recovery from older fields, avoiding the high initial cost of exploration and development. Indeed, during 1981, additions to domestic oil reserves from these less costly extensions to old reservoirs yielded more than twice the volume of additions to reserves from exploration and development of new fields. These results indicate that decontrol of crude oil prices enables maximum production of the lowest cost domestic oil.

By allowing market forces to determine oil prices, national energy policy has produced direct benefit to U.S. consumers. Retail gasoline prices, which rose briefy after decontrol as a result of the December 1980 OPEC price increase, declined from a peak national average of $1.39 per gallon in March 1981 to about $1.27 per gallon in July 1983. Even with the addition of a 5-cent-per gallon increase in the federal excise tax that went into effect on April 1, 1983, and despite some general inflation over the two-year period, nominal retail gasoline prices in July 1983 remained lower than they were during January 1981, the last month of price controls. In real terms, these prices were more than 15 percent below January 1981 levels.

While lower gasoline prices did not result solely from decontrol of oil prices, they do reflect the benefits that a combination of market forces have produced for the consuming public. These include increased domestic production, increased efficiency and competition in distribuition, lower demand for oil here and abroad and declining world oil prices since 1981.

Similar benefits have not yet been achieved in the case of natural gas, which remains the only primary energy source subject to government price controls. Implementation of a market-based system for natural gas is essential to achieving national energy policy objectives as they apply to natural gas, and it is critical to continued economic recovery and growth.

Natural gas accounts for 26 percent of total U.S. energy use, amounting to 17.7 trillion cubic feet in 1982. Ninety-five percent of the gas used in the United States is domestically produced; imported gas makes up the remaining 5 percent. As with other fuels, supply and demand for natural gas have changed over time. Federal price controls, however, have prevented the market from responding to these changes and, instead, have allowed gas price to move only in an upward direction despite growing surpluses and declining demand. They have encouraged contract provisions that bind producers and pipeline companies to what, in an unregulated market, would be irrational economic behavior. These circumstances have encouraged premature abandonment of older wells that could produce more supplies of less expensive gas and have skewed the gas market to economically inefficient production of higher cost supplies, thereby depriving consumers of lower prices.

The Administration's proposal to correct distortions caused by current federal regulation of the gas market is based on three fundamental principles: consumer protection against unreasonable price increases resulting from the status quo or from new legislation; gas deregulation of natural gas prices at the wellhead to capture the benefits of competition in the marketplace; and adjustments of contracts entered into in a regulatory environment that has contributed to the present situation in which gas prices

escalate even though supplies are abundant. Within this framework, decontrol of all natural gas prices at the wellhead by a date certain is critically important to achieving a decrease in natural gas prices after legislation is enacted and to maintaining gas prices at a level that is lower than what would result from continued government controls. As indicated in Chapter I, the Administration will continue to work closely with Congress to obtain passage of natural gas decontrol.

The energy policy strategy to minimize federal control involves more than removing price controls. As indicated in previous sections of this Plan, a market-based national energy policy does not presume that the federal government should refrain absolutely from intervening in energy markets. Where markets do not readily reflect full costs and benefits to society, federal regulation may be required, as in the case of ensuring environmental, health, and safety objectives.

Environmental Regulation

Almost all energy production and consumption activities use or affect environmental resources—air, land, and water. The benefits from increased use of environmental resources in the production and use of energy should be balanced with environmental costs in terms of opportunities to use these resources in some other fashion. In practice, however, debate and uncertainty usually accompany the calculation of costs and benefits, and definitive answers seldom emerge. Decisionmakers are faced with the challenge of balancing the goals of energy policy within the broader context of economic policy, while giving adequate consideration to environental concerns.

Federal efforts to ensure that the nation's energy system remains environmentally sound fall into two categories: analyzing the probable environmental consequences of energy technologies through research and development programs, and promoting cost-effective regulations. Both efforts advance environmental interests by ensuring that energy prices reflect environmental costs and benefits to society.

Several important regulatory policy initiatives have been taken in the past two and one-half years to promote an environmentally acceptable system of energy production and use. A single standard for lead content in gasoline has been applied to all producers. Although this initiative resulted in increased production costs for some refiners and blenders, the adverse health implications of airborne lead emissions justified its adoption. In the case of Clean Water Act requirements, initiatives have been taken to strengthen the enforcement of existing standards, to streamline the permit issuance process, and to increase the authorities and responsibilities of the states. These efforts are aimed at developing more effective regulatory strategies to maintain and to enhance water quality. Finally, initiatives aimed at allowing market forces to operate freely can promote environmental protection. Such is the case with the Administration's proposal to deregulate natural gas. This policy initiative will serve both consumer and environmental interests by allowing increased use of a plentiful domestic energy source that is generally considered to be the most environmentally perferred of all fossil fuels.

In the area of acid rain—perhaps the Nation's most controversial energy-related environmental issue—national energy policy has supported accelerated research to determine how acidic compounds are formed in the atmosphere and the relationship between air emissions and acid deposition effects. The National Academy of Sciences and the White House Office of Science and Technology Policy recently released their findings on the acid rain phenomenon, and an interagency group that includes the Environmental Protection Agency and the Department of Energy is reviewing these and other research findings and alternative options for mitigating the adverse effects of acid rain. The national energy policy objective concerning acid rain continues to be one of achieving a scientific understanding of the atmospheric physics and chemistry and related characteristics of the acid rain phenomenon and of avoiding premature or excessive regulatory initiatives that might increase consumer prices significantly without providing corresponding benefits in controlling acid rain.

Energy and environmental objectives may appear to conflict more frequently than they converge, but they are not mutually exclusive. The question is not one of "either/or"; rather, it is a matter of determining how we can achieve both. Overall, public health has improved significantly as industrial society has advanced. In many cases, such as production of unleaded gasoline or flue gas cleanup, added energy consumption is required to achieve environmental protection. In addition, many current initiatives to promote a balanced and mixed energy system, such as the emphasis on conservation and renewable energy as well as the proposed deregulation of natural gas prices, can result in positive environmental effects. National energy policy is committed to achieving both objectives: adequate supply of energy at reasonable costs and an environmentally acceptable mix of energy supplies.

Nuclear Energy Regulation

Nuclear energy is of continuing importance to the Nation's economic growth and, along with coal, is economically more attractive over the long term for baseload electricity generation than either oil or gas. Nuclear power plants have been providing about one-eighth of the Nation's electricity supply for more than five years and are now operating in 26 states. Nuclear power fills more than the total electricity requirements in some states; and by 1990, when most plants now under construction will be operating, nuclear-generated power is expected to account for about 20 percent of our total national electricity supply. Beyond its importance in terms of domestic supply, nuclear-based electricity will be an increasing source of future worldwide energy supply because many of our allies have fewer cost-competitive energy options than the United States. All these factors make it imperative that the United States maintain nuclear power as a viable energy option and an area of U.S. technical leadership.

Decisions about whether to build and use nuclear power will remain matters of local determination. Unfortunately, segments of the public—consumers, public officials, industry, and even some regulators—no longer seem certain that current federal regulation of nuclear energy is capable of ensuring nuclear safety, despite the nuclear industry's enviable safety record.

If nuclear power is to remain a viable energy option for the future, the nuclear regulatory process must continue to ensure public health and safety and must become more predictable, timely, and efficient. Several actions taken since publication of the 1981 National Energy Policy Plan are intended to stabilize the nuclear regulatory process, improve nuclear safety, and enhance public participation in nuclear power decisionmaking.

In October 1981, the President issued his nuclear energy policy statement, which included as one of its principal objectives the development of a program for storing and disposing of commercial high-level radioactive waste. Safe, efficient management and permanent

disposal of nuclear wastes is essential to the continued use of existing or future nuclear power plants as part of a diverse, balanced mix of energy supplies. Congress recognized this need by enacting the Nuclear Waste Policy Act of 1982, a landmark legislative achievement that provides the Nation's first comprehensive nuclear waste management program. The Act establishes rigorous schedules and processes for siting, constructing, and licensing geologic repositories for permanent waste disposal; provides for a utility-paid fee system under which the costs of waste disposal will be borne by the owners and generators of nuclear waste; prescribes that the Department of Energy submit a proposal for the construction of one or more monitored retrievable storage facilities by 1985; and requires that states be allowed to participate extensively in the processes concerning selection of waste repository sites. The Act's major objectives are to construct a permanent nuclear waste repository by 1998; to assist utilities in developing and licensing additional at-reactor storage capacity; and to provide necessary emergency federal interim storage.

The Department of Energy is implementing the Nuclear Waste Policy Act with high administrative priority. Nine potentially acceptable repository sites have been identified in Louisiana, Mississippi, Nevada, Texas, Utah, and Washington for possible selection as the Nation's first repository site. Literature surveys of geologic formation in several other states are being conducted to determine if these states contain potentially acceptable sites for a second repository. Governors and legislatures in the several sates have been notified, and public hearings have been conducted in the six states with candidate sites for the first repository.

As required by the Act, the Department of Energy has begun collecting fees from utilities that use nuclear power to generate electricity. The fees will total approximately half a billion dollars per year by fiscal year 1987. In addition, about $2 billion in fees will be collectd from owners of inventories of spent fuel or high-level radioactive waste. The Department also has submitted a report to Congress on research and development that would be required for monitored retrievable storage facilities. By mid-1985, DOE will submit a proposal, supporting plans, and environmental assessments for the construction of one or more of these facilities. In addition, the Nuclear Regulatory Commission (NRC) has published a proposed rule establishing procedures and criteria for determining eligibility of utilities for federal interim storage of spent fuel, and has issued a rule addressing the administrative procedures and technical criteria for disposal of high-level wastes in geologic repositories.

Another objectives of the President's nuclear energy policy statement is to streamline federal regulatory and licensing processes. Accordingly, the Administration has proposed the Nuclear Licensing and Regulatory Reform Act of 1983. This bill would provide five major improvements in the nuclear regulatory and licensing process: approval by NRC of suitable sites prior to filing of construction permit applications; approval by NRC of optional standardized designs for entire plants or major subsystems; a disciplined process for requiring equipment modifications on new and existing plants; an optional combined construction and operating license; and improvements in the public hearing process. Each of these provisions offers significant benefits independently of the others. Their combined effect will provide a more rational and integrated approach to nuclear licensing, resulting in improved safety, reduced costs, and, it is hoped, renewed public confidence in the reliability of nuclear-generated electricity.

Utimately, the question of public confidence in nuclear safety is not simply a matter of federal responsibility. National energy policy, which leaves to states and localities the role of determining whether or not to build and use nuclear power, also assigns to them primary responsibility for developing contingency plans tailored to local conditions that are available for use in the event of emergencies. Federal regulations require that such plans be developed with adequate provisions for addressing the safety needs of those potentially affected in the unlikely event of emergencies at nuclear power plants. The federal government will continue to work cooperatively with states and localities in the development of such plans, and it will do so recognizing that the task of maintaining and renewing public confidence in government regulations and control of nuclear-generated electricity is shared by officials at all levels of government and must be accomplished as a matter of providing for our general welfare.

Federal Leasing

The domestic energy resources of the United States are sufficiently abundant to ensure a secure, diverse mix of energy supplies under any reasonable projection of our energy future well beyond the year 2000. Timely, economic development of these resources to ensure future supply certainly will be determined in part by how well federal programs in leasing of public lands and the Outer Continental Shelf (OCS) support private sector initiatives and capital investment in exploration and development activities.

The federal government owns one-third of the Nation's onshore land and all the Outer Continental Shelf seaward of state ownership. In the lower-48 states, these federal lands and OCS areas contain a little less than half of the Nation's prospective crude oil and natural gas resources, about one-third of its coal resources, and almost three-fourths of its oil shale and tar sands resources. The federal government, because of its resource ownership, has a direct influence on future energy resource development through its onshore and OCS leasing policies.

To encourage private exploration and development of the Nation's energy resources to meet future U.S. energy needs, the federal government must allow a broad range of opportunities for investment in these resources, including making federal offshore and onshore resources available for leasing. In particular, the Outer Continental Shelf (for oil and gas) and the federal lands in the West (for coal) provide an important source of new reserves to replace domestic reserves produced to meet demand.

Long-term prospects and uncertainties, rather than short-term considerations, should determine leasing policy. There is a very long lag time between leasing and production of oil, gas, and coal. Resources leased this year will not enter production for at least 5 to 10 years, and they will not complete production for 15 to 40 years or, in some cases, longer. Production from federal lands today depends heavily on resources leased in the 1960s. Similarly, the value of leasing these resources is determined by the prices in effect when they are produced and current estimates of those prices, rather than simply by today's prices. Thus, companies will bid today for leases on the basis of their expectations of what prices will be in the future. If they expect prices to rebound and demand to be strong, they will bid higher and buy more leases; if they expect prices to remain low, they will bid less and lease only the best prospects and deposits.

Although future world oil prices are uncertain, we know that reserves of potentially competing energy supplies will help restrain future oil price increases. The federal government

impedes this process at the risk of our national economic well-being if it restricts opportunities for companies to invest in exploration and development of our energy resources.

One of the major purposes of offering expanded areas for lease is to maximize energy investment opportunities for the efficient production of energy for consumers; it is not, as some suggest, merely to balance the federal budget. More federal revenue is obtained from royalties and taxes (plus expanded economic activity) on actual production than from up-front payments for the right—which may never be exercised—to explore for and to develop resources on federal lands. Far more important than federal revenues is the benefit to the economy as a whole of timely and efficient energy production. To maximize federal bonus payment revenues some would have the federal government behave like a monopolist, restricting supplies to keep prices up. In the long run, the Nation is better served by lower prices to consumers than by artifically inflating the average price of a tract in the pursuit of higher short-run federal revenues.

The U.S. Outer Continental Shelf continues to offer some of the most economically and environmentally attractive prospects for developing domestic energy resources. In fact, the record to date indicates that offshore oil production results in far fewer oil spills than transporting oil by tanker. To ensure that these offshore resources are made available for development, the Outer Continental Shelf leasing process has been streamlined. A vigorous but deliberate schedule is being implemented to make available major prospective producing regions. Also, this leasing process has been restructured to allow individual companies to decide on which specific tracts to bid, rather than to continue relying on the federal government to determine which limited prospects are most likely to be productive.

Onshore oil and gas development may be less prolific per well than offshore drilling, but it involves many more leases and individuals. The Administration has made major strides in reducing the previously lengthy backlog of unprocessed noncompetitive lease applications, allowing more timely exploration and development. An increase in the filing fee has helped reduce this backlog and place the opportunities for oil and gas development in the hands of those who can best and most efficiently exploit those opportunities. In addition, increased filing fees have increased federal revenues. Major onshore oil and gas resources in Alaska have been made available for lease for the first time.

Coal leasing essentially was halted during the 1970s. Eighty-three percent of all current federal coal leases were issued in the 1960s or earlier; only 9 percent of current leases were issued in the 1970s, when a moratorium was in effect through much of the decade. Despite the many unforeseen changes in the energy market during the 1970s, federal coal leasing policy late in the 1970s embraced the notion that production requirements could be predicted by government and that, as a result, the federal government could and should tailor its leasing precisely to such predictions. The current Administration, understanding that circumstances change and that the private sector needs an extensive and diverse array of opportunities for development, has redesigned and revitalized the coal leasing program, again making federal coal available to energy markets, and ensuring that an adequate supply of coal reserves will be available for development when it is needed.

The regulatory and federal leasing accomplishments and initiatives of the past two years are principal elements of the national energy strategy to minimize federal control while maintaining public health and safety and environmental quality. They provide for economic efficiency, and they support implementation of the national energy policy strategy to promote a balanced and diverse energy resource system.

Promoting a Balanced and Diverse Energy Resource System

Achieving a balanced and diverse energy resource system involves both public and private initiatives. The federal role in pursuing this energy strategy maintains our national energy security and creates a technological and economic climate that encourages private innovation and investment. In this connection, federal programs and actions involve the full range of energy resources and a variety of national and international activities.

Energy Resources

Conservation. National energy policy regards conservation essentially as increased energy efficiency and views it as an energy *resource*—to be approached with the same market-oriented public policy strategy as are other energy resources. Conservation investment options by businesses and consumers frequently are competitive with new energy supply or fuel-switching investments.

Investment in energy conservation often makes good business sense. It need not be viewed as an altruistic activity or as a sacrifice. As our experience with conservation practices has expanded, our understanding of the technical characteristics and the economic returns of alternative conservation techniques also has expanded. The provision of technical and economic information is a particularly effective role for the federal government in terms of expanding the use of cost-effective conservation measures. On the other hand, the Administration does not support an emphasis on federal funding of large-scale conservation projects or the imposition of federal regulations upon consumers and businesses to conserve energy according to federal mandate.

Since publication of the 1981 National Energy Policy Plan, the Administration has implemented this approach by emphasizing market pricing of energy, redirecting federal conservation programs to emphasize basic research and development in materials and combustion processes, and modifying or eliminating federal regulations that attempted to mandate specific levels of conservation, regardless of cost or consumer preference. In addition, and consistent with the view that energy policy is part of overall economic policy, tax reductions provided by the President's Economic Recovery Program benefit conservation as well as other economic activities by freeing private capital for investment and research and development activities that will improve energy efficiency.

During the past decade, U.S. consumers have demonstrated the energy resource potential of conservation by using energy more efficiently in response to market conditions. Some federal energy conservation programs, including those that help provide increased information about the energy efficiency of equipment and appliances as well as about research and development programs, have contributed to the increased efficiency of energy use by U.S. consumers. Residential and commercial buildings in the United States today consume 20 percent less energy per square foot than they did 10 years ago. Energy consumption per capita has declined by 13 percent since 1973. Energy input per unit of industrial output has declined by 23 percent since 1973; between 1979 and 1981 alone, it fell by 10 percent. Fuel use per vehicle declined by 20 percent over the last decade. Similar energy efficiency gains have been achieved in nearly every aspect of

energy use. As a result, the overall rate of energy consumption per dollar of gross national product has fallen by 19 percent since 1973, declining by 10 percent in the relatively brief period from 1979 to 1982. While early increases in automobile fuel efficiency were facilitated by fuel efficiency standards enacted in 1975, fuel efficiency and other energy conservation advances during more recent years occurred primarily as a result of consumer response to market forces, and not as a result of federal intervention in the marketplace.

Conservation has shown itself to be a unique, economic, and highly flexible energy resource applicable to all energy technologies and fuel types. It is not limited by geography or indigenous natural resources, and it may offer significant environmental advantages. No other energy resource can be tailored to individual needs or employed in increments as effectively as conservation, and each additional increment results in immediate energy savings, thus promptly reducing costs and offering return on capital investment. In short, conservation actions in response to changing marketing incentives have a degree of flexibility unequaled by any other energy resource option, and they will continue to be an important component of our energy resource choices made by consumers and businesses.

Energy conservation occurs in response to various forces at work in the marketplace. The most influential factor is the price of energy. Other important elements include changing economic conditions, new trends in technology, changing consumer preferences, and legislative and regulatory factors that directly and indirectly relate to energy use. These forces have produced both long-term, fundamental trends that can be expected to continue and short-term trends that may be temporary or may reverse themselves as conditions change.

Some of the more fundamental improvements in energy efficiency are a result of technological improvements, which have been spurred by the fact that energy is a significant cost of doing business. As new and more efficient equipment makes up a larger share of energy-using capital stock, the effects of these trends in conservation will become increasingly evident. In many cases, energy-efficiency improvements depend on changes to capital stock (machines, automobiles, appliances, and buildings)—changes that require time. In addition, the energy content of products and services consumed within the economy is expected to continue to change in ways that will tend to reduce the average content of energy contained within products and services. Advances in energy efficiency observed during the last 5 to 10 years give an indication of conservation's continuing potential, and they suggest that many conservation measures begun in response to the events of the 1970s are only now beginning systematically to affect national patterns of energy production and consumption.

Recent technological advances and current market conditions offer a wide range of conservation opportunities; national energy policy encourages private initiative to take advantage of these opportunties. The Administration has supported existing tax credits for residential conservation investments to encourage private sector implementation of additional energy-efficiency improvements. On the other hand, the Department of Energy has not promulgated substantive mandatory appliance efficiency standards because, after full rulemakings, it was determined that substantive appliance efficiency standards for eight consumer appliances were not economically justified, and for seven of the eight appliances such standards would not save a significant amount of energy. A more cost-effective approach to improved energy efficiency in appliances is accomplished by providing accurate information to consumers, and the Administration therefore supports continuation of the appliance labeling program. Conservation initiatives by states and the private sector also are encouraged through a variety of loan and grant programs administrered by several federal agencies. For example, the Low Income Homeowner Energy Assistance Program (administered by the Department of Health and Human Services), while primarily designed to pay heating bills, allows up to 5 percent of the funds allotted to each state to be used as a block grant for weatherizing homes. Similarly, the Department of Housing and Urban Development's community development block grant program allows states to use some of their funds for weatherization programs. Private sector initiatives are provided through the Small Business Administration's loans to firms providing conservation or weatherization materials and services and the Department of Agriculture's loan grant program for weatherizing rural homes and buldings.

National energy policy also seeks to foster a technical and economic environment that will ensure continued development of conservation's energy resource potential. The President's Economic Recovery Program provides broad-based benefits toward this end. In addition, federally funded research and development programs and related technology transfer activities specifically promote full development of conservation as a critical element in a balanced and diverse energy resource system.

Energy Research and Development. To a large extent, research and development activity can be described in terms of the path of technology development and the stages through which new technologies pass until they reach the market as competitive energy investment options. Stated simply, the technology development path consists of five stages. *Basic research* involves the development of scientific knowledge, including a fundamental understanding of the physical and chemical properties of new or unconventional fuel sources or energy systems. *Applied research* includes the broad engineering and physical science aspects of specific energy technologies. *Proof-of-concept* is where enough is learned to establish the technical viability and basic engineering feasbility of a concept and to forecast its expected economic and environmental performance standards, permitting industry to make decisions concerning whether the concept merits further development. *Process development* involves increasingly larger scale systems where the objective is to reduce technical risks and to improve process operability, reliability, economics, and environmental impacts. *Commercialization* enables a new energy technology to gain acceptance in the marketplace.

In the two years since publication of the last National Energy Policy Plan, federal energy research and development funding has been redirected to emphasize basic and applied research and development and to move away from the demonstration and commercialization efforts that dominated previous energy research and development policy. This change in federal research and development emphasis is consistent with the Administration's views concerning the federal role in research and development and reflects our confidence in the private sector's ability to make the best-informed decisions about the production and use of specific fuels, technologies, and energy-efficiency improvements. It also reflects the Administration's determination to recognize budget constraints and to use

federal resources to their maximum advantage.

The federal role in energy research and development is concentrated in areas where the incentives for and availability of private investment are severely limited or nonexistent. In these areas, competitive rates of return on investment cannot be realized by private firms, either because they are difficult to predict or highly risky, or because they would require an exceptionally long time to be realized. The success of federal research and development programs in providing options for private investment and commercial development depends on effective *technology transfer*. The federal government does not have responsibility for the adoption of new energy technologies by the private sector and often is not a customer for such technologies. Its contribution to the development of future energy resources lies in the prompt and effective transfer of results from federally funded generic research and development activities to private entrepreneurs, innovators, businesses, and industry and in facilitating transfers of technology within the private sector. Traditionally, such transfer is accomplished through a variety of mechanisms, ranging from publications and symposia to advisory boards and peer reviews, and to federal laboratory access and patent policy. Recognizing the critical importance of effective technology transfer to the success of national energy policy, the Administration will intensify its emphasis on effective management of the process through which it is accomplished.

A balanced national research and development program that includes public and private funding and effective technology transfer enhances the Nation's ability to develop new technologies and to improve the efficiency and acceptability of existing technologies. The scope of federal research and development programs designed to accomplish these objectives is far too broad to describe in this Plan beyond the brief summary that follows.[2]

Conservation. Current and future market conditions offer a wide range of incentives for conservation initiatives by the private sector. Federally funded research and development, therefore, is selectively targeted to particular areas of energy efficiency that are not likely to be undertaken by the private sector alone. Examples include programs to develop alternatives to liquid fuels in automotive applications, advanced industrial and heat recovery processes, and improvements in the energy performance of buildings. In addition, federal research and development addresses scientific processes that cut across a variety of end-use application, including combustion and fluid mechanics, electrochemisty, and materials and thermal sciences. As circumstances change and our understanding of certain energy-efficient technologies advances, the priorities and mix of research and development programs will be reviewed to ensure that federal efforts continue to provide a flexible, evolutionary process that supports private sector investment and application of energy-efficiency improvements.

Renewable Resources. Technologies that convert renewable resources into usable forms of energy—such as active and passive solar heating and cooling; photovoltaics; wind, biomass, and ocean thermal conversion; and geothermal energy systems—offer a vast potential source of energy supply. Many utilities are finding renewable energy to be a viable option for satisfying a portion of their needs for expanded electricity generating capacity. The Geysers geothermal field in northern California has been tapped by several utilities, including the Sacramento Municipal Utility District and Pacific Gas and Electric Company. A total of 902 megawatts-electric (MWe) of capacity were on line in 1981, with an additional 1,988 MWe projected to be available by the year 2000. Southern California Edison has in place or on contract more than 1,200 MWe of renewable energy generating capacity and plans to have a total of 2,150 MWe by 1990.

For many renewable technologies, however, advances still must be made before economically viable systems will be available to produce energy in major direct thermal applications and bulk electricity supply or to meet requirements for liquid and gaseous fuels.

Federal research and development programs in renewable energy are aimed at improving system efficiencies, reducing material costs, and improving system operating life. In solar heat technologies and photovoltaics, federal research seeks to develop less costly and more efficient materials. Biomass research is directed toward improving pyrolysis, liquefaction, and gasification processes. Wind energy research aims to validate analytic and modeling techniques and to test existing and advanced systems. Research in geothermal energy is designed to reduce the technical risks associated with exploiting the geothermal resource base.

The overall objective of these programs is to contribute scientific and engineering knowledge to the renewable energy technology base so that industry can develop systems for transforming renewable resources into energy forms suitable for widespread application.

Magnetic Fusion. One of the clearest examples of basic research in the federal research and development portfolio is the magnetic fusion program. In a fusion reaction, nuclei of the isotopes of hydrogen (deuterium and tritium) fuse under conditions of extreme pressure and temperature. The reaction creates helium and releases enormous amounts of energy in a way similar to the reactions that take place in the sun. Fusion energy has vast potential and could become a principal energy source in the very long term—well into the next century. Before it will have any practical application, however, numerous technical and basic scientific uncertainties that are being addressed by federal research must be overcome. Despite the very long-term potential of fusion energy, near-term benefits also are obtained from the U.S. fusion energy program in areas as diverse as superconducting magnets, high-power accelerators, advanced material development, and advanced computer techniques.

Fossil Fuels. Continued long-term production of our domestic fossil resources will depend on the interplay between advances in extraction technologies, the difficulties of developing increasingly marginal known deposits, and discovery of presently unknown reserves. In the case of oil and gas, long-term production from conventional sources is likely to decline, certainly within the next century. In the case of coal, the known U.S. resource base—the world's largest known reserves—will be adequate for several centuries at current and project rates of demand. Actual long-term development will depend importantly on the ability of private and public sector research groups to develop acceptable environmental protection technologies; adequate technologies for efficient use of coal, both directly and by conversion; and on the availability of adequate economical coal transportation facilities.

Federal research and development efforts in areas such as advanced coal cleaning, coal conversion, and enhanced oil recovery are intended to ensure economic development and use of

[2] More detailed information about Department of Energy research and development activity is contained in the *Secretary's Annual Report to Congress* (U.S. Department of Energy, *Secretary's Annual Report to Congress* Government Printing Office, Washington, 1983. [DOE S-0010(83)])

domestic fossil resources over the long term. As fossil fuel prices rise because of resource exhausion, which will probably happen sooner with oil and gas then with coal, other energy sources will become comparatively more economic.

Nuclear Energy. Nuclear energy has been a major element of the federal energy research and development program since the 1950's. The decision to develop commerical nuclear power was and continues to be based on our need to provide safe and economic alternatives to our finite fossil energy resources; and, hence, to help ensure reliable sources of the energy needed for long-term economic development and national security. Nuclear research and development is a lengthy and capital-intensive process that requires resources and capabilities normally outside the realm of the private sector. In addition, federal responsibility in the area of nuclear health and safety assurance is unique and essential. Thus, the federal government's role in nuclear power development is fundamental.

The original U.S. nuclear program strategy called for a two-stage approach: (i) to develop and commercialize light water reactors that economically could use the high-grade uranium resources initially available; and (ii) to develop breeder reactors that would use uranium much much more effectively as those resources declined. The first part of that strategy is essentially complete, although the government continues to play a unique role in certain areas, such as improving the safety and reliability of nuclear power plants.

The second part of that strategy is well under way—the development of the liquid metal fast breeder reactor. The immediate goal of the Department of Energy's program is to develop the technology to a level that will enable industry to make appropriate commercial decisions with acceptable risks. Utilizing a systematic program of research, test facility construction and operation, and cooperative efforts with private industry, the federal government is pursuing a program to develop and demonstrate a breeder technology that private industry can commercialize as electric power demand and competitive market forces dictate. Furthermore, if the United States is to maintain a position of leadership and influence in nuclear trade and non-proliferation matters—a position critical to our national security—it must continue to advance its scientific and technical competence in all areas of nuclear energy technology, but particularly in the area of the fast breeder reactor and its fuel cycle.

To this end, the Administration is requesting that Congress provide for partical federal funding to complete the Clinch River Breeder Reactor (CRBR). Although the CRBR is an exception to our general approach to energy research and development, its completion is the most cost-effective way of advancing breeder reactor technology—an objective of the President's 1981 nuclear energy policy statement.

The unique aspects of nuclear energy suggest that a substantial portion of federal energy research and development efforts will continue to be devoted to nuclear research and development. They do not, however, diminish the importance that national energy policy assigns to ensuring a balanced, diverse, and economically efficient energy system. Nor do they preclude continuing review of nuclear research and development budgets for the purpose of identifying appropriate alternative approaches. The recent efforts by Congress and the Administration to obtain additional private sector investment in the Clinch River Breeder Reactor plant serve as an example of the pursuit of such alternatives.

Synthetic Fuels. By some criteria, federal support for synthetic fuels development also may seem to be an anomaly of current energy policy. It should be noted, however, that the federal synthetic fuels program was established at a time when most projections of future energy treads suggested shortages and large price increases for oil and petroleum products by the end of the century. While world conditions have changed and current energy projections accordingly do not point to such shortages or to such large price increases, it is likely that over the longer term the lowest cost energy supply, as well as our national economic and security interests, will dictate the substitution of synthetic liquids and gas for present supplies of oil and natural gas. The same changes that have led to revised energy projections have resulted in currently diminished incentives for private investment in synthetic fuels. In these circumstances, some continued federal support for synthetic fuels development is warranted. In this connection, the Department of Energy is conducting research and development programs related to synthetic fuels, and the Synthetic Fuels Corporation is implementing a strategy of support for the most promising synthetic fuel technologies using a number of economic incentives.

Electricity. Electricity is an important intermediate activity on the spectrum between energy producer and energy consumer. Electric power generation consumes about 33 percent of the primary energy used in the United States. Current DOE estimates indicate that electricity demand growth is likely to increase at an annual rate of 3 percent over the period 1982 to 2000. This is equivalent to the projected rate of GNP growth and would continue a trend over the past 10 years of matching average growth rates for electricity demand and real GNP. Since other end-use fuel demand is projected to increase at less than the rate of GNP growth, the electricity share of final energy consumption is projected to increase during the remainder of this century.

Between 1973 and 1982, demand for electricity increased about 25 percent more than growth in the gross national product. Electricity prices per kilowatt-hour on a national average increased significantly less than those for other energy forms and, in real terms, were no higher in 1980 than in 1960, although real prices increased roughly 60 percent from their low point in 1970 to their highest level in 1982. But these national statistics mask substantial variations among different sections of the country, among various sectors of the economy, and between systems using different fuels to generate electricity. No other energy commodity shows as much regional price variation as does electricity.

The availability of an adequate supply of electricity at reasonable costs to meet current and future needs has come to be viewed as a "right" by many consumers. Although sufficient electricity supplies should be available throughout the 1980s, the long-term outlook for continued availability of reliable supplies is not certain.

Current estimates of future energy supplies do not project electricity shortages in this decade. According to one set of load-growth projections, however, significant additional generating capacity will be required to meet future demands, to replace obsolete facilities during the 1990s, to displace high-cost fuels (that is, oil and natural gas), and to provide for effective reserve margins.[3] Should these projections prove correct, 438 gigawatts of additional generating capacity would be needed by the year 2000. This translates into the need to build the

[3] U.S. Department of Energy, *The Future of Electric Power in America: Economic Supply for Economic Growth.* Report of the Electricity Policy Project (Washington, D.C.: Government Printing Office, 1983). [DOE PE-0045]

equivalent of 438 large (1,000 megawatt) electric generating plants. Approximately 25 percent of this additional capacity is currently planned or under construction. The electric power industry would have to spend more than a trillion dollars in new capital investment between 1983 and the year 2000 to provide this additional generation capacity. Such an investment would not represent a larger fraction of gross domestic private investment than the industry has previously required. It would be a sizable capital undertaking for the industry—an undertaking made difficult by the fast-changing economic and energy conditions of the past decade.

Cost increases (especially fuel costs, which have increased from 15 percent to 35 percent of total production costs over the past decade) and rate regulatory practices, which resulted in underrecovery of investment and substantial increases in the ratio of noncash earnings (that is, future or accrued, as opposed to currently available earnings) to cash earnings, have combined to create serious disincentives for new investment in electric power facilities. Noncash earnings result from construction expenditures that are not permitted by regulation to be included in a utility's rate base for collection as current receipts and thus are not available to the utility as current earnings. As such, they are an important negative financial factor affecting investor ratings of a utility's financial risk and credit worthiness. Although some financial indexes for the electric utility industry have shown recent improvement, the industry continues to face significant financial disincentives to new capital investment.

The utility industry also faces an uncertain future supply and demand situation. More than 200 delays or cancellations of new coal-fired and nuclear power plants were announced during 1980 and 1981. About half these plants would have displaced projected higher cost fuels and therefore would have reduced future electricity prices for consumers based on midrange NEPP-1983 price projections for oil and natural gas. Delays and cancellations of new generating facilities may be justified in terms of both market conditions and current financial disincentives that face utility companies as a result of rate regulation; however, the long-term economic and social costs to the Nation resulting from these regulatory disincentives to efficient investment will continue to be a significant issue for national energy policy.

The electric power industry has had to face radical changes over the past decade. The ability of the industry and its regulators at all levels of government to adapt to these changes will ultimately determine the sufficiency and efficiency of electric supplies in the long term. The federal role is important but limited. In areas where the federal government has responsibility (for example, nuclear licensing and wholesale rate setting), the policy should be to regulate in a manner that protects public interests and allows market mechanisms to operate in electric power supply and consumption. In areas where state or local governments have primary responsibility (for example, retail rate regulation), the federal government will offer its full cooperation, including information sharing, whereever possible, while continuing to defer to the authority of state or local governments.

Using this established division of responsibilities between federal, state, and local governments, the full cooperation of the various government entities will be required to enable the electric power industry to maintain its tradition of reliable service at reasonable costs.

Energy Security and International Cooperation

Federal programs in the area of energy security are critical to our national and international security interests. U.S. energy security interests are enhanced by a range of federal energy programs, including many of those already mentioned, such as oil and natural gas price decontrol, leasing of federal lands and the Outer Continental Shelf, and research and development including cooperative research and development efforts in the international community. Federal programs related directly to energy security include development of the U.S. Strategic Petroleum Reserve (SPR), management of naval petroleum reserves (NPR), energy emergency preparedness actions, nuclear non-proliferation agreements, energy trade, and related activities to secure energy supplies needed for our economic welfare and defense readiness.

Emergency preparedness. The most effective actions taken by the United States to enhance energy security over the last two and one-half years have been the removal of price and allocation controls on oil and the rapid filling of the Strategic Petroleum Reserve. Since the end of 1980, the amount of oil stored in the SPR has tripled, to more than 350 million barrels in September 1983. The Administration remains committed to construction and fill of SPR capacity to a level of 750 million barrels.

Together with private petroleum stock files (about 1.1 billion barrels in August 1983), the SPR can be a cost-effective form of insurance against the potentially severe effects of oil supply disruptions. Current market conditions—namely, lower U.S. import levels and very large amounts of spare world oil production capacity (estimated to be more than 10 million barrels per day in the second quarter of 1983)—reduce the potential effects of oil supply disruptions in the near term. The Administration, therefore, has moved to fill the SPR at a rate consistent with these conditions. As world oil market conditions change, the Administration will review SPR fill rates to ensure that the insurance provided by SPR is maintained in a manner that is costs effective.

In the event of a supply disruptions, the United States will fulfill its international obligations and rely on unrestricted energy markets to distribute supplies domestically, including supplies drawn down from the SPR. Markets are far superior to any alternative way of allocating oil during supply disruptions. They permit prompt, decentralized, flexible responses to the uncertainties that accompany disruptions and thus avoid the regidities of government controls that necessarily are based on historical patterns of consumption. We know from experience that government allocation schemes do not work. The U.S. experience with oil price and allocation controls during past disruptions included long gasoline lines and missallocations of supplies. This contrasts sharply with the experience of industrialized countries such as Japan, West Germany, and the United Kingdom that relied on market allocation and did not encounter such difficulties. The decentralized decisionmaking that characterizes market allocation permits supplies to flow to where demand is greatest and allows much more diversity of response—conservation, fuel switching, and domestic production. It also reduces the likelihood that the federal government which at the outset consistently has overestimated the severity of past disruptions, will cause widespread damage by decisions that later prove to be wrong or misdirected.

In addition to further development of the Strategic Petroleum Reserve and reliance on the market to distribute oil supplies, the Adminstration will continue to strengthen the Nation's energy emergency preparedness efforts as part of our commitment to maintain and improve its defense and national security positions.

The Administration will seek legislation to ensure the availability and effectiveness of the Executive Manpower Reserves in domestic and international energy emergencies: to extend the International Energy Agency (IEA) antitrust defense to June 30, 1985, consistent with authorities contained in the Energy Policy and Conservation Act of 1975: and to correct shortfalls in existing emergency preparedness legislation, such as current provisions that require clarifications or that contain inconsistencies. In addition, the Adminstration and Congress are committed to improving federal-state coordination during an emergency period.

Comprehensive energy emergency preparedness can be furthered also by appropriate administrative action on a timely basis. The comprehensive energy emergency response procedures contemplated by the Energy Emergency Preparedness Act of 1982 are being improved. As part of this effort, several tests of emergency systems have been conducted, including the recent SPR drawdown exercise, and more are planned. In addition, an analysis of administrative actions is under way, design to support the existing SPR drawdown plan and associated legal authorities.

International Cooperation. No less important than the actions it takes domestically are the international efforts of the United States that support international energy security objectives. As the world's largest producer and consumer of energy resources, the United States is a leader in international energy policy by virtue of the example it sets in its choice of domestic policies and the role it plays in promoting cooperative approaches to the mutual energy concerns of the free world.

Consistent with U.S. national interests and international relations, the national energy policy goal of fostering adequate supplies of energy at reasonable costs applies, as well, to our international energy policymaking. Similarly, the U.S. approach is to rely on market forces at home and abroad and thereby demonstrate to others in our international energy relations that this strategy is in our mutual long-term interests. Implicit in this approach is achievement of energy stability and security in a manner that respects the sovereignty of other nations and reflects the need to accommodate and resolve broader mutual security issues.

Although the primary threat to the collective energy security of the United States, Western Europe, and Japan remains our continued vulnerability to oil supply disruptions, there have been a number of changes in the world energy situation since the oil supply disruptions of the 1970s that have strengthened significantly free-world energy security. For instance, the United States and its allies have diversified their sources of foreign oil supply. During the first six months of 1983, U.S. oil imports from Mexico and Canada were more than double our total oil imports from the Persian Guf. Organization for Economic Cooperation and Development (OECD) countries, excluding the United States, also have diversified their sources of foreign oil supply, and since 1979 have decreased total dependence on OPEC oil from 40 percent to about 28 percent of their energy demand.

Since the 1970s, we also have witnessed energy-efficiency improvements and fuel switching in the international community parallel to those that have taken place in the United States. For example, since 1973 the rate of energy consumption per dollar of gross national product is estimated to have declined by 15 percent in OECD Europe and by a little less than 10 percent in Japan. During the same period, oil's share of total energy consumption is estimated to have declined by more than 10 percent in OECD Europe and by almost 15 percent in Japan. Despite this progress in energy efficiency and fuel switching, dependence on imported oil remains high in many countries; and therefore, further reduction in vulnerability and strengthening of emergency response measure continue to be primary international energy policy concerns.

Recent events have demonstrated the need for greater vigilance, for improved international cooperation, and for a more flexible approach to international energy policy to prepare better for new problems and new vulnerabilities. The overriding concern of our allies to reduce their dependence on imported oil has led to growing reliance on natural gas from the Soviet Union, a new source of vulnerability and concern to our collective energy security and to fundamental U.S. national security interests. Accordingly, a principal concern of this Administration's international energy policy involves national security interests and the importance of cooperative efforts to find secure and economic alternatives to increased Western reliance on insecure and prospectively uneconomic Soviet supplies.

Through the International Energy Agency, the Organization for Economic Cooperation and Development, and economic summits, the United States has participated in reassessing collective energy requirements and establishing a framework for international energy security. Within this framework, the United States will address natural gas security issues bilaterally and under the auspices of IEA/OECD; will maintain its strong commitment to the International Energy Program and the IEA oil emergency system; and will continue its support of IEA programs to remove market impediments, accelerate the development of new technologies, increase energy efficiency, and strengthen emergency preparedness. U.S. international energy policy also will continue to promote safe, reliable nuclear power and nuclear non-proliferation goals through the Nuclear Energy Agency and the International Atomic Energy Agency.

A major national security issue is the need to strengthen the international nuclear non-proliferation regime, while continuing to promote the peaceful uses of nuclear energy and maintaining the role of the United States as a reliable trading partner and stable supplier of nuclear material, equipment, and services. In accordance with the Nuclear Non-Proliferation Act of 1978, new and amended agreements for nuclear cooperation are being negotiated to clarity and strengthen the nonproliferation conditions under which the United States exports nuclear materials and equipment. In addition, the United States is continuing to work with other supplier nations to gain acceptance of strengthened uniform safeguards—an effort that will improve the international non-proliferation regime and place U.S. suppliers on a more equal basis with foreign suppliers.

Energy Trade and Transportation. Actions by the United States in international energy matters affect not only energy security, but our economic progress as well. Continued economic recovery in the world's industrialized nations and the growth of developing countries, unless offset by gains in energy efficiency, inevitably will lead to long-term growth in total energy demand. Energy demand growth, coupled with the fact that the world's energy resources and technological capabilities are not distributed evenly, will lead to the increasing importance of energy trade and related energy transportation issues in national and international energy policy concerns. As in other areas of energy policy, the U.S. goal is to foster adequate supplies of energy at reasonable costs by supporting a free-market environment that encourages economic efficiency. Since 1981, the United States has sent several official delegations to allied

countries to promote expanded energy trade.

The vast reserves of domestic coal offer significant export potential. In 1982, the United States exported 106 million short tons of coal, slightly less than the 1981 high of 113 million short tons. Coal export levels in 1983 have fallen sharply in response to lower oil prices, lagging recovery from the recent recession, and increased competition from other coal exporting nations. The market will continue to determine the level of U.S. coal exports in competition with lower cost supplies from areas such as Poland, Australia, and South Africa. The competitiveness of U.S. coal in foreign markets will depend on the transportation costs incurred in moving the coal from mine mouth to the port of export and from there to foreign destinations. In a move to enhance the confidence of coal importing nations in the security of U.S. coal supplies, the Administration has continued to stress that coal destined for export will not be diverted to satisfy domestic demand except in the event of a national emergency.

Modernization of the Nation's port system can enhance America's competitiveness in the world trading community and reduce the cost of transporting coal and other commodities to overseas markets. Accordingly, the Administration has budgeted for and supports proposed financing arrangements that would allow expansion of port facilities consistent with port and user needs. User fees along with streamlined authorization and approval procedures would ensure that decisions to expand port facilities reflect market conditions.

Inland transportation costs will have a major impact on the competitiveness of U.S. export coal. Coal slurry pipelines, for example, may offer the potential to reduce inland coal transportation costs by increasing competition and encouraging expanded use of coal in both domestic and international markets. However, the construction of slurry pipelines involves questions of eminent domain and rights-of-way that are reserved to state and local authorities. National energy policy recognizes the role of state and local interests in balancing energy needs and property rights. At the same time, the development of an economical coal slurry pipeline industry would promote competition in inland coal transportation and would be in the national interest. In this connection, legislation may be worthy of consideration that would permit the exercise of federal eminent domain for slurry pipelines in a manner that protects state water rights and preserves the rights of individual property owners and states in eminent domain actions. Such legislation would not guarantee that coal slurry pipelines, in fact, would be built. If enacted, however, it would remove a barrier to market efficiency and the operation of competitive forces to transport coal for domestic consumption and international trade.

A second energy trade issue involves the export of domestic oil, particulary from Alaska. Current law permits exports of petroleum products, but prohibits exports of crude oil. U.S. petroleum product exports have tripled since 1977. Product exports to the Pacific Rim countries have grown from 36,000 barrels per day in 1977 to 138,000 barrels per day in 1982, the majority going to Japan.

There are a number of important reasons for considering alternatives to the existing ban on the export of Alaskan crude oil. In 1982, the majority of oil imported by the Pacific Rim countries was from potentially insecure sources, with Japan depending on the Middle East for approximately 70 percent of its oil consumption and Korea importing from the Middle East approximately 79 percent of the oil it consumes. Substitution of Alaska oil for some of the oil now obtained from insecure sources would strengthen the energy security of Pacific Rim nations, a stated goal of the International Energy Agency and, in turn, would enhance free-world energy security, including that of the United States. In addition, depending on specific provisions that might be adopted in connection with relaxing export restrictions, significant potential economic benefits could accrue to the United States. In particular some portion of the Alaskan oil that currently is creating excess supplies on the west coast or is being shipped to U.S. Gulf Coast refineries—a distance of approximately 6,800 miles—could be shipped more cheaply over the 3,300 miles to Japan. This could have several beneficial effects. In particular, less expensive supplies for Gulf Coast refineries could be obtained from such sources as Mexico and Venezuela. Further, such trade would provide new opportunities for expanding Alaskan and west coast production.

The Administration recognizes that important considerations exist on both sides of the Alaskan export question (not the least being the health of the U.S. maritime industry); the Administration intends to work cooperatively with Congress to identify possible alternative approaches. The goals would be to provide economic benefits to the United States and to maintain its energy security while at the same time ensuring the energy security of the Pacific Rim countries and the free world in general.

Finally, the area of nuclear energy trade remains a principal concern of U.S. energy and foreign policies. As indicated previously, the United States remains committed to nuclear non-proliferation goals and provisions of the Nuclear Non-Proliferation Act of 1978. Within this framework, the United States has sought to reassure Western Europe and Japan that we are supportive of nuclear programs and that we recognize the vital role that nuclear energy plays in their energy systems. At the same time, the Administration has sought to expedite the processes for granting export approvals and licenses. Most important, the United States has empasized to its nuclear trade partners that the strict control of sensitive materials and technologies must be ensured to preclude nuclear proliferation to unstable or sensitive areas of the world.[4]

Continued implementation of market-based domestic and international energy policies will promote increased efficiency and development of alternative resources and technologies. As a result, the United States and its allies will be better prepared to respond to emergencies should they occur. The United States will continue its efforts to remove barriers to its domestic energy markets and to support the momentum for similar efforts within the international community.

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Energy as a major concern of national debate and policymaking is a relatively recent phenomenon, roughly dating to the oil embargo of 1973–74. Before then, relatively abundant supplies and declining energy prices made national energy policymaking and concerns about the federal role in energy largely unnecessary. In less than a decade the national posture on energy has evolved from "crisis" perceptions and attempts through federalintervention to shield our economy from the realities of change to renewed confidence in the ability of consumers and businesses responding to market forces to ensure adequate supplies at reasonable costs. National energy policy will continue to reflect confidence in American consumers and in businesses and the determination of this Administration to continue implementing the energy strategies that

[4] Additional information on nuclear non-proliferation is contained in the *Secretary's Annual Report to Congress.* See footnote 2, page 14.

have resulted in significant energy accomplishments since 1980.

IV. 1983 NEPP Energy Projections

This chapter briefly summarizes information contained in the technical report *Energy Projections to the Year 2010.*

Energy price increases of the past decade, which have stimulated conservation and the continuing process of innovation and technology improvement, make it very likely that increased market efficiency and production will continue to meet our national goal of adequate energy supplies at reasonable costs. The specifics of future energy prices and production are very uncertain and not subject to precise definition. The projections discussed in this chapter do not necessarily represent Administration policy or the beliefs of the President or the Secretary of Energy. They are, instead, presented in compliance with congressional mandate as one of a number of sets of projections that can be derived from mathematical modeling processes.

Like other private and government energy projections, the energy projections presented with this 1983 National Energy Policy Plan are inherently uncertain. Because projections cannot fully represent a number of important qualitative factors that influence energy markets—such as political events, consumer behavior, or policy changes—these NEPP projections involve a considerable amount of analytical judgment. As most energy analysts will acknowledge, projections cannot and should not be a substitute for common sense. Thus, the energy outlook presented here should be interpreted as simply a point of departure for understanding future energy developments.

- Although the outlook for future world oil prices [1] is highly uncertain, most analysts now agree that world oil prices probably will fall in real terms until the mid-1980s, barring a significant oil supply disruption. From 1985 to 1990, prices are projected to increase moderately in real terms. Beyond 1990, the outlook becomes increasingly uncertain.
- The oil price increases of 1973–74 and 1979–80 set into motion powerful energy conservation forces that are likely to continue, especially in terms of oil use. Energy conservation has become as important as various sources of energy supply in determining the future evolution of the U.S. and world energy situations. Therefore, more attention should be given to energy conservation trends in future energy projections.
- Oil price increases also provided incentives for development of energy resources other than oil.
- The recent decline in world oil prices has added a new dimension to the uncertainty about future market conditions. Now, investment planners must be concerned about the potential for future price breaks.
- Under all but extreme assumptions, the United States and the rest of the world will remain dependent to some extent on oil supplies from OPEC for at least the next 20 years.

Nothing more clearly illustrates the difficulty in projecting future energy trends than does a review of past NEP and NEPP world oil projections. In less than five years (1979 to 1983), energy projections have changed dramatically. For example, mid-case projections of the 1985 world oil price, measured in 1982 dollars, have varied from a high of about $47 (NEPP–1981) to a low of about $25 (both NEP–1979 and NEPP–1983). Projections concerning free-world oil demand have varied from an increase of 1.5 to 2 percent per year until the year 2000 (NEP–1979) to slowly declining demand between 1980 and 2000 (NEPP–1981) to steady but moderately increasing demand (less than 1.0 percent per year on average) beginning in the mid-1980s through the remainder of the century (NEPP–1983). New information and changes in the world situation are the primary reasons for variations in these projections.

Energy Price Projections—1983

As a result of the unexpectedly low demand for OPEC oil, world oil prices have declined steadily since 1981, rather than climbing at a 2- to 3-percent-per-year real increase as assumed in NEPP–1981. Lower demand for OPEC oil has occurred primarily because of increased non-OPEC oil production, oil conservation, and fuel switching in response to the price increases of 1973–74 and 1979–80, lower energy demand caused by worldwide recession in 1981–82, and worldwide drawdown of crude oil and petroleum product inventories. A key question now is: How are current market conditions and trends likely to evolve both in the near and longer term?

For long-term planning purposes, oil prices are projected to follow a relatively smooth path; however, the actual price path most likely will repeat the volatile behavior of the past in response to economic conditions, unusually cold or warm weather, and other erratic events that directly affect world oil demand and supply. Each smooth price scenario should be viewed as an average of many equally plausible but erratic paths. The short-term volatility is important since price fluctuations can increase the uncertainty of consumers and producers about the true state of longer term price trends. In any given year, the world oil price could be considerably above or below its underlying long-term trend.

Although there are large inherent uncertainties about future world oil prices, the current projection is that world oil prices will tend to fall in real terms until the middle 1980s. Beyond 1990, prices may rise in real terms, in which case, the major question would be whether (after averaging out fluctuations) they would rise only slightly faster than inflation or much more rapidly.

Other aspects of NEPP–1983 price projections include the following:

- World oil prices are likely to stabilize in the $23- to $30-per-barrel range in 1983 and 1984 (1982 dollars), unless the Iran-Iraq war suddenly ends (increasing world oil production) or the rate of world economic recovery slows (decreasing world oil demand) in 1984.
- Between 1985 and 1990, demand for OPEC oil is projected to increase as world economic activity expands. Sometimes between 1986 and 1990, demand for OPEC oil is projected to reach 24 million to 26 million barrels per day. This level of demand should create significant upward price pressure in the world oil market.
- By 1990, the world oil price in 1982 dollars is likely to be between $26 and $40 per barrel. Thus, the price in 1990 is projected to be about the same as the $34-per-barrel price just before the sharp real price decline observed in 1982.
- Beyond 1990, world oil prices are extremely uncertain and speculative, but are projected in real terms to reach between $36 and $80 per barrel by the year 2000 and between $55 and $110 per barrel by 2010. By that time, however, the emergence of alternative energy sources (or technological changes that cannot be anticipated) render current projections of dubious value.
- One conditioning factor influencing the projected range of price increases during the 1990 to 2010 time period is the assumption that the cost of unconventional oil sources such as shale oil and coal liquids will be in the

[1] "World oil price" is defined as the average cost to U.S. refiners, including transportation and fees, of imported crude oil. This average reflects differences in quality among the various imported crudes purchased by U.S. refiners.

$50- to $80-per-barrel range (1982 dollars) as opposed, for example, to the $35- to $50-per-barrel range assumed by NEP–1979.

U.S. Energy Trends—1983

Primary Energy Consumed by the United States

Before 1950, U.S. energy consumption grew at a slower rate than real economic output. From 1950 to 1973, energy consumption grew at about the same rate as economic growth, or about 3.8 percent per year. In NEPP-1983, the quantity of energy consumed between 1982 and 2000 is projected to increase at only about 1.3 percent per year, less than half the 2.8-percent projected annual rate of U.S. economic growth during that period. This amounts to an increase in energy consumption during the period 1982 to 2000 of about 27 percent, from just under 35 million barrels per day oil equivalent (MMBOE) to 44 MMBOE.

From 1960 to 1977, there was a trend of steadily increasing reliance on oil imports that peaked at 24 percent of total U.S. energy consumption in 1977 (about 8.6 million barrels per day). Reaction to higher oil prices has reversed this trend. By the year 2000, U.S. net oil imports are projected to account for about 12 percent of total energy consumption (about 5 million barrels per day), compared to the 1982 level of 12 percent of total energy consumption (about 4.3 million barrels per day).

Starting in 1982, if U.S. energy consumption were to grow at the 2.8-percent rate projected for economic growth, the amount of energy consumed in the year 2000 would be more than 121 quadrillion Btu's (quads), about 30 percent more than the 93 quads projected, with an energy consumption increase of 1.3 percent per year. Consequently, improved energy efficiency in the economy is projected to be a very significant factor in determining long-term U.S. energy consumption patterns.

Energy Produced by the United States

U.S. oil and natural gas production peaked at about 45 quads (about half oil and half gas) in the early 1970s. NEPP–1983 projects that increased investment in oil and gas development will maintain domestic production at close to 37 to 40 quads per year through the 1980s. Beyond 1990, oil and gas are likely to become increasingly difficult to find and develop, although unexpected breakthroughs in theories of where large undiscovered quantities might be found could alter this projected production path.

Coal, nuclear, and renewable energy use are projected to increase substantially over the long term. In particular, coal production is projected to increase in absolute terms more than that of any other fuel between 1980 and 2000. Contributing to coal's growth is an estimated 4-percent-per-year growth in U.S. coal exports (from about 90 million tons in 1980 to about 200 million tons by the year 2000). The chief uncertainty here is to what extent the costs associated with the use of coal could reduce its competitive advantages and, therefore, be reflected in lower coal production.

U.S. Primary Electricity Inputs

Primary U.S. electricity inputs are projected to continue the historical trend of increasing as a percentage of total primary energy consumption (from 18 percent in 1960 to 31 percent in 1980 and a projected 42 percent of primary energy consumption by the year 2000).

Coal's share of electricity generation is expected to increase from about 50 percent in 1980 to 59 percent by 2000. Oil and gas are projected eventually to be priced out of most utility markets so that oil and gas generation drops from 27 percent in 1980 to about 8 percent by 2000. Oil and gas generation already has dropped to 17 percent since 1980; thus, a little more than half the projected decline already has occurred.

Nuclear expansion is expected to slow temporarily in the early 1990s once facilities currently under construction are completed. Nuclear's share of electricity inputs, however, is projected to increase to more than 25 percent by the year 2010. The share of electricity generation provided by all renewables (hydropower, geothermal, wind, solar, etc.) is expected to increase from 12 percent to around 15 percent by the year 2010. During this period, hydropower's contribution is expected to drop from 12 percent to 8 percent, while the contribution of all other renewables grows to 7 percent of total electricity generation.

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As noted throughout this chapter, considerable uncertainty is attached to projections of future energy trends. Relatively small changes in the assumptions upon which projections are based can result in significant changes to the energy outlook. New information and changing world conditions will alter NEPP–1983 projections as well as those of other analysts. No single set of projections is sufficiently reliable as the sole basis for future planning. The range of future energy projections and the expert opinions that appear in the technical report *Energy Projections to the Year 2010*, however, are sufficient to warrant two conclusions: our energy future will continue to be marked by uncertainty; and flexibility (which is best provided by relying on market forces and on the availability of a balanced mix of energy resources) offers the greatest opportunity for ensuring an effective response to uncertain conditions.

V. Public Comments

Background

Title VIII of the Department of Energy Organization Act of 1977 requires that the President prepare and submit to Congress biennially a National Energy Policy Plan and that the views and proposals of all segments of the economy be taken into account in the preparation and formulation of the Plan. The Department of Energy solicited comments through a notice published in the January 20, 1983, **Federal Register**. The notice invited public comment at a series of public hearings that were held in Detroit, Tulsa, Atlanta, Washington, D.C., Burlington (Vt.), Sacramento, and Denver. Written comments also were solicited in the notice.

The Department received testimony from 136 persons at the hearings, as well as 111 written responses to the **Federal Register** notice. Comments were received from Members of Congress; state, local, and territorial officials; regional governmental organizations; officials representing industry, utilities, and professional organizations; public interest groups; religious and social service organizations; educational institutions; and individuals. Transcripts of the hearings and copies of the written comments are available in the Department of Energy's Freedom of Information Office Reading Room in Washington, D.C.

Summary of Comments

The comments received covered a broad spectrum of energy-related issues. Some offered general suggestions about energy policy; others included specific, detailed recommendations. The comments, which do not necessarily reflect the views of the Administration, have been categorized according to broad issue areas and are summarized below.

Energy security and emergency preparedness—specifically dependence on oil imports and the ability of the United States to respond adequately to an oil supply interruption—were issues

of concern mentioned frequently. Many commentors expressed the views that the Nation cannot be completely secure until our dependence on oil imports from unstable and unreliable sources is considerably reduced or eliminated. Some believe that free-market forces during an emergency would ensure fair and equitable allocation of supplies; others suggested that the federal government should intervene during an energy emergency. Some indicated that federal intervention should be primarily in the role of coordinator, for establishing priorities and allocating supplies, while others felt that price controls or set-asides would be necessary.

Many believed; that the development of the Strategic Petroleum Reserve (SPR) is an effective means for ensuring against supply disruption. Comments on the SPR ranged from a belief that the filling of the SPR should be accelerated to satisfaction with the current fill rate. Some concern was expressed about regional issues pertaining to the SPR, such as the potential distrubution inequities in an emergency situation.

Issues related to conservation and renewable resources were of concern to many. Those who supported government conservation and renewable energy programs expressed concern that these programs were unfunded and that current policies favor nuclear programs at the expenses of solar and conservation programs. Many respondents encouraged the continuation of business and residential tax credits for conservation and renewable investments. Commentors also urged continued federal support for state and local energy conservation programs, especially for the Weatherization Assistance Program and the Low Income Energy Assistance Program, separate from general block grants to the states.

It was suggested that the Residential Conservation Service (RCS) should be ended because sufficient market incentives already exist for home energy audits and that the cost of subsidized audits is not justified and burdens utility ratepayers. Others, while saying that the RCS program needed some reform, contended that it nevertheless was beneficial. Energy education and information programs also received attention, with some respondents maintaining that support for additional or expanded programs was important.

Comments pertaining to specific renewable energy resources included objections to preference being given to applications by municipally owned utilities and rural electric cooperatives in cases involving the relicensing of hydroelectric power plants; support for increased federal assistance for the production of alcohol fuels; and support for additional funding for photovoltaics.

Many respondents expressed concern about the role of nuclear energy in the Nation's future and questioned the continued funding—described by some as subsidization—of nuclear power in light of the Administration's commitment to free-market forces. Others supported the development of nuclear power because it would increase the Nation's energy independence. Other nuclear-related issues concerned regulations, particularly those associated with permitting and licensing; nuclear waste disposal and nuclear safety; and breeder technology. Opinion concerning nuclear waste generally favored programs to deal with nuclear waste disposal. Opinion on all other nuclear issues ranged from urging more federal involvement to cancellation of nuclear power plant projects.

Comments pertaining to oil issues included opposition to additional taxes on oil, including an oil import fee; support of repeal or the phasing out of the windfall profit tax; and both support for an opposition to removing restrictions on mineral exploration of public lands, particularly the Outer Continental Shelf.

Issues pertaining to natural gas, particularly natural gas decontrol and problems associated with the Natural Gas Policy Act of 1978 (NGPA), were mentioned quite frequently in the comments. Partial or complete decontrol of natural gas prices was both supported and discouraged. Problems associated with the NGPA were mentioned repeatedly, and various solutions were offered, including support for amending or repealing the NGPA. Some suggested that legislative changes were needed to alter current contract provisions between gas producers and distribution and pipeline companies.

A number of comments favored increasing coal production and use, coal exports, and federal support for coal research and development. Reducing regulatory impediments to coal use also was mentioned. The major objections to increased use of coal revolved around environmental issues. Those commenting on coal transportation issues supported granting coal slurry pipelines rights-of-way across federal lands and the right of eminent domain.

Federal support for research and development in synthetic fuels, including coal gas and shale oil gas and shale oil, also was favored as one component of a program to encure energy security. Other comments suggested that synthetic fuel subsidies should be reduced and that the environmental problems associated with use of these fuels should be addressed instead.

Issues related to human health and the environment were mentioned frequently. Of primary concern were health and environmental hazards associated with nuclear power, including nuclear waste, and coal and synthetic fuels. Comments included support for continued or additional control requirements and for research on the environmental effects of coal use, particularly the causes and effects of acid rain, and support for the modification or elimination of the environmental constraints on the use of fossil fuels, including modifications to the Clean Air Act that would relax air quality standards.

Some encouraged increased federal support for both basic research programs and applied research and development programs. It was suggested by some that the government should provide limited support for some demonstration projects. Opponents, however, stated that government assistance in these areas will inhibit or delay private efforts in research and development because of the possibility of obtaining federal assistance.

The views mentioned above covered the full spectrum of national opinion on energy issues. Although some of the comments may not be in accord with the views of the Administration, it nevertheless is important to have the benefit of a broad range of opinion from all sectors of the economy. This process has been designed to ensure such participation, and the comments received have been helpful.

Issued in Washington, D.C., July 25, 1984.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84-20182 Filed 7-30-84; 8:45 am]

BILLING CODE 6450-01-M

federal register

Tuesday
July 31, 1984

Part VI

Federal Mine Safety and Health Review Commission

29 CFR Part 2705

Privacy Act of 1974; Proposed Rules and Systems of Records

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2705

Privacy Act of 1974; Proposed Regulations for Implementation

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Proposed rule.

SUMMARY: The following proposed regulations drafted accordance with section (f) of 5 U.S.C. 552a, Privacy Act of 1974, are hereby offered for public comment. The purposes of these regulations are to establish procedures by which an individual can determine if the Commission maintains a system of records which include a record pertaining to that individual and also to establish procedures for individual access to the records for purposes of review, amendment and/or correction.

DATE: Comments are due on or before August 30, 1984.

ADDRESS: Send comments to the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Room 612, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Catherine Sands Hiler, (202) 653–5625.

Signed this 24 day of July, 1984.

Catherine Sands Hiler,

Executive Director.

List of Subjects in 29 CFR Part 2705

Privacy.

It is proposed to add the following Part 2705 to title 20 of the CFR.

PART 2705—PRIVACY ACT IMPLEMENTATION

Sec.

2705.1 Purpose and scope.
2705.2 Definitions.
2705.3 Procedures for requests pertaining to individuals' records in a records system.
2705.4 Times, places, and requirements for the identification of the individual making a request.
2705.5 Access of requested information to the individual.
2705.6 Request for correction or amendment to the record.
2705.7 Agency review of request for correction or amendment of the record.
2705.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
2705.9 Disclosure of record to a person other than the individual to whom the record pertains.
2705.10 Fees.

Authority: 5 U.S.C. 552a: Pub. L. 93–579

§ 2705.1 Purposes and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Federal Mine Safety and Health Review Commission, hereafter the "Commission", maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 2705.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number.

(d) The term "system or records" means a group of any records under control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§2705.3 Procedure for requests pertaining to individuals' records in a records system.

An individual shall submit a request to the Executive Director to determine if a system of records named by the individual contains a record pertaining to the individual. If a record pertaining to the individual does exist in the specified system of records and the individual wishes to review that record he or she shall submit a request to the Executive Director of the Commission which states the individual's desire to review his or her record.

§ 2705.4 Times, places, and requirements for the indentification of the individual making a request.

An individual making a request to the Executive Director of the Commission pursuant to § 2705.3 shall present a written request at the Commission Office, 1730 K Street NW., Room 612, Washington, D.C. 20006, on any business day between the hour of 8:30 a.m. and 5:00 p.m. The individual submitting the request should present himself or herself at the Commission's offices with a form of identification which will permit the Commission to verify that the individual is the same individual as contained in the record requested.

§ 2705.5 Access to requested information to the individual.

As soon as practicable after verification of identify the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 2705.6 Request for correction or amendment to the record.

The individual shall submit a written request to the Executive Director which states the individual's desire to correct or to amend his or her record and details the specific corrections or amendments sought. This request is to be made in accord with provisions of § 2705.4.

§ 2705.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Executive Director will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment to that portion of the record which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of the Executive Director's refusal to correct or to amend the record in accordance with the request, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 2705.8 Appeal of an initial adverse Commission determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Executive Director to correct or to amend his or her record may submit a request for a review of such refusal to the Chairman, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Room 610, Washington, D.C. 20006. The Chairman will, not later than thirty working days from the date on which the individual requests such review, complete such review and make final determination unless, for good cause shown, the Chairman extends such thirty-day period. If, after his or her

review, the Chairman also refuses to correct or to amend the record in accordance with the request, the Individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

2705.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notices of its system of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 2705.10 Fees.

If an individual requests copies of his or her record, he or she will be charged a reasonable fee, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc. 84-20199 Filed 7-30-84; 8:45 am]
BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; Systems of Records

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Proposed Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 52a, the Federal Mine Safety and Health Review Commission, hereafter the "Commission", or "FMSHRC", hereby publishes for comment those systems of records subject to the Privacy Act of 1974 which are maintained by the Commission. The systems of records are maintained for general accounting, personnel and property inventory purposes (Titles 5 U.S.C. "Government Organization and Employees", generally; 31 U.S.C "Money and Finance", generally; and 40 U.S.C. 483 "Property Utilization") with the exception of the Administrative Law Judge (ALJ) Caseload Report System, FMSHRC–05. The ALJ Caseload Report System is maintained for the purpose of assigning cases to the ALJs, Titles 5 U.S.C. 3105 "Appointment of administrative law judges" and 30 U.S.C. 823(d)(1) "Proceedings; rules of procedure; review, record." The Federal Mine Safety and Health Review Commission systems of records should not have any effect on the First Amendment rights or activities of any Commission employee. Any person interested in commenting on the routine use portions of the system notices may do so by submitting comments in writing to the Executive Director, Federal Mine Safety and Health Review Commission, at the address below. Comments should be submitted within 30 days of publication of this notice. The Commission's procedures for access to records in the systems are contained in 29 CFR Part 2705.

DATE: Comments are due on or before August 30, 1984. These systems of records will become effective August 30, 1984 unless the Commission publishes notice to the contrary.

ADDRESS: Send comments to the Executive Director, Federal Mine Safety and Health Review Commission, Room 612, 1730 K Street, NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Catherine Sands Hiler, (202) 653–5625.

Signed this 24th day of July, 1984.

Catherine Sands Hiler,

Executive Director.

FMSHRC–01

SYSTEM NAME:

Payroll records—Federal Mine Safety and Health Review Commission.

SYSTEM LOCATION:

General Services Administration, National Payroll Center; copies held by Commission. (GSA holds records for the Commission under contract.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and members of the Commission.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms and W–2 forms; overtime requests; leave data; retirement records. Records are used by the Commission and GSA employees to maintain adequate payroll information for the Commission employees, and otherwise by the Commission and GSA employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. "Money and Finance", generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix.

Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Executive Director, Federal Mine Safety and Health Review Commission, Room 612, 1730 K Street NW., Washington, D.C. 20006. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both. Pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Executive Director.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and microfilm.

RETRIEVABILITY AND ACCESSING:

Social Security number, name, block number, symbol number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel, including among others, GSA liaison staff and finance personnel; and the Commission administrative staff.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Record Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Mine Safety and Health Review Commission, Room 640, 1730 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORD ACCESS PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

FMSHRC–02

SYSTEM NAME:

General Finance and Accounting Records—The Federal Mine Safety and Health Review Commission.

SYSTEM LOCATION:

The Commission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and members of the Commission.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

SF–1038, Application and account for advance of funds; vendor register and vendor payment. Information is used by accounting technicians to maintain adequate financial information and by other officers of the Commission who have a need for the records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. "Money and Finance", generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix. Records also are released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to power of attorney. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and tape.

RETRIEVABILITY AND ACCESSING:

Manual and automated by name.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Mine Safety and Health Review Commission, Room 640, 1730 K Street, NW., Washington, D.C. 20006.

NOTIFICAION PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORDS ACCESS PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

CONTESTING RECORD PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

FMSHRC–03

SYSTEM NAME:

General Informal Personnel Files—Federal Mine Safety and Health Review Commission.

SYSTEM LOCATION:

The Commission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Commission members, staff and consultants, past and present.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Biographic information, correspondence with members of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. "Government Organization and Employees", generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3). Also, see Appendix.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Manual by name.

SAFEGUARDS:

Stored in lockable file cabinets, released only to authorized personnel, including among others, GSA liaison staff and the Commission administrative staff.

RETENTION AND DISPOSAL:

Retained until no longer needed, then discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Federal Mine Safety and Health Review Commission, Room 640, 1739 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Commission access reglations contained in 29 CFR Part 485.

RECORD ACCESS PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

FMSHRC–04

SYSTEM NAME:

Property Management System—Federal Mine safety and Health Review Commission.

SYSTEM LOCATION:

The Commission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Commission members and staff.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Description, value and location of furnishings and equipment.

AUTHORIZATION FOR MAINTENANCE OF THE SYSTEM:

Title 40 U.S. C. 483 "Property Utilization" and 31 U.S.C. "Money and Finance", generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix. Records are also released to GAO for audits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and tape.

RETRIEVABILITY AND ACCESSING:

Manual and automated by name.

SAFEGUARDS:

Stored in guarded building; released only to authorized personel.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Federal Mine Safety and Health Review Commission, Room 640, 1730 K Stret NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Parts 2705.

RECORD ACCESS PROCEDURE:

Contact Executive Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Direcor or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; the Administrative Office of the Commission.

FMSHRC-05

SYSTEM NAME:

Administrative Law Judge Caseload Report, Federal Mine saftety and Health Review Commission.

SYSTEM LOCATION:

The Commission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Administrative Law Judge of the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Caseload assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 30 USC 823(d)(1) "Proceedings; rules of procedure; review; record" and Title 5 U.S.C. 3105 "Appointment of administrative law judges".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

Chief Administrative Law Judge and Commission for case assignment; also, see Appendix.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY AND ACCESSING:

Manual by month, year and name.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Law Judge, Federal Mine Safety and Health Review Commission, Room 642, 1730 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Contact Exective Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORDS ACCESS PROCEDURE:

Contact Exective Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

CONTESTING RECORDS PROCEDURES:

Contact Exective Director or refer to the Commission access regulations contained in 29 CFR Part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

Appendix—Federal Mine Safety and Health Review Commission ("Agency")

In the event that a system of records maintained by this Agency to carry out it functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statue or particular program statue, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statue or rule, regulation or order issued pursuant thereto.

A record from this system or records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to the duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management in accordance with that agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OBM Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Service Administration in connection with administrative services provided to this Agency under agreement with GSA.

[FR Doc. 84-20200 Filed 7-30-84; 8:45 am]

BILLING CODE 6735-01-M

federal register

Tuesday
July 31, 1984

Part VII

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2584-5]

Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to revise Subpart GG–Standards of Performance for Stationary Gas Turbines, of 40 CFR Part 60, to include additional fuel analysis procedures in response to requests for approval of recently available new or revised methods. These procedures, prepared and published by the American Society for Testing and Materials (ASTM), are for the determination of sulfur content of gaseous fuels in compliance with the requirements in §§ 60.333 and 60.334. The newly listed methods are being published as additions to the methods previously included in Subpart GG for this purpose.

EFFECTIVE DATE: July 31, 1984. The revisions to 40 CFR Part 60, Subpart GG and the incorporation by reference of the publications listed in the regulation is approved by the Director of the Federal Register as of July 31, 1984.

ADDRESSES: *Docket.* A docket, number A–84–06, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Peter R. Westlin or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Trading Park, North Carolina 27711, telephone (919) 541–2237.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

SUPPLEMENTARY INFORMATION: Subpart GG—Standards of Performance for Stationary Gas Turbines, was published as a final rule on September 10, 1979 (44 FR 52792). This regulation included requirements to determine the sulfur content of liquid and gaseous fuels in order to comply with sulfur emission limits. The regulation specified published ASTM methods for sampling and analysis of fuels.

Since the publication of these rules, ASTM has published new and revised methods for the analysis of sulfur content in gaseous fuels. Several industry representatives have contacted EPA for approval of the use of these new methods as alternatives to the published methods. The newer methods offer simplified procedures and lower costs for similar results. The Agency has approved the use of these procedures by letter to the requesting sources and is now publishing revisions to the regulation to include the use of the methods.

The revisions would apply to all sources who must comply with the provisions of Subpart GG to meet the sulfur emission limits for gaseous fuels. Any of the four methods listed would be applicable for this purpose.

Miscellaneous

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

This rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because the revisions do not impose additional costs in tests.

The Agency finds that notice and public procedure on this rule are unnecessary, because the rule is technical and noncontroversial. The changes to the regulation are in the form of additions of acceptable fuel analysis procedures that will allow sources more flexibility in complying with the regulation. There are no substantial changes to the regulation.

This final rulemaking is issued under the authority of section 111, 114, and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7414, and 7601(a)].

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 6, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. By revising § 60.335 (b)(2) as follows:

Subpart GG—Standards of Performance for Stationary Gas Turbines

* * * * *

§ 60.335 Test methods and procedures.

* * * * *

(b) * * *

(2)(i) ASTM D 2880–71 for the sulfur content of liquid fuels and ASTM D 1072–80, D 3031–81, D 4084–82, or D 3246–81 for the sulfur content of gaseous fuels (these methods are incorporated by reference—see § 60.17). These methods shall also be used to comply with § 60.334(b).

(ii) The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples prior to analysis (with verification of the dilution ratio) is allowable subject to the approval of the Administrator.

* * * * *

2. By revising § 60.17 (a)(20) and adding three new paragraphs (a)(42), (43), and (44) as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(20) ASTM D 1072–80, Standard Method for Total Sulfur in Fuel Gases, IBR approved July 31, 1984 for § 60.335(b)(2).

* * * * *

(a)(42) ASTM D 3031–81, Standard Test Method for Total Sulfur in Natural Gas by Hydrogenation, IBR approved July 31, 1984 for § 60.335(b)(2).

(a)(43) ASTM D 4084–82, Standard Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved July 31, 1984 for § 60.335(b)(2).

(a)(44) ASTM D 3246–81, Standard Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved July 31, 1984 for § 60.335(b)(2).

* * * * *

FR Doc 84–20119 Filed 7–30–84; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
July 31, 1984

Part VIII

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Opacity Provisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2584-4]

Standards of Performance for New Stationary Sources; Opacity Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would require that owners and operators of affected facilities that are subject to opacity standards in 40 CFR Part 60 record and report the opacity of emissions at specified times. It would implement section 114 of the Clean Air Act, as amended, and is based on the Administrator's determination that such recordkeeping and reporting is necessary to demonstrate compliance with the respective opacity standards. These data will also be used during reviews of the standards so that EPA can make a sound judgment as to whether revisions to the standards are appropriate. The intent of this proposed rule, therefore, is to ensure that adequate opacity data are obtained and recorded.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before October 1, 1984

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 17, 1984, a public hearing will be held on August 28, 1984 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will occur.

Request To Speak at Hearing. Persons wishing to present oral testimony must contact EPA by August 17, 1984.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131, Attention: Docket Number A-83-43, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Environmental Research Center, corner of Highway 54 and Alexander Drive, Research Triangle Park, North Carolina. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will be held. Persons wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket Number A-83-43, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION: Standards of performance for new, modified, and reconstructed stationary sources are contained in 40 CFR Part 60. The emission limits contained in these standards are set at levels that are intended to reflect the best demonstrated technology, considering costs, energy, and environmental impacts (referred to as BDT).

Most of the standards of performance in 40 CFR Part 60, particularly those for particulate matter, contain two types of emission limits. The first type is a mass emission limit, compliance with which is determined by conducting a performance test in accordance with § 60.8. The results of the performance test must be recorded and provided to EPA. The second type of emission limit is a limit on the opacity of emissions. Compliance is determined by observing emissions according to the procedures in Reference Method 9 and § 60.11. There are no recordkeeping or reporting requirements for opacity standards.

Due to the General Provisions' requirement for owners or operators to record and report performance test results for the mass emission limit for an affected facility, adequate mass emission data are available to determine if the standards reflect BDT and to make compliance determinations. However, very little opacity data exist, apparently due to the lack of a requirement to record and report it. The addition of opacity recordkeeping and reporting requirements would provide a basis for assuring that opacity standards are achieved at each facility when the facility is properly operated and maintained. This requirement would ensure effective enforcement of the opacity standards.

In addition, as required by section 111(b)(1)(B) of the Clean Air Act, EPA reviews the standards of performance at 4-year intervals to determine if revisions are appropriate. During the review, EPA assesses such factors as improvements in emission control technology, enforceability, the existence of alternative test methods, and reporting requirements. To aid in this assessment, emission data from sources that have become subject to the standards in the preceding 4 years are analyzed. However, in conducting several of the 4-year reviews, EPA found that almost no opacity data exist to indicate whether revisions to opacity limits are needed.

Consequently, EPA has determined that it is necessary to require recordkeeping and reporting of opacity data to demonstrate compliance with the respective opacity standards and to carry out the requirement of section 111(b)(1)(B) of the Act that standards of perfomance be reviewed every four years and revised if appropriate. The proposed rule would amend 40 CFR 60.11(e) to require that the owner or operator of an affected facility make opacity observations during each performance test of a facility to which an opacity standard applies. Also, affected facilities already required to continuously monitor opacity by transmissometer would be required to report the opacity data for the same time period as the opacity observations. If no performance test is required for the affected facility (as is true for some fugitive emission standards) or if visibility conditions prevent opacity observations during a performance test, The opacity observations would have to be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated, but no later than 180 days after initial startup of the facility. The proposed rule also requires the owner or operator of an affected facility collecting Method 9 data to provide to the Administrator a copy of a certificate or other evidence indicating proof of current visible emission certification and to make available such records as may be necessary to determine the conditions under which the observations were made. An amendment is also proposed to 40 CFR 60.7(a) to require a 30-day prior notification to EPA of the observations. This is consistent with notification required for performance tests and would allow EPA time to arrange to have an observer present.

Paperwork Reduction Act

During the first year that the proposed rule would be in effect, the average annual industry-wide burden of the reporting and recordkeeping requirements would be 2.4 person-years, based on an average of 256 respondents per year. The supporting statement that documents calculation of this burden is filed as item II–F–1 in docket A–83–43. The information collection requirements in this proposed rule have been submitted for approval to the Office of Managment and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** Section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see **ADDRESSES** section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this purposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (§ 307(d)(7)(A))).

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it would not meet any of the criteria for a major regulation stated in section 1(b) of Executive Order 12291. This regulation was submitted to OMB for review as required by the Executive Order.

Pursuant to the provisions of 5 U.S.C 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because there would not be a significant economic impact on any entities.

List of Subject in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Date: July 23, 1984.

William D. Ruckelshaus

Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended by adding paragraph (a)(6) to § 60.7, by adding a third sentence in paragraph (b) to § 60.11, and by revising paragraphs (e)(1) and (e)(2) of § 60.11 to read as follows: Subpart A—General Provisions

* * * * *

§ 60.7 Notification and recordkeeping.

(a) * * *

(6) A notification of the anticipated date for conducting the opacity observations required by § 60.11(e)(1) of this part. The notification shall be postmarked not less than 30 days prior to such date.

* * * * *

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.11 Compliance with standards and maintenance requirements.

* * * * *

(b) * * *

The owner or operator of an affected facility shall make available to the Administrator such records as may be necessary to determine the conditions under which the visual observations were made.

* * * * *

(e)(1) The owner or operator of an affected facility to which an opacity standard in this part applies shall conduct opacity observations in accordance with paragraph (b) of this section. The opacity observations shall be conducted concurrently with each performance test required in § 60.8. If no performance test is required or if visibility conditions prevent opacity observations, then observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility, and as such times as may be required by the Administrator. The minimum total time of opacity observations shall be 30 6-minute averages for each performance test or other set of observations. The owner or operator of an affected facility collecting Method 9 data shall provide a copy of a certificate or other evidence indicating proof of current visible emission certification.

(2) An owner or operator of an affected facility required to install and operate a continuous opacity monitor shall record the continuous opacity monitoring data produced during every performance test required by this paragraph and shall furnish the Administrator a written report of the continuous opacity monitoring results. Upon receipt from an owner or operator of the written reports of the results of the performance tests required by § 60.8, the opacity observation results and observer certification required by § 60.11(e)(1), and the continuous opacity monitoring results. If applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards.

* * * * *

(See 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 84–20104 Filed 7–30–84; 8:45 am]

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