AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10

9-4-84
Vol. 49 No. 172
Pages 34799-35000

federal register

Tuesday
September 4, 1984

465.624
G.SA

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aircraft
Federal Aviation Administration

Animal Diseases
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Banks, Banking
Comptroller of Currency

Communications Common Carriers
Federal Communications Commission

Disaster Assistance
Federal Emergency Management Agency

Endangered and Threatened Species
Fish and Wildlife Services

Freedom of Information
Agriculture Department

Government Publications
Commodity Futures Trading Commission

Indians—Education
Indian Affairs Bureau

CONTINUED INSIDE

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Selected Subjects

Manufactured Homes
Veterans Administration

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Price Support Programs
Commodity Credit Corporation

Savings and Loan Associations
Federal Home Loan Bank Board

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

Agricultural Marketing Service
RULES
34799 Lemons grown in Arizona and California
Milk marketing orders:
34799 Upper Florida et al.
PROPOSED RULES
Milk marketing orders:
34832 Georgia et al.

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Grain Inspection Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.
RULES
34804 Freedom of Information Act; implementation; International Cooperation and Development Office

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
34847 Wine labeling and advertising; geographic brand names; extension of time

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
34804 Lethal avian influenza; interim

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
34885 Procurement list, 1984; additions and deletions; correction

Bonneville Power Administration
NOTICES
34891 Northwest Power Planning Council; conservation surcharge recommendations; inquiry, etc.

Centers for Disease Control
NOTICES
Meetings:
34962 Mining, national occupational health survey, etc. (NIOSH)

Civil Aeronautics Board
NOTICES
34884 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
34885 American Airlines, Inc., et al.
34885 Connie Kalitta Services, Inc.

Coast Guard
RULES
Regattas and marine parades:
34822 Lake Havasu Water Ski Show
34821 River Days, Ohio River Championships

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
34833 Grain price support

Commodity Futures Trading Commission
RULES
34818 Weekly Advisory Calendar, mail subscriptions; fees

Comptroller of Currency
PROPOSED RULES
National banks:
34838 Minimum capital ratios; directives issuance

Consumer Product Safety Commission
NOTICES
35000 Meetings; Sunshine Act (3 documents)

Defense Department
NOTICES
34886 Personal property program, international through government bill of lading; inquiry; extension of time

Economic Regulatory Administration
NOTICES
Consent orders:
34896 ONEOK, Inc.

Education Department
NOTICES
Grantback arrangements; award of funds:
34886 Rhode Island
Grants; availability, etc.:
34887 Handicapped program, training personnel; new projects
34890 Handicapped program, training personnel; noncompeting continuation projects
34889 Handicapped program, training personnel; parent organization projects

Energy Department
See Bonneville Power Administration; Economic Regulatory Administration; Federal Energy Regulatory Commission; Western Area Power Administration.

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
34823 Electroplating and metal finishing, and electrical and electronic components; reporting and recordkeeping requirements
PROPOSED RULES
Air programs:
34870 Primary nonferrous smelter orders

Air quality implementation plans:
34851 Interstate pollution abatement
Air quality implementation plans; approval and promulgation; various States:
34866 New Mexico
NOTICES
Air and water pollution control:
34957 Confidential information and data transfer to contractors

Federal Aviation Administration
RULES
Air carriers certification and operations:
34815 Foreign air carriers; delay of Part 125 applicability
34815 Jet routes
34813, 34814 Transition areas (2 documents)
34814 VOR Federal airways
PROPOSED RULES
34846 Transition areas
NOTICES
Advisory circulars; availability, etc.:
34998 Aircraft, restricted category; use of automobile gasoline
Meetings:
34999 Air Traffic Procedures Advisory Committee

Federal Communications Commission
RULES
Common carrier services:
34824 Competitive rates and facilities authorizations; policy and rules
NOTICES
34957 Rulemaking proceedings filed, granted, denied, etc.; petitions

Federal Emergency Management Agency
PROPOSED RULES
Disaster assistance:
34874 Crisis counseling assistance and training
NOTICES
Disaster and emergency areas:
34958 Pennsylvania

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
34896 Mississippi River Transmission Corp. et al.
34897 Mountain Fuel Resources, Inc.
34897 National Fuel Gas Supply Corp.
34898 Northwest Pipeline Corp.
34898 Raton Natural Gas Co.
34898 Transcontinental Gas Pipe Line Corp. et al.

Federal Grain Inspection Service
NOTICES
Agency designation actions:
34881 Alabama and Iowa
34880 Arizona, Illinois, and South Carolina
34880 Illinois and Oregon

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
34806 Net worth certificates
NOTICES
34958, 34959 Agency information collection activities under OMB review (3 documents)
Receiver appointments:
34958 Fidelity Federal Savings & Loan Association, Baltimore, MD

Federal Maritime Commission
NOTICES
34959, 34961 Agreements filed, etc. (2 documents)
34961 Agreements filed, etc.; intent to terminate
Casualty and nonperformance, certificates:
34961 Stena Cargo Line Ltd. et al. (2 documents)
34960 Tariffs, inactive; cancellation

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
34961 Norstar Bancorp Inc. et al.
34962 Sunrise Bancorp

Federal Trade Commission
RULES
Prohibited trade practices:
34817 Avco Financial Services, Inc.
34816 Cynex Manufacturing Corp.
34818 Peabody Barnes, Inc.
34817 Sovereign Chemical & Petroleum Products, Inc.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
34878 Blackside dace
34879 Welsh's milkweed; comment period reopened, etc.

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
34820 Tylosin
NOTICES
Animal drugs, feeds, and related products:
34967 Furaltadone (NF-260); hearing on proposal to withdraw approval
34971 Furazolidone (NF-180); hearing on proposal to withdraw approval
34965 Nitrofurazone (NF-7); hearing on proposal to withdraw approval
Food additive petitions:
34970 Ciba-Geigy Corp.
Food for human consumption:
34964, 34965 Cheese, grated; identity standard deviation; market testing permit (2 documents)
Human drugs:
34976 Pathilon tablets; hearing request denied, etc.; correction
Laser variance approvals, etc.:
34969 Coherent Innovations, Inc., et al.
Sunlamp variance approvals, etc.:
34963 Tan Body Sun Systems, Manufacturing Inc., et al.
X ray systems variance approvals, etc.,
34964 Baystate Medical Center
34970 Elscint, Inc.

Forest Service
NOTICES
Environmental statements; availability, etc.:
34882 Boise National Forest, ID

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration.

Indian Affairs Bureau
RULES
Education:
34820 Indian school equalization program; interim

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service.
NOTICES
Environmental statements; availability, etc.:
34976 Federal coal management program

International Trade Administration
NOTICES
Meetings:
34885 Importers and Retailers' Textile Advisory Committee; room change

Interstate Commerce Commission
NOTICES
34981 Agency information collection activities under OMB review
Railroad services abandonment:
34981 Illinois Central Gulf Railroad Co.

Justice Department
NOTICES
Pollution control; consent judgments:
34981 Fischer & Porter Co.

Land Management Bureau
NOTICES
Meetings:
34976 Medford District Advisory Council

Merit Systems Protection Board
NOTICES
34982 Decisions and index publication; availability; cancellation

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
34885 Gilbert, Dr. James R.

National Park Service
NOTICES
Historic Places National Register; pending nominations:
34976 Alabama et al.
34979 National Historic Landmarks; proposed boundaries

National Science Foundation
NOTICES
Grants availability, etc.:
34982 College science instrumentation program; announcement and guidelines

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
34987 Consolidated Edison Co. et al.
34987 General Public Utilities Nuclear Corp. et al.
34989 Virginia Electric & Power Co.
Environmental statements; availability, etc.:
34989 Northern States Power Co.

Personnel Management Office
NOTICES
34990 Agency information collection activities under OMB review (3 documents)
Committees; establishment, renewals, terminations, etc.:
34991 Federal Prevailing Rate Advisory Committee

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
34882 Allegheny Electric Cooperative, Inc.
34883 Big Horn County Electric Cooperative, Inc.
34883 Homer Electric Association, Inc.

Securities and Exchange Commission
NOTICES
Hearings, etc.:
34991 Hartford Money Market Fund, Inc., et al.
34992 Jersey Central Power & Light Co. et al.
Self-regulatory organizations; proposed rule changes:
34993 American Stock Exchange, Inc.
34994 Midwest Securities Trust Co.
34993, 34994 Midwest Stock Exchange, Inc. (2 documents)
34995 Pacific Securities Depository Trust Co.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
34884 Tainter Lake Critical Area Treatment RC&D Measure, Wisconsin
Wood County Highway HH Critical Area Treatment RC&D Measure, Wisconsin (**Editorial Note:** This document, appearing at page 34055 in the **Federal Register** of August 28, 1984, was listed incorrectly in that issue's table of contents.)

Transportation Department
See also Coast Guard; Federal Aviation Administration.
NOTICES
34996 Agency information collection activities under OMB review

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Comptroller of Currency.
NOTICES
34999 Agency information collection activities under OMB review

Veterans Administration
PROPOSED RULES
Loan guaranty:
34847 Manufactured home loans

Western Area Power Administration
NOTICES
Power marketing plans:

34900 Salt Lake City Area

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
910 34799
1006 34799
1007 34799
1011 34799
1012 34799
1013 34799
1093 34799
1094 34799
1096 34799
1098 34799
1099 34799
1102 34799
1108 34799
2200 34804

Proposed Rules:
1007 34832
1093 34832
1094 34832
1421 34833

9 CFR
81 34804

12 CFR
552 34806
572 34806

Proposed Rules:
3 34838

14 CFR
71 (3 documents) 34813, 34814
75 34815
125 34815

Proposed Rules:
71 34846

16 CFR
13 (4 documents) 34816–34818

17 CFR
145 34818

21 CFR
558 34820

25 CFR
39 34820

27 CFR

Proposed Rules:
4 34847

33 CFR
100 (2 documents) 34821, 34822

38 CFR

Proposed Rules:
36 34847

40 CFR
413 34823
433 34823
469 34823

Proposed Rules:
52 (2 documents) 34851, 34866
57 34870

44 CFR

Proposed Rules:
205 34874

47 CFR
61 34824
63 34824

50 CFR

Proposed Rules:
17 (2 documents) 34878, 34879

Rules and Regulations

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 479]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 215,768 cartons during the period September 2–8, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 2, 1984.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on August 28, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.779 is added as follows:

§ 910.779 Lemon Regulation 479.

The quantity of lemons grown in California and Arizona which may be handled during the period September 2, 1984, through September 8, 1984, is established at 215,768 cartons.

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

Dated: August 29, 1984.

Thomas R. Clark,

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

[FR Doc. 84–23372 Filed 8–30–84; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1093, 1094, 1096, 1098, 1099, 1102, and 1108

[Docket Nos. AO–356–A22 et al.]

Milk in the Upper Florida and Certain Other Marketing Areas; Order Amending Orders

7 CFR parts	Marketing area	Docket Nos.
1006	Upper Florida	AO–356–A22
1007	Georgia	AO–366–A24
1011	Tennessee Valley	AO–251–A27
1012	Tampa Bay	AO–347–A25
1013	Southeastern Florida	AO–286–A32
1093	Alabama-West Florida	AO–366–A3
1094	New Orleans-Mississippi	AO–103–A45
1096	Greater Louisiana	AO–257–A32
1098	Nashville, Tennessee	AO–184–A47
1099	Paducah, Kentucky	AO–183–A39
1102	Fort Smith, Arkansas	AO–237–A33
1108	Central, Arkansas	AO–243–A37

AGENCY: Agricultural Markting Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Upper Florida and 11 other Federal milk marketing orders. One change increases the Class I price differentials in 10 of the orders by 20 cents per hundredweight for the months of September 1984 through February 1985. Also, a hauling credit is provided for handlers under those 10 orders for supplemental milk brought in from other order plants during the same months. The base-excess plans contained in 6 of the orders will be modified to allow producers' milk delivered to other order plants regulated by the southeastern orders containing base-excess plans to be included in the computation of their bases.

These changes are based on evidence presented at a public hearing held on August 7, 1984, in Atlanta, Georgia. The order changes were requested by a cooperative association that represents dairy farmers who supply milk to the 12 markets.

The adopted order changes are necessary to reflect current marketing conditions and to insure that all handlers in the affected markets share more equitably in the cost of obtaining substantial supplies of supplemental milk during September through February. Because of the limited time available to complete the rulemaking procedures, a recommended decision and the opportunity to file exceptions

thereto were omitted. Cooperative associations representing at least two-thirds of the producers in each market who were engaged in the production of milk for sale during the determinated represented period have approved the issuance of the amended orders.

These amendments to the 12 milk orders also were proposed for the Louisville-Lexington-Evansville and Memphis, Tennessee, orders and adopted in the Assistant Secretary's decision of August 22, 1984. A final rule for those orders is delayed pending the results of referenda to determine producer approval of the amended orders.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 1, 1984; published August 3, 1984 (49 FR 31072).

Emergency Final Decision: Issued August 22, 1984; published August 28, 1984 (49 FR 34028).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid tentative marketing agreements and orders:

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders 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 areas, and the minimum prices specified in the orders, 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 orders as hereby amended regulate the handling of milk in the same manner as, and are 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.

(b) *Additional findings.* It is necessary in the public interest to make this order amending each of the aforesaid orders effective on September 1, 1984. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued August 22, 1984 (49 FR 34028). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending each of the aforesaid orders effective on September 1, 1984, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of this order amending each of the specified orders is approved of or favored by at least two-thirds (three-fourths in the case of Fort Smith) of the producers who were engaged in the production of milk for sale in the respective marketing areas during the determined representative period.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1093, 1094, 1096, 1098, 1099, 1102, 1108

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended, as follows:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.50, paragraph (a) is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1006.60, paragraph (h) is revised to read as follows:

§ 1006.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.50, paragraph (a) is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30, and

plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1007.60, paragraph (g) is revised to read as follows:

§ 1007.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, buy a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1007.90 is revised to read as follows:

§ 1007.90 Base milk.

"Base milk" means the producer milk of a producer in each month of February through August that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of February 1985 through August 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1007.13.

4. In § 1007.92, the following language is added to paragraphs (a) and (b):

§ 1007.92 Computation of base for each producer.

(a) * * *

For producer bases to be calculated on or before March 1, 1985, and subject to § 1007.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 145, whichever is more.

(b) * * *

For bases calculated from the September 1984–January 1985 base-forming period, and except as provided in paragraph (c) of this section, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.10, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1011.60, paragraph (g) is revised to read as follows:

§ 1011.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1011.90 is revised to read as follows:

§ 1011.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1011.13.

4. In § 1011.92, the following language is added to paragraphs (a) and (b):

§ 1011.92 Computation of base for each producer.

(a) * * *

For producer bases to be calculated on or before February 1, 1985, and subject to § 1011.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia-Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) * * *

For bases calculated from the September–December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.50, paragraph (a) is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.95, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1012.60, paragraph (h) is revised to read as follows:

§ 1012.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool

plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.50, paragraph (a) is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.15, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1013.60, a new paragraph (h) is added to read as follows:

§ 1013.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.50, paragraph (a) is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1093.60, a new paragraph (g) is added to read as follows:

§ 1093.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1093.90 is revised to read as follow:

§ 1093.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through July that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1093.13.

4. In § 1093.92, the following language is added to paragraphs (a) and (b):

§ 1093.92 Computation of base for each producer.

(a) * * *

For producer bases to be calculated on or before February 28, 1985, and subject to § 1093.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 120, whichever is more.

(b) * * *

For bases calculated from the September 1984-January 1985 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.50, paragraph (a) is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1094.60, a new paragraph (h) is added to read as follows:

§ 1094.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.50, paragraph (a) is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1096.60, a new paragraph (g) is added to read as follows:

§ 1096.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any

difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. In § 1098.50, paragraph (a) is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.85, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1098.60, a new paragraph (g) is added to read as follows:

§ 1098.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. In § 1098.90, the following language is added:

§ 1098.90 Base milk.

* * * * *

For the months of March 1985 through July 1985, base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1098.13.

4. In § 1098.92, the following language is added:

§ 1098.92 Computation of daily average base for each producer.

* * * * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1098.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 153, whichever is more; or by 138 pursuant to the above provisions.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. In § 1099.50, paragraph (a) is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.70, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1099.60, a new paragraph (g) is added to read as follows:

§ 1099.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. Section 1102.90 is revised to read as follows:

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93 except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1102.13.

2. In § 1102.92, the following language is added:

§ 1102.92 Computation of daily average base for each producer.

* * * * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1102.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis Tennessee; Nashville; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became an approved plant, or a pool plant under any of the above orders, during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been an approved plant or a pool plant during such period.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.90 is revised to read as follows:

§ 1108.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July which is not in excess of such producer's base computed pursuant to § 1108.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1108.13.

2. In § 1108.92, the following language is added:

§ 1108.92 Computation of daily average base for each producer.

* * * * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1108.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a pool plant under this order or any of the above orders during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a pool plant under this or any of the above orders during such peirod.

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

Effective date: September 1, 1984.

Signed at Washington, D.C., on: August 29, 1984.

C. W. Millan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–23390 Filed 8–30–84; 8:45 am]

BILLING CODE 3410–02–M

Office of International Cooperation and Development

7 CFR Part 2200

Availability of Information to the Public

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Final rule.

SUMMARY: This rule explains how to request records from the Office of International Cooperation and Development under the Freedom of Information Act. It supplements the Department's regulations in 7 CFR 1.1–1.16 and Appendix A.

EFFECTIVE DATE: September 4, 1984.

ADDRESSES: Send comments to Mr. Charles H. Cook, Office of International Cooperation and Development, USDA, Washington, DC 20250, (202) 475–5246.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Cook, Office of International Cooperation and Development, USDA, Washington, DC 20250, (202) 475–5246.

SUPPLEMENTARY INFORMATION: This rule is an interpretative rule. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated a non-major rule.

Finally, this action is not a rule as defined in Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2200

Freedom of information.

7 CFR is amended by adding a new Chapter XXII and Part 2200 reading as follows:

CHAPTER XXII—OFFICE OF INTERNATIONAL COOPERATION AND DEVELOPMENT

PART 2200—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

2200.1 General.
2200.2 Public inspection, copying and indexing.
2200.3 Requests for records.
2200.4 Denials.
2200.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

§ 2200.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1–1.16 of this title and appendix A thereto, implementing the Freedom of Information Act. The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Office of International Cooperation and Development (OICD) to the public.

§ 2200.2 Public inspection, copying and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. OICD does not maintain materials within the scope of these requirements.

§ 2200.3 Requests for records.

(a) Requests for records of OICD shall be made in accordance with § 1.3(a) of this title and addressed to the Director, Information and Evaluation Staff, Office of International Cooperation and Development, USDA, Room 3059–S, Washington, DC 20250. Authority is hereby delegated to this official to make determinations regarding such requests in accordance with § .14(c) of this title.

(b) Requests should be reasonably specific in identifying the record requested and should include the name, address, and telephone number of the requester.

(c) Available records may be inspected and copied in the Office of the Director, Information and Evaluation Staff, from 8:30 a.m. to 5:00 p.m. local time on regular working days, or may be obtained by mail. Copies will be provided upon payment of applicable fees, unless waived or reduced, in accordance with the Department of Agriculture fee schedule set forth in Appendix A to Part 1, Subpart A, of Subtitle A of this title.

§ 2200.4 Denials.

If the Director, Information and Evaluation Staff determines that a requested record is exempt from mandatory disclosure and the discretionary release would be improper, he/she shall give written notice of the denial in accordance with § 1.5(a) of this title.

§ 2200.5 Appeals.

The denial of a requested record may be appealed in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Office of International Cooperation and Development, Washington, DC 20250.

Done at Washington, D.C., this 28th day of August, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84–23370 Filed 8–31–84; 8:45 am]

BILLING CODE 3410–DP–M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84–075]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim Rule.

SUMMARY: This document amends the Lethal Avian Influenza interim rule by reducing the area designated as a quarantined area in Pennsylvania because of lethal avian influenza. The quarantined area is changed by deleting a portion of Adams County from the quarantined area (with this change all of Adams County is outside of the quarantined area). The quarantined area was established as part of a mechanism to help prevent the spread of lethal avian influenza. However, it is no longer necessary to quarantine the deleted area for such purpose.

DATES: Effective date is August 29, 1984. Written comments must be received on or before November 5, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H. A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8087.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule which is set forth in 9 CFR Part 81 (48 FR 51422–51423, 51798, 52420–52427, 52885–52887, 53586, 53678–53679, 53679–53681, 53997, 54574–54575, 55402–55405, 55722, 57474–57475, 49 FR 368–369, 2742–2744, 3494, 3839–3845, 5723–5724, 7978–7979, 8412–8415, 8582–8583, 13863–13864, 19288–19289, 19500–19501, 24011–24013, 31055–31057). Among other things, the interim rule designates portions of Pennsylvania and Virginia as quarantined areas and prohibits or restricts certain interstate movements from quarantined areas of poultry, poultry eggs, and other items because of lethal avian influenza.

Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Effect of Designation as a Quarantined Area

With certain exceptions, the interim rule provides that the following articles designated as prohibited articles are prohibited from being moved interstate from a quarantined area:

(1) Live poultry,

(2) Manure from poultry, and

(3) Litter that has been used by poultry.

The interim rule also provides, with certain exceptions, that the following articles designated as restricted articles are allowed to be moved interstate from a quarantined area only in accordance with certain conditions:

(1) Poultry carcasses or parts thereof,

(2) Eggs from poultry, and

(3) Coops, containers, troughs or other accessories that have been used in the handling of poultry or poultry eggs.

Reduction of Quarantined Area in Pennsylvania

Prior to the effective date of this document, the quarantined area in Pennsylvania included portions of Adams, Berks, Chester, Dauphin, Lancaster, Lebanon, and Schuylkill Counties.

The quarantined area in Adams County was described as:

That portion of Pennsylvania, beginning at the junction of Heidlersburg Road and Carlisle Road; then southerly along Carlisle Road to its intersection with Brookside Lane; then easterly along Brookside Lane to its intersection with Rentzel Road; then southerly along Rentzel Road to its intersection with Oakhill Road; then easterly along Oakhill Road to its intersection with Stone Jug Road; then northerly along Stone Jug Road to its intersection with Heidlersburg Road; then westerly along Heidlersburg Road to its intersection with Carlisle Road.

This document reduces the quarantined area in Pennsylvania by deleting all of the previously quarantined area in Adams County.

The portion of Adams County that was included in the quarantined area was inciuded because of one premises which contained poultry which had antibodies indicating they were infected with lethal avian influenza. The poultry on that premises have been depopulated and the premises has been cleaned and disinfected. Sufficient time has now elapsed to ensure that this premises is free of lethal avian influenza virus and that no lethal avian influenza virus exists in the previously quarantined area in Adams County. Under these circumstances there is no longer a basis for imposing prohibitions of restrictions because of lethal avian influenza on the movement of live poultry or other items from the area removed from quarantined area status.

With the deletion of a portion of Adams County, the remaining quarantined area in Pennsylvania includes all or portions of Berks, Chester, Dauphin, Lancaster, Lebanon, and Schuylkill Counties and is described as follows:

That portion of Pennsylvania beginning at the intersection of the eastern bank of the Susquehanna River with the Pennsylvania-Maryland State Line; then northwesterly along the eastern bank of the Susquehanna River to its interstate Highway 83; then east and north along Interstate Highway 83 to its intersection with Interstate Highway 81; then west along Interstate Highway 81 to its intersection with the Susquehanna River; then northwesterly along the Susquehanna River to its intersection with PA Highway 325; then northeasterly along PA Highway 325 to its intersection with U.S. Highway 209; then northeasterly along U.S. Highway 209 to its intersection with PA Highway 61; then southeasterly along PA Highway 61 to its intersection Highway 78; then northeasterly along Interstate Highway 78 to its intersection with the Berks-Lehigh County Line; then southeasterly along the Berks-Lehigh County Line to its intersection with the Berks-Montgomery County Line; then southwesterly along the Berks-Montgomery County Line to its intersection with U.S. Highway 422; then southeasterly along U.S. Highway 422 to its intersection with PA Highway 100; then southerly along PA Highway 100 to its intersection with the Pennsylvania-Delaware State Line; then southwesterly along the Pennsylvania-Delaware Line to its intersection with the Pennsylvania-Maryland State Line; then westerly along the Pennsylvania-Maryland State Line to its intersection with the Susquehanna River.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from a portion of Adams County in Pennsylvania.

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

Executive Order and Regulatory Flexibility Act

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

This action relieves restrictions on the movement of live poultry and certain other items from a portion of Adams County in Pennsylvania. Currently there are no poultry raised in the area being released from quarantine.

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

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

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

§ 81.4 [AMENDED]

Under the circumstances referred to above, § 81.4 of 9 CFR Part 81 is amended by removing paragraph (a)(1), and by redesignating paragraph (a)(2) as paragraph (a).

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a-1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 29th day of August, 1984.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84-23316 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 552 and 572

[No. 84-460]

Net Worth Certificates; Charter Amendments by Federal Institutions

Dated: August 27, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has amended its regulations implementing the Net Worth Certificate Act, Title II, Pub. L. 97-320, 96 Stat. 1469 (October 15, 1982), (1) to increase the maximum amount of net worth certificates ("NWCs") which the Federal Savings and Loan Insurance Corporation ("Corporation") may purchase from a qualified institution, (2) to define mismanagement of an institution to include actions or inactions which constitute unsafe or unsound practices or other violations of law, (3) to remove the requirement of stockholder approval of issuance of NWCs by stock institutions, and (4) to make certain technical and clarifying changes, including clarification of the method of calculating the amount of NWCs that may be purchased pursuant to a commitment of the Corporation to purchase NWCs. These amendments are intended to promote a more efficient administration of the net worth assistance program and to clarify certain policy objectives of the program.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: James A. Kristufek, Special Assistant to the Director, Office of Examinations and Supervision (202-377-6290), of Clement Dinsmore, Attorney, FSLIC Division, Office of General Counsel (202-377-7051), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Board in Resolution No. 82-793, dated December 8, 1982, 47 FR 58215 (1982), adopted regulations to implement the Net Worth Certificate Act, Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469 (October 15, 1982) ("DIA"). The Board amended these regulations pursuant to Resolution No. 83-87, dated February 18, 1983, 48 FR 8256 (1983).

The Board has since reviewed the thrift industry's response to the net-worth assistance program and has considered the utility of the program as a means of both addressing the present and foreseeable circumstances of the industry and preserving the Corporation's Insurance Fund. As a result, the Board has determined that certain changes in the program would make it more useful as a means to protect the Insurance Fund against undue risk of loss and depletion and to enable members of the thrift industry to survive as independent going concerns during a period of economic transition.

These programmatic changes include, but are not limited to, the regulatory amendments adopted pursuant to this final rule. Changes also will be made in the program's application forms and procedures and the legal documents used to implement the program, specifically including the form of Master Agreement between the Corporation and a qualified institution which issues NWCs to the Corporation.

The Board's policy objectives include using the net-worth assistance program to deter thrift institutions from increasing the Corporation's risk of loss on its insurance liability to insured depositors and account holders. The Board hopes to realize this objective by increasing the amount of assistance available to improve the net-worth condition of thrift institutions insured by the Corporation while requiring the Corporation to review more carefully such institutions' operating losses in order to exclude from the amount of available assistance all losses attributable to management's pursuit of speculative or high-risk strategies that involve unsafe or unsound practices or other violations of regulatory restraints.

In making the regulatory changes reflected in this final rule and in considering related non-regulatory changes in the net-worth assistance program, the Board also anticipates that the program is more likely to enable the Corporation to avoid alternative supervisory actions with respect to insured thrift institutions that would result in more immediate and substantial depletion of the Insurance Fund.

Although not a subject of this final rule, extension or other modification of the Corporation's Appraised Equity Capital rule, § 563.13(c) of the Regulations for the Corporation ("Insurance Regulations"), 12 CFR 563.13(c) (1983), which currently will expire as of December 31, 1985, is under review by the Board's staff. Pursuant to § 572.2(c) of the Insurance Regulations, as amended, the Board has elected to continue to require that thrift institutions participating in the net-worth assistance program include appraised equity capital in their

regulatory net worth as permitted by § 563.13(c) of the Insurance Regulations.

II. Regulatory Amendments

A. Amount of Assistance

The Board has amended paragraph (d) of § 572.1 of the Insurance Regulations to remove the distinction between the maximum amount of NWCs which the Corporation may purchase initially from a qualified institution and the maximum amount it may purchase after its initial purchase. This change is accomplished by the deletion of paragraph (d)(2) from § 572.1 and the deletion of paragraphs (b) and (i) from § 572.2. The distinction made under the prior rule derived from the Board's judgment that an institution's operating losses might well be higher prior to the institution's undertaking to comply with the operating restrictions required as a condition to the Corporation's purchase of NWCs. While removing the distinction, the Board will continue to require careful review of an institution's operating losses. Pursuant to paragraph (f) of § 572.1, losses attributable to mismanagement will be excluded in the Corporation's calculation of the maximum permissible amount of NWCs it may purchase.

The Board also has amended paragraph (d) of § 572.1 to simplify the method of calculating the maximum amount of NWCs the Corporation may purchase. Under the rule, as amended, if the Corporation exercises its discretion to purchase NWCs from a qualified institution, it shall purchase NWCs equal to 70% of a qualified institution's operating losses subject to the limitations and other provisions of Part 572. The deletion of paragraph (d)(3) and the revision of paragraph (d)(1) of § 572.1 remove the prior method of calculation that reduced the purchase of NWCs by the Corporation as institutions' net worth approached 3% and that required one or more recalculations of an institution's net worth to determine the ultimate maximum amount of NWCs the Corporation might purchase. While the prior rule closely tracked section 406(f)(5)(E) of the National Housing Act ("NHA"), as amended by the DIA, this final rule facilitates the efficient administration of assistance under the net-worth assistance program, and section 406(f)(5)(F) of the NHA, as amended by the DIA, gives the Corporation discretion to alter the method of calculation suggested in section 406(f)(5)(E).

B. Losses Attributable to Mismanagement

The Board has amended paragraph (f)(1) of § 572.1 of the Insurance Regulations to further clarify the types of mismanagement which the Corporation would consider in determining the amount of NWCs it would purchase from an institution. The illustrations stated in the second sentence of paragraph (f)(1) of § 572.1 have been expanded to make clear that mismanagement resulting in any action or inaction constituting a violation of law or an unsafe or unsound practice, as determined by the Corporation, shall result in a reduction in the amount of NWCs purchased by the Corporation. Enhancement of the Corporation's ability to identify losses attributable to mismanagement will be pursued through revisions to the program's application documents and procedures.

C. Corporate Authorization of Issuance of NWCs

The Board has amended paragraph (i) of § 572.1 to remove the requirement of stockholder approval of a stock institution's issuance of NWCs to the Corporation. Pursuant to paragraph (h)(3) of § 572.1, the Corporation will continue to require a certification that the NWCs have been validly authorized by all necessary corporate action.

The Board has reconsidered the necessity for the stockholder approval requirement in the prior rule, and has determined that under section 406(f)(5)(A) of the NHA, as amended by the DIA, the Corporation may authorize qualified institutions to issue NWCs by corporate action prescribed by the Corporation. The Board has further determined that the stockholder approval requirement in the prior rule created a substantial deterrent to the participation by stock institutions in the Corporation's net-worth assistance program due to the time, organizational effort, and disclosures required to obtain such approval. The costs of compliance with the requirement were potentially substantial, particularly for the publicly held stock institutions with a substantial number of stockholders. Furthermore, the requirement's deterrent effect upon stock institutions' entry into the program prevented the institutions' stockholders from realizing the benefit of the program s support of the institutions' continued viability.

The Board recognizes that, due to the priority in liquidation of the Corporation's claims under NWCs over stockholders' claims provided by section 406(f)(5)(A)(iv) of the NHA, as amended by the DIA, and the dividend restriction that applies to qualified institutions with NWCs outstanding pursuant to section 406(f)(5)(M) of the NHA, as amended by the DIA, the board of directors of a qualified stock institution may choose to authorize the issuance of NWCs subject to the approval of the institution's stockholders. This final rule does not preclude such action; it, however, leaves to the board of directors the determination to take such action.

If the board of directors of a qualified institution determines to seek stockholder approval to authorize the issuance of NWCs, the Corporation will not purchase NWCs from the institution until such approval is obtained.

The revision of paragraph (i) of § 572.1 addresses the corporate authorization of issuance of NWCs by stock and mutual institutions, whether federally or state chartered. In conformance with the above-described amendments to paragraph (i), the Board has amended Part 572 by deleting § 572.10 and paragraph (h)(4) of § 572.1 and by revising paragraph (a)(2) of § 572.1.

In a related change, the Board has amended paragraph (b)(7) of § 552.4 of the Regulations for the Federal Savings and Loan System ("Federal Regulations") to remove the pre-approved amendment to federal stock charters that, upon adoption, permitted board-of-director authorization of issuance of NWCs without prior stockholder approval. This amendment to the Federal Regulations does not, as discussed above, preclude approval of such a charter amendment.

D. Other Changes

The Board has amended paragraphs (c), (e), and (f) of § 572.1 of the Insurance Regulations to cure a technical deficiency in the prior rule. The amendment clarifies that all purchases of NWCs by the Corporation from qualified institutions, whether or not pursuant to a prior commitment based on the Corporation's initial determination of eligibility pursuant to § 572.3(i), are subject to the general restrictions and limitations of paragraphs (e) and (f) of § 572.1. The Board has amended paragraph (g)(1) of § 572.1 to cure a similar deficiency. The amendment clarifies that the net worth maintenance obligation of a holding company or majority stockholder takes account of any commitment by the Corporation to purchase NWCs that may be included in a qualified institution s regulatory net worth.

The Board has amended paragraph (e)(3) of §571.1 to illustrate more clearly the basis upon which the Corporation would be likely to find that a significant

supervisory problem existed that justified the Corporation's refusal to purchase NWCs from an institution. The change is designed to make the illustrations given in the paragraph's first sentence more clearly indicative of a significant supervisory problem.

The Board has amended paragraph (a) of § 572.1 to add a new paragraph (a)(3) that provides for the prospective effect of the amendments to Part 572 that the Board has adopted pursuant to this final rule. Purchases by the Corporation of NWCs consummated prior to the effective date of these amendments are unaffected by the rule's changes.

The Board has amended paragraphs (d), (e), (f), and (h) of § 572.2 of the Insurance Regulations to conform Part 572 with the changes in financial reporting requirements implemented pursuant to Board Resolution No. 83–576, dated October 24, 1983, 48 FR 50955 (1983). The change substitutes the quarterly Financial Report for the Semiannual Report as the means of identifying an institution's operating losses. The Board also has amended § 572.3 to add a new paragraph (n) that indicates that institutions with fiscal years ending on a date other than the close of a calendar quarter nevertheless will use the Quarterly Financial Report to identify their operating losses for the purposes of Part 572.

The Board also has amended paragraphs (e) (1) and (3) of § 572.2, as amended, to take account of the continuing participation by some qualified institutions in the net-worth assistance program and the effect of section 406(f)(5)(J) of the NHA. If the Corporation has purchased NWCs from a qualified institution, that purchase will increase the institution's equity capital for the purpose of determining compliance with paragraph (e)(1) of § 572.2. In determining compliance with paragraph (e)(3) of § 572.2, the Corporation will take account of the purchase of NWCs that a qualified institution has requested as of the end of its most recent applicable period but the Corporation has not yet consummated.

The Board has amended paragraphs (a) and (b) of § 572.3 to remove the prior reference to Forms 1286 and 1287. These forms will be replaced by a single form.

The Board has amended paragraphs (a) and (e) of § 572.5 to distinguish more clearly between the Corporation s initial determination of eligibility pursuant to § 572.3(i) and its determination pursuant to paragraphs (g) and (h) of § 572.3. Notwithstanding the initial determination provided by § 572.3(i), an institution, pursuant to § 572.3(a), still must file an application form to report actual operating losses incurred during the period in which an initial determination was made. The Corporation's determination following receipt of the application form would be subject to the appeal procedure of § 572.5, as would any other determination made pursuant to paragraphs (g) and (h) of § 572.3.

Regulatory Analysis

The elements of regulatory analysis for major regulations required by Board Resolution No. 80–584, dated September 11, 1980, have been incorporated into the supplementary information contained herein.

List of Subjects in 12 CFR Parts 552 and 572

Savings and loan associations.

The Board finds that observance of the notice and comment period pursuant to 5 U.S.C. 553(b) and 12 CFR 508.12, and the delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary, because it is in the public interest for the Board's program of net-worth assistance, as revised by these amendments to that program, to take effect at the earliest feasible time and these amendments to that program promote a more efficient administration of the program and are to the benefit of participants in the program.

Accordingly, the Board hereby amends Part 552 of Subchapter C, and amends Part 572 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

§ 552.4 [Amended]

1. Amend § 552.4 by removing paragraph (b)(7) thereof.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

2. Revise Part 572, as follows (the entire part, including unchanged provisions, is reprinted here for the benefit of the reader):

PART 572—NET WORTH CERTIFICATES

Sec.

572.1 Purchase of net worth certificates.
572.2 Definitions.
572.3 Application for Corporation purchases of net worth certificates.
572.4 Delegations.
572.5 Right to appeal.
572.6 Effect of Corporation purchase of net worth certificates.
572.7 Dividends.
572.8 Branching.
572.9 Transactions with holding company.
572.10 Board statutory authority.

Authority: Secs. 401, 403, 405, 406, and 407, 48 stat. 1255, 1256, 1257, 1259, and 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1729, and 1730); secs. 2 and 5, 48 stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); Reorg. Plan No. 3 of 1947, 3 CFR 1943–1948 Comp., p. 1071.

§ 572.1 Purchase of net worth certificates.

(a) *General.* (1) Title II of the Garn-St Germain Depository Institutions Act of 1982 (the "DIA"), Pub. L. 97–320, 96 Stat. 1493, (October 15, 1982), amends section 406(f) of the National Housing Act ("NHA"), 12 U.S.C. 1729(f), to authorize the Corporation, in its sole discretion and on such terms and conditions as it may prescribe, to increase or maintain the capital of a qualified institution by making periodic purchases of net worth certificates ("NWCs") for such form of consideration as the Corporation may determine.

(2) This section explains the Corporation's program for the purchase of NWCs from qualified institutions pursuant to the DIA authority. The other sections of this part specify the procedures for a qualified institution to request that the Corporation purchase NWCs, govern action by the Corporation on such a request, define pertinent terms, and place certain limitations on an institution having outstanding NWCs.

(3) All purchases of NWCs by the Corporation, including purchases made pursuant to commitments issued by the Corporation in accordance with § 572.3(i) of this part, that are made after September 4, 1984, shall be made in accordance with the terms and conditions specified in this part.

(b) *Purchase of NWCs.* Except as otherwise specified in paragraph (c) of this section, the Corporation will only consider the purchase of NWCs from a "qualified institution", as defined in § 572.2 of this part, that requests such purchase by compliance with the application procedure specified in § 572.3 of this part and only on the basis of that institution's operating losses for the applicable period as to which an application is timely filed. If the Corporation approves an application under § 572.3, it may purchase NWCs from the qualified institution in exchange for promissory notes ("FSLIC Notes") in the appropriate amount as determined by the Corporation. Both the NWCs and the FSLIC Notes will be in forms satisfactory to the Corporation, and will contain such terms and conditions as the Corporation

determines to be appropriate under the particular circumstances involved. The Corporation retains sole discretion regarding whether or not to purchase NWCs from an institution, the amount of NWCs which it may purchase, and any terms and conditions it may impose in connection with a purchase of NWCs.

(c) *Commitment to purchase NWCs.* (1) If the Corporation determines in accordance with § 572.3(i) of this part that an institution is eligible to sell to the Coporation NWCs allocable to operating losses for the applicable period during which the institution files an application pursuant to § 572.3, the Corporation is committed to purchase, subject to paragraph (e) of this section, that amount of NWCs determined in accordance with paragraphs (d) and (f) of this section.

(2) This commitment exists so long as the institution remains a qualified institution and its amount is calculated and adjusted as appropriate on a month-to-month basis during the appropriate applicable period. Actual purchases will be made on the basis of the results of an applicable period. The amounts of a monthly commitment or monthly operating losses not covered by a commitment that result from the minimum purchase of rounding procedures shall be taken into account in subsequent months and appropriate adjustments made.

(d) *Maximum amount of NWCs*—(1) *General.* The maximum amount of NWCs which the Corporation may purchase from a qualified institution will be based on that institution's (i) operating losses for an applicable period, as defined in § 572.2, and (ii) ratio of equity capital as of the end of the applicable period, as defined in § 572.2, to total assets. If the Corporation determines to purchase NWCs from a qualified institution, it shall purchase NWCs equal to 70% of operating losses subject to the limitations and other provisions of this part.

(2) *Limitations.* (i) The Corporation will not purchase any NWC subsequent to October 15, 1985.

(ii) The Corporation will not purchase NWCs in an amount which causes an institution's ratio of equity capital to total assets to exceed 3 percent.

(iii) The corporation will not purchase NWCs applicable to operating losses for an applicable period if the amount to be purchased under the calculation would be less than $25,000, except that the Corporation may purchase the $25,000 minimum amount if the purchase amount calculated pursuant to paragraph (d)(1) of this section would increase the institution s ratio of equity capital to total assets from an amount less than 0.5 percent to an amount greater than 0.5 percent.

(iv) Purchase will be rounded to the nearest $25,000, except that (A) if the rounding procedure would cause the institution's ratio of equity capital to total assets to be reduced from an amount in excess of 0.5 percent to less than 0.5 percent, the amount purchased will be rounded to the next higher $25,000 multiple, or (B) if the rounding procedure would cause the institution's ratio of equity capital to total assets to be increased to an amount in excess of 3 percent the amount purchased will be rounded to the next lower $25,000 multiple.

(v) Notwithstanding paragraph (d)(2)(iii) of this section, if an institution qualifies for capital assistance for two consecutive applicable periods, but would be excluded from the Corporation's purchase of NWCs because of the $25,000 minimum limitation, the Corporation may purchase NWCs as of the end of that second applicable period on the basis of the cumulative amount for the pertinent applicable periods.

(e) *Restrictions on NWC purchases.* Even if an institution is a qualified institution, as defined in § 572.2, and has operating losses for an applicable period, the Corporation may exercise its discretion not to purchase any NWCs from that institution pursuant to the DIA authority in the following circumstances.

(1) *Cost.* The Corporation may refuse to purchase NWCs if it determines in its sole judgment that such purchase would be costlier to it than alternative transactions available to the Corporation or the institution. Alternative available transactions would include a liquidation of the institution (including the paying of insured accounts), transactions committed to the discretion of the Corporation in accordance with sections 406(f)(1), (2), or (3) of the NHA, or mergers or supervisory conversions available to the institution which would eliminate or significantly reduce the institution's need for capital assistance under the DIA authority. In making this determination of relative cost, the Corporation will consider the net present-value cost to it of all projected purchases of NWCs which would be made under the criteria of this part and alternative transactions or liquidation. The Corporation delegates to the Director of the Federal Home Loan Bank Board's ("Board") Office of the Federal Savings and Loan Insurance Corporation, or his designee, with the concurrence of the General Counsel, or his designee, the authority to determine whether an alternative is less costly than the Corporation's purchase of NWCs under the DIA authority.

(2) *Pending insolvency.* (i) The Corporation may refuse to purchase NWCs from an institution if it determines in its sole judgment that, after giving effect to the proposed purchase of NWCs by the Corporation, that institution would be "insolvent" within six months from the proposed date of purchase. For this purpose, "insolvent" means zero or less equity capital. The fact that the pending "insolvency" of an institution is determined by the FSLIC does not mean either that the FSLIC will or will not grant assistance to that institution under its traditional authority. The FSLIC will exercise its discretion as to such assistance in light of the existing circumstances. Similarly, the fact that an institution reaches a zero equity-capital level does not mandate that the FSLIC take immediate supervisory action. The FSLIC will evalatue its responsibilities at the time, particularly in light of its determination regarding the safety and soundness of the institution.

(ii) Prior to a determination by the Corporation that it will not purchase NWCs from an institution on the basis of the institution's pending insolvency within six months, the Director of the Board's Office of Examinations and Supervision ("OES") or his designee will make an initial determination of pending insolvency and in doing so may project future results of operations on the basis of the average of the results of operations from the institution s most recent three months required to be reported to the Corporation, or on the basis of other criteria deemed reasonable by the Corporation, and will issue to the institution a Preliminary Notice of Pending Insolvency. This Preliminary Notice becomes a final "determination of insolvency within six months" by the Corporation unless within 15 business days after the date of the Preliminary Notice the institution shall submit to the Corporation three copies of a detailed financial analysis, including plans and projections for the institution, which demonstrates that the institution will not be insolvent within six months. This analysis shall be submitted to OES.

(3) *Supervisory problem.* The Corporation may refuse to purchase NWCs from an institution which has failed to satisfy the Corporation concerning a significant supervisory problem, including the failure by an institution to (i) comply with an agreement with the Corporation, or a written request by its Supervisory Agent

or the Corporation relating to a continuing violation of law, statute, or rule or regulation or an unsafe or unsound practice, or (ii) correct a matter that is the subject of a cease-and-desist order. The Corporation may consider that a supervisory problem under a plan acceptable to the Corporation for the complete resolution of that supervisory problem.

(4) *Business plan.* The Corporation may refuse to purchase NWCs from an institution unless the institution adopts a business plan satisfactory to the Corporation which demonstrates a reasonable probability that the institution will be able to redeem the NWCs. The business plan shall be submitted as part of the application for Corporation purchases of NWCs required by § 572.3, but need not be submitted until the Corporation has issued a preliminary notice of intent to purchase NWCs.

(f) *Reduction of NWC purchases.* The maximum amount of NWCs which the Corporation may purchase from an institution will be reduced in the following manner:

(1) The amount of an institution's operating losses used to calculate the maximum amount of NWC purchases will be reduced by the amount of any losses determined by the Corporation to have been occasioned by mismanagement, by speculation in futures or forward contracts, or by management actions designed for the purpose of obtaining assistance. Mismanagement shall include, but not be limited to, any action which violates a previous agreement with the Corporation or a business plan previously submitted to the Corporation in connection with a purchase of NWCs and any action or inaction which the Corporation determines in its sole judgment constitutes a violation of law or unsafe or unsound practice or practices.

(2) The maximum amount of NWC purchases calculated on the basis of actual operating losses will be reduced by 80 percent of the amount by which the institution s operating expenses exceed the amount that would have been the institution s operating expenses if such expenses, expressed as a percentage of total assets, equaled the mean operating expenses, similarly expressed, of its peer group plus 10 percent of that mean. This reduction will not be made by the FSLIC, however, if the institution demonstrates that its higher-than-peer-group operating expenses are justified in light of its particular circumstances.

(g) *Holding companies.* (1) The Corporation may purchase NWCs under the criteria of this part from a qualified institution that is controlled by a holding company or majority stockholder who has entered into an agreement with the Corporation to maintain the net worth of the institution at a specified level. Under these circumstances the holding company or majority stockholder will be required, as a condition to the Corporation's purchase, to infuse sufficient capital in excess of the Corporation's NWC purchase and commitment to purchase so as to increase the institution's regulatory net worth to the agreed-upon level.

(2) Where a "qualified institution" is controlled by another savings and loan or savings bank institution, the Corporation may consider the purchase of NWCs on the basis of the consolidated equity capital and operating results of the qualified institution together with its parent and any other institutions controlled by the parent.

(h) *Requests for Corporation purchase of NWCs.* (1) A qualified institution may request that the Corporation purchase NWCs from it by complying with the application procedure specified in § 572.3.

(2) A State-chartered institution shall file copies of its application with its State supervisory authority as required by § 572.3 and request that that State supervisor submit to the Principal Supervisory Agent, within 15 days after the application is filed with the Corporation, a certification regarding whether or not (i) the State supervisor objects to the Corporation s purchase of NWCs from the institution, and (ii) the institution is a qualified institution. If the State supervisor formally objects, he may furnish the Principal Supervisory Agent a written explanation of the reasons for his objection. The Corporation will consider the views of the State supervisor submitted in a timely manner, but will not be bound by those views.

(3) All institutions requesting that the Corporation purchase NWCs must be validly authorized to issue those NWCs to the Corporation in exchange for FSLIC Notes. To ensure that valid authorization, the forms required by § 572.3 will require an appropriate certification by the board of directors of the institution. This certificate may be filed by amendment after the Corporation has issued a preliminary notice of intent to purchase athe institution's NWCs.

(4) The burden of validly authorizing the issuance of NWCs to the Corporation rests solely upon the institution and its counsel Unless challenged or unless there is reason to question the validity of the proposed issuance of NWCs, the Corporation will rely upon the requisite certification by the institution s board of directors in this regard.

(i) *Corporate authorization.* A qualified institution, whether Federally or State chartered and whether a mutual or stock institution, is authorized to issue NWCs to the Corporation upon appropriate resolution of the institution s board of directors and without the prior approval of the institution s stockholders or withdrawable-account holders or depositors.

(j) *Effect on regulatory net worth.* 12 U.S.C. 406(f)(J), as adopted by the DIA, states that "[n]otwithstanding any other Federal or State law, net worth certificates purchased by the Corporation under this paragraph shall be deemed to be net worth for statutory and regulatory purposes." Accordingly, NWCs when purchased by the Corporation under the DIA authority shall constitute an item of the issuing institution s regulatory net worth as defined in § 561.13 of this subchapter. In addition, NWCs which the Corporation is committed to purchase in accordance with paragraph (c) of this section constitute regulatory net worth as defined in § 561.13. This permits the inclusion of outstanding NWCs and those which the Corporation is committed to purchase in the institution s calculation of its reserves and net worth for purposes of paragraphs (a) and (b) of § 563.13.

(k) *State-fund-insured institutions.* A savings and loan association the accounts of which are insured or guaranteed under State law rather than by the Corporation may be a "qualified institution" as that term is defined in § 572.3. Accordingly, it may request the Corporation to purchase NWCs pursuant to § 572.3 if arrangements satisfactory to the Corporation are made by the State-fund-insured institution and its State insurance fund (the "State Fund") to satisfy the following conditions:

(1) The State Fund agrees to indemnify the Corporation for any losses the Corporation may incur as a result of purchasing NWCs from a State-fund-insured institution, including any cash outlays for interest or principal on a FSLIC Note as they are made, and any lost opportunity costs. Such agreement must include a commitment by the State Fund to use its assessment authority over all institutions the accounts of which are insured or guaranteed by it for the purpose of funding this indemnification obligation.

(2) The State Fund (i) agrees to furnish collateral satisfactory to the Corporation to guarantee fulfillment of the indemnification obligation, (ii) obtains the separate agreement of each insured institution the accounts of which are insured by the State Fund to indemnify the Corporation in the event the State Fund does not fulfill the indemnification obligation, or (iii) obtains a guarantee of the indemnification obligation by a person satisfactory to the Corporation.

(3) The State Fund agrees that, during any period when a qualified institution the accounts of which it insures has outstanding NWCs purchased by the Corporation pursuant to this DIA authority, it will establish and maintain a level of assessment on all of its members which results in costs to its members which are at least equivalent to the premium assessment paid to the Corporation by the Corporation's insured institutions during such period.

(4) The State Fund agrees not to impose requirements on State-fund-insured institutions with outstanding NWCs which are inconsistent with the terms and conditions established by the Corporation in connection with its purchase of NWCs from a State-fund-insured institution.

(5) The State Fund agrees to provide to the Corporation, upon its request, full and complete information regarding a State-fund-insured institution's management, financial condition and results of operations, business operations, and compliance with laws and regulations, to the extent such information is available to the State Fund.

(6) The State-fund-insured institution agrees that, during any period when it has outstanding NWCs purchased by the Corporation, it will be governed by all rules and regulations of the Board or other Federal regulatory authority, including examination authority and reporting requirements, which are applicable to insured institutions.

§ 572.2 Definitions.

This section defines the following terms for the purposes of this part:

(a) "Applicable period" means a semiannual fiscal-year period of a qualified institution ended subsequent to September 30, 1982, and prior to October 1, 1985.

(b) "Net worth certificate" or "NWC" means a certificate in the form acceptable to the Corporation issued by a qualified institution to the Corporation in accordance with the provisions of this part, except that with regard to a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation ("FDIC"), NWC means a certificate issued by that institution to the FDIC in accordance with regulations, policies, or procedures of that agency pursuant to the authority granted by Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469. Any NWC issued by an FDIC-insured institution in accordance with those FDIC procedures shall be deemed to be issued in accordance with the provisions of this part, unless otherwise stated by the Corporation in written form to the institution.

(c) "Equity capital" of an institution means regulatory net worth as defined in § 561.13 of this Subchapter, including any amount of appraised equity capital, as defined in § 563.13(c) of this subchapter, which the institution would be permitted to include in its regulatory net worth, plus savings accounts pledged pursuant to an agreement acceptable to the Corporation.

(d) "Operating losses" of an institution means the total amount of the institution's operating income less the total amount of all of its operating expenses and interest (dividend) charges as reported to the Corporation in accordance with the "Instructions For the Quarterly Financial Report of the Industry Condition Report System"; *provided*, that such operating losses shall be reduced, for institutions that have outstanding NWCS, by expenses otherwise included in operating expenses which are attributable to the payment of, or provisions for, State or local taxes which are determined on the basis of the amount of deposits held by the institution or the interest paid on such deposits.

(e) "Qualified institution" means an "insured institution" as that term is defined in § 561.1 of this subchapter or a State-fund-insured institution which institution and its State Fund have entered into agreements satisfactory to the Corporation regarding indemnification of the Corporation, equivalent level of assessments, and equivalent regulatory standards, which institution as of the end of it most recent applicable period:

(1) Has equity capital of 3 percent or less of its total assets before giving effect to any purchase of NWCs not consummated by the Corporation;

(2) Has incurred operating losses for its most recent applicable period, net of losses which are the result of speculation in futures or forward contracts, management action designed solely for the purpose of qualifying for Corporation purchase of net worth certificates, or excessive operating expenses;

(3) Will have equity capital of at least 0.5 percent of its total assets, after giving effect to the Corporation's purchase of NWCs that has been requested but not consummated and that is based on operating losses for the applicable period;

(4) Has investments in residential mortgage loans or securities backed by such mortgage loans aggregating not less than 20 percent of its total outstanding loans; and

(5) Agrees to comply with all the terms and conditions established by the Coporation in connection with its purchase of NWCs.

(f) "Quarterly Financial Report" means Federal Home Loan Bank Board Form 1313 effective as of January, 1984, as it may be amended.

(g) "State-fund-insured institution" means an institution substantially equivalent to an "insured institution" as that term is defined in § 561.1 except that its accounts are insured or guaranteed under State law rather than by the Corporation. The State insurance or guarantee shall be termed the State Fund.

(h) "Total assets" of an institution means the total amount of assets net of contra-asset accounts reported by the institution to the Corporation in accordance with the "Instructions For The Quarterly Financial Report of the Industry Condition Report System".

§ 572.3 Application for Corporation purchases of net worth certificates.

(a) A qualified institution may request that the Corporation purchase NWCs issued by the institution by filing an application with the Corporation. The form and content of the application shall be as prescribed by the Corporation.

(b) The qualified institution shall file two copies of the application with its principal Supervisory Agent and one copy with the Office of Examinations and Supervision ("OES"), Federal Home Loan Bank Board, Washington, D.C. The application shall be deemed to be filed on the date received by the Principal Supervisory Agent, provided that the copy required to be filed with OES has been sent or given by that date. In addition, a State-chartered institution shall file three copies of its application with its State supervisory authority and request that State supervisor to submit to the Corporation, within 15 business days after the application is filed with the Corporation, a certification regarding whether or not (1) the State supervisor objects to the Corporation's purchase of NWCs in accordance with the provisions of this part, and (2) the application is a qualified institution. The

certification by the State supervisor is to assist the Corporation in its determination and is not binding on the Corporation.

(c) An application must request that the Corporation purchase NWCs from a qualified institution on the basis of that institution's operating losses for an applicable period, and shall be filed no later than the later of March 1, 1983, or 30 days after the close of that applicable period.

(d) In addition to requesting that the Corporation purchase NWCs from the institution based on operating losses for the applicable period immediately preceding the filing of the application, the application shall be deemed to request, unless otherwise specified, that the Corporation purchase NWCs from the institution on the basis of its operating losses for the current applicable period.

(e) A qualified institution may request that the Corporation purchase NWCs in an amount less than the Corporation would be willing to purchase.

(f) if an application is acceptable to the Corporation with regard to the applicable period immediately preceding the date of its filing, then the Corporation will issue to the applicant a preliminary notice of an intent to purchase a specified amount of NWCs. Within 45 days after the date of this preliminary notice, the institution shall amend its application to submit any items not previously included, *e.g.*, the certification by the board of directors regarding authority to issue NWCs, or a business plan, and shall submit executed copies of the NWC governing documents.

(g) The corporation will notify the applicant regarding any change in the corporation s preliminary decision, set forth in the preliminary notice, as a result of the additional information submitted by the applicant to complete its application.

(h) If the Corporation finds unacceptable an application pertaining to the applicable period immediately preceding the date of its filing, the Corporation will issue to the applicant a notice of determination not to purchase NWCs.

(i) In addition to determining whether to purchase NWCs based on the applicable period immediately preceding the filing of an application, the Corporation, unless requested not to do so, will make an initial determination regarding the applicant's eligibility to sell NWCs to the Corporation based on operating losses for the current applicable period (*i.e.*, the period during which the application is filed), and will notify the applicant regarding this determination. If an initial determination of eligibility regarding such current period is made by the Corporation, the Corporation will be committed to purchase NWCs allocable to such current applicable period as provided in § 572.1(c) of this part.

(j) The Corporation retains the right to waive, upon a showing of good cause, any of the requirements of this part regarding this timeliness of submissions.

(k) Each application filed by an institution under this part constitutes an offer for the sale of NWCs to be issued by the applicant to the Corporation. Each application will be separately considered.

(l) Purchase by the Corporation of NWCs from an institution as a result of operating losses during one applicable period does not create any right or entitlement in the institution to require the Corporation to purchase NWCs on the basis of operating losses for a different applicable period.

(m) Except as otherwise specified in § 572.1(c) of this part, a qualified institution that applies for Corporation purchase of NWCs does not become entitled to require any such purchase.

(n) Each applicant which has a fiscal year that closes on a date other than the close of a calendar quarter shall submit with its application completed Sections A through E of the Quarterly Financial Report for each of the three-month periods included within the applicable period that the application covers.

§ 572.4 Delegations.

The Corporation delegates all of its authority regarding its actions under this part, not specifically delegated to another member of its staff in § 572.1 of this part, to the Director of the Office of Examinations and Supervision ("OES") of the Federal Home Loan Bank Board (the "Board"), or his designee, who may include the Principal Supervisory Agent; except that no alteration may be made in the standard form of NWC or promissory note of the Corporation prescribed by the Board's General Counsel without the concurrence of the Board's General Counsel or his designee.

§ 572.5 Right to appeal.

(a) Within 15 business days after the date of a final notice issued pursuant to delegated authority announcing the Corporation s intent regarding the purchase of NWCs from an institution, that institution may petition the Board for its consideration of the NWC purchase request. The petition must explain in detail the reason(s) for the institution's belief that the decision made pursuant to delegated authority was inappropriate.

(b) Upon the filing of an appeal petition, as provided for in paragraph (a) of this section, regarding an action taken pursuant to delegated authority, the Director of OES shall either overrule the action and accede to the action requested by the appeal, or submit the matter to the Board for its consideration of the request on the basis of the petition, the application and related documents, including, if applicable, the institution's detailed financial analysis submitted in response to a Preliminary Notice of Pending Insolvency as described in § 572.1 of this part, and any other information which OES or the Board's Office of General Counsel deems appropriate to submit. The Board will not entertain any oral arguments on behalf of the institution.

(c) Notwithstanding the provisions of paragraph (a) of this section, an institution shall not petition the Board and the Board will not consider any appeal of a denial to purchase NWCs on the basis of a final determination of pending insolvency if the institution has failed to submit the requisite financial analysis in response to a Preliminary Notice of Pending Insolvency.

(d) No person other than an applicant under § 572.3 of this part has a right to request Board consideration of Corporation action under this part affecting that applicant, or otherwise to protest that Corporation action. In particular, no person other than the applicant shall have any right to protest a decision by the Corporation: (a) To purchase or decline to purchase NWCs, or (b) regarding the comparative cost of a purchase of NWCs as opposed to alternative remedies.

(e) There is no right to appeal an initial determination by the Corporation pursuant to § 572.3(i) of this part that an applicant is not eligible to sell NWCs based on operating losses for the applicable period during which the application is filed.

§ 572.6 Effect of Corporation purchase of net worth certificates.

Unless expressly provided for by contract, the purchase by the Corporation of NWCs from an institution under the provisions of this part:

(a) imposes no obligation whatsoever on the Corporation to provide any other form of financial assistance to the issuing institution;

(b) does not release, alter, amend, or otherwise affect any outstanding agreement between the issuing institution and the Corporation;

(c) does not limit, restrict, alter, restrain, or otherwise affect the supervisory and regulatory powers, duties, and responsibilities of the Corporation; and

(d) does not waive or grant a forbearance from the enforcement of any provision of law or regulation.

§ 572.7 Dividends.

During any period in which an institution which is organized in stock form has outstanding NWCs issued in accordance with the provisions of this part, such institution shall not pay dividends to its stockholders.

§ 572.8 Branching.

(a) No institution which has outstanding NWCs issued in accordance with the provisions of this part shall establish a new branch office or, without the prior written approval of the Director of the Board's Office of Examinations and Supervision or his designee, who may include the Principal Supervisory Agent, relocate an existing branch office.

(b) Notwithstanding paragraph (a) of this section, the Corporation may in its discretion grant prior written approval for the opening of new offices by an institution which has NWCs outstanding if the existence of those outstanding NWCs results from a business combination whereby the institution acquired another institution that had NWCs outstanding.

§ 572.9 Transactions with holding company.

No institution which has outstanding NWCs issued in accordance with the provisions of this part shall enter into a new contract or modify an existing contract with its parent holding company or an affiliate thereof, without the prior written approval of the Director of the Board's Office of Examinations and Supervision or his designee, who may include the Principal Supervisory Agent.

§ 572.10 Board statutory authority.

(a) Notwithstanding the other provisions of this part, the Board retains the right to authorize the Corporation to purchase NWCs from an institution in accordance with the authority granted by Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469. A purchase effected pursuant to this section shall be subject only to such terms and conditions as are specified by the Board.

(b) The delegation of authority set out in § 572.4 of this part is not applicable to a purchase of NWCs effected in accordance with this section.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-23356 Filed 8-31-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASO-13]

Designation of Transition Area, Monroe, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Monroe, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operation at the Monroe Municipal Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Monroe Non-directional Radio Beacon (NDB), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

EFFECTIVE DATE: 0901 G.m.t., October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Specialist, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 27, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Monroe, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Monroe Municipal Airport (49 FR 26253). The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. All comments received were favorable. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Monroe, Georgia, transition area to accommodate IFR aeronautical operations in the vicinity of Monroe Municipal Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

PART 71—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Monroe, Georgia, transition area is designated under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended), effective 0901 G.m.t., October 25, 1984, as follows:

Monroe, GA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Monroe Municipal Airport (Lat. 33°46'57"N., Long. 83°41'31"W.); within 3 miles each side of the 212° bearing from the Monroe RBN (Lat. 33°44'15"N., Long. 83°43'37"W.) extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN; excluding that portion which coincides with the Covington transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air naviagtion, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 10, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-23281 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ACE-09]

Designation of Transition Area; Eureka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Eureka, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Eureka Municipal Airport, Eureka, Kansas, utilizing the Emporia, Kansas VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR .

EFFECTIVE DATE: October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Eureka, Kansas, Municipal Airport utilizing the Emporia, Kansas, VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Eureka, Kansas, at or above 700 feet above the ground within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On Pages 26601 and 26602 of the **Federal Register** dated June 28, 1984, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Eureka, Kansas. Interested Persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Airspace, Transition areas, Aviation safety.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. October 25, 1984, by designating the following transition area:

Eureka, Kansas

That airspace extending upwards from 700' above the surface within a five-mile radius of the Eureka Municipal Airport (latitude 37°51'02" N, longitude 96°17'33" W) and within 1.5 miles each side of the Emporia, Kansas VORTAC. 195° radial extending from the five-mile radius area to 6 miles north/northeast of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on August 21, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-23282 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-AWP-15]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule raises the upper limits of two VOR Federal Airways in the States of Arizona and California so that air traffic controllers and pilots may more effectively utilize the airspace along these routes.

EFFECTIVE DATE: 0901 G.m.t., October 25, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On June 18, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to raise the upper limits to 18,000 feet MSL along certain segments of VOR Federal Airways V-135 and V-137 (49 FR 24896). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations raises the upper limits of VOR Federal Airways: (1) V-135 from 9,000 feet MSL to 18,000 feet MSL between Bard, AZ, and Parker, CA; (2) V-137 from 10,000 feet MSL to 18,000 feet MSL between Parker, CA, and Needles, CA; and (3) V-137 from 7,000 feet MSL to 18,000 feet MSL between Imperial, CA, and a point 13 nautical miles southeast of Thermal, CA. By raising the ceilings, a significant operational advantage is gained. The advantages are: (1) Aircraft would not have to be routed fuel-depleting distances away from their planned routes in order to remain within controlled airspace; and (2) turbine powered aircraft would not be kept at the lower and fuel-inefficient altitudes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V-135 [Amended]

By removing the words "to Tonopah, excluding the airspace above 9,000 feet MSL between Bard and Parker, and the airspace above 10,000 feet MSL between Parker and Needles." and substituting the words "to Tonopah."

V-137 [Amended]

By removing the words "Salinas, CA, excluding the airspace above 7,000 feet MSL, between Imperial and the intersection of the Thermal 122° and the Julian, CA, 055° radials." and substituting the words "Salinas, CA."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 21, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-23283 Filed 8-31-84; 8:45 am]
BILLING CODE 4910-13-M

---

14 CFR Part 75

[Airspace Docket No. 84-AWP-5]

Realignment of Jet Route J-65, CA

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This rule realigns a segment of a Jet Route in the State of California to facilitate a more efficient utilization of the airspace and conserve aviation fuel.

EFFECTIVE DATE: 0901 G.m.t., October 25, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1984, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-65 (49 FR 26602). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations moves a segment of Jet Route J-65 eastward approximately 8 miles to (1) make that route segment a more direct path between those two locations and thereby contribute to aviation fuel conservation; (2) reduce controller workload by removing the need for air traffic controllers to utilize radar vectoring and route monitoring procedures along the proposed route segment alignment; and (3) provide more airspace for high performance aircraft departing northbound from Burbank, CA, and Los Angeles, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

PART 75—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

J-65 [Amended]

By removing the words "INT Palmdale 291° and Bakersfield, CA, 149° radials;" and substituting the words "INT Palmdale 310° and Bakersfield, CA, 140° radials;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 21, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-23279 Filed 8-31-84; 8:45 am]
BILLING CODE 4910-13-M

---

14 CFR Part 125

[Docket No. 23381; Amdt. 125-5]

Delay of Part 125 Applicability to Part 129 Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment to the Federal Aviation Regulations extends the date from September 1, 1984, to February 28, 1986, for foreign air carriers holding Part 129 operations specifications to comply with Part 125 of the Federal Aviation Regulations. Since the FAA has an active rulemaking project which includes a study of changes to Part 129, this action is necessary to avoid requiring foreign air carriers to comply with rules which may be revised by the FAA in the near future.

DATES: Effective Date of this amendment is August 31, 1984. Comments must be received on or before October 1, 1984.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23381, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ron Myres, Project Development Branch, (AFO-850), General Aviation and Commercial Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426-8150.

SUPPLEMENTARY INFORMATION:

Background

Part 125 includes, in the applicability under § 125.1(e), a deferred compliance date of September 1, 1984, for foreign air carriers holding operations specifications issued under Part 129. As stated in the preamble to the adoption of Part 125 (45 FR 67214; October 9, 1980), this deferred compliance date was included because the agency was considering a regulatory project to revise Part 129, and it would not have been appropriate to subject foreign air carrriers to Part 125 requirements until the agency could determine the proper action on Part 129. Various revisions to Part 129 are now under active consideration. A rulemaking project is underway at this time, but the FAA foresees that this project and any subsequent rule changes will not be completed until after the compliance date of September 1, 1984.

The FAA is also taking into consideration that proposal of revisions to Part 129 will entail a 120-day comment period to afford all affected persons an opportunity to express their views. With this in mind, the agency has decided to extend the compliance date to February 28, 1986.

Since the deferred compliance date of September 1, 1984, in § 125.1(e) applies only to foreign air carriers holding operations specifications issued under Part 129, the extension of that date applies only to those operators. Other foreign citizen operators of U.S.-registered airplanes covered by Part 125 remain subject to that part.

Need for Immediate Adoption

The FAA is currently considering a rulemaking project to revise Parts 129 and 125 with regard to foreign air carriers. The present data for these carriers to comply with Part 125 for operation of U.S.-registered airplanes will be reached before that rulemaking project is completed. The FAA recognizes an urgent need to amend § 125.1(e) to extend the compliance date and defer imposing Part 125 requirements on these carriers until this rulemaking action is completed. Not adopting this amendment immediately would unnecessarily impose a burden, both monetarily and in terms of resource utilization, on the FAA and the concerned foreign air carriers. Therefore, I find that notice and public procedure are impracticable and contrary to the public interest. In addition, since this amendment relieves restriction, I find that good cause exists for making this amendment effective in fewer than 30 days. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address specified above. All communications received on or before October 1, 1984, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Conclusion

By extending a compliance date, this amendment allows foreign air carriers regulated by Part 129 to continue operating their U.S.-registered airplanes under that part. Thus, for the period of the extension, there is no change in their present regulatory status. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed above, it also has been determined that the anticipated economic impact is so minimal that no regulatory evaluation is necessary.

List of Subjects in 14 CFR Part 125

Aircraft, Airplanes, Hours of work, Airports, Air traffic control, Airworthiness, Flammable materials, Cargo, Airmen, Pilots, Drugs, Narcotics, Hazardous materials, Handicapped, Children, Infants, Smoking, Air transportation, Airspace, Chemicals.

Adoption of the Amendment

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

§ 125.1 [Amended]

Accordingly, § 125.1(e) of the Federal Aviation Regulations (14 CFR § 125.1(e)) is amended effective August 31, 1984, by removing the date "September 1, 1984," and substituting the date "February 28, 1986," in place thereof.

(Secs. 313, 601 through 610, and 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983); and 14 CFR 11.45)

Issued in Washington, D.C., on August 20, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84-23430 Filed 8-30-84; 2:14 pm]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3139]

Cynex Manufacturing Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Hillside, N.J. manufacturer and seller of a power factor controller (a device claimed to reduce the amount of electricity used by any motorized electrical home appliance or tool), among other things, to cease making any enery-related claim for its product unless the claim is based on competent and reliable substantiation. The order also bars the firm from making energy-related claims using the term "up to" or words of similar import, unless a significant number of consumers can achieve the maximum levels of savings or performance claimed; and where consumers cannot reasonably foresee the major factors or conditions affecting the maximum levels of savings or performance, respondent is required to clearly and prominently disclose the class of consumers who can achieve those levels. The company is further prohibited from misrepresenting the purpose, content or conclusions of any test or study; and required to retain records substantiating claims for a period of three years.

DATE: Complaint and Order issued August 6, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/B-415-3, Brinley H. Williams, Washington, D.C. 20580 (202) 8720.

SUPPLEMENTARY INFORMATION: On Wednesday, May 23, 1984, there was published in the **Federal Register**, 49 FR 21762, a proposed consent agreement with analysis In the Matter of Cynex Manufacturing Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit

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

comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleading: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170 Economizing or saving; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods: § 13.1710 Qualities and Properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Power factor controllers, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 84–23309 Filed 8–31–84; 8:45 am]

BILLING CODE 6750–01–M

---

16 CFR Part 13

[Docket C–3140]

Sovereign Chemical and Petroleum Products, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Chicago, Ill. manufacturer and seller of automotive products, among other things, to cease representing that any automatic transmission fluid or motor oil possesses certain performance or quality characteristics, including any claim that a motor oil has an American Petroleum Institute (API) service classification or a Society of Automotive Engineers (SAE) viscosity, unless such claims can be substantiated by competent and reliable evidence. The manufacturer must retain representative samples of motor oil and automotic transmission fluid from its production batches and filling runs, document its sampling method, and pay for an independent laboratory to test these and other samples obtained in the marketplace. The manufacturer must also maintain records to substantiate claims covered by the order and distribute a copy of the order to all personnel with responsibility for advertising, quality control or corporate policy.

DATE: Complaint and Order issued August 8, 1984.[1]

FOR FURTHER INFORMATION CONTACT: James K. Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603. (312) 353–5576.

SUPPLEMENTARY INFORMATION: On Monday, April 23, 1984, there was published in the **Federal Register**, 49 FR 17013, a proposed consent agreement with analysis In the Matter of Sovereign Chemical & Petroleum Products, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective action, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely and Misleadingly: § 13.170 Qualities or properties of product or service; § 13.175 Quality of product or service; § 13.205 Scientific and other relevant facts; § 13.245 Specifications or standards conformance. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–35 Employment of independent agencies; § 13.533–45 Maintain records. Subpart—Misbranding or Mislabeling: § 13.1170 Advertising and Promotion; § 13.1290 Qualities or properties; § 13.1295 Quality or grade; § 13.1330 Specifications or standards conformance. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts.

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

List of Subjects in 16 CFR Part 13

Automatic transmission fluid, Motor oil, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 84–23308 Filed 8–31–84; 8:45 am]

BILLING CODE 6750–01–M

---

16 CFR Part 13

[Docket No. C–3141]

Avco Financial Services, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Newport Beach, CA, finance company, among other things, to cease in connection with the collection of debts, using obscenities in conversations with debtors and third parties; threatening to use physical force or violence; improperly contacting or communicating with debtors, their friends, relatives, and employers; or engaging in any conduct that would harass, abuse or oppress a debtor or third party. The order prohibits the company from contacting consumers known to be represented by an attorney or who request in writing that the company cease communications. The order additionally requires that the company maintain a toll-free customer service telephone number; include in certain notices, a prescribed statement informing the recipient of his/her rights under federal law and of the availability of complaint resolution procedures; and resolve complaints within 90 days. The company must also maintain a plan with explicit policies and procedures for lawful debt collection practices, and

impose disciplinary sanctions for violations.

DATE: Complaint and Order issued August 9, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Christopher Schwartz, New York Regional Office, Federal Trade Commission, 2243–EB Federal Bldg., 26 Federal Plaza, New York, NY 10278. (212) 264–1242.

SUPPLEMENTARY INFORMATION: On Tuesday, July 12, 1984, there was published in the **Federal Register**, 49 FR 31867, a proposed consent agreement with analysis In the Matter of Avco Financial Services, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or correction actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.356 Delinquent debtors. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–45 Maintain records; § 13.533–45(c) complaints; § 13.533–45(e) correspondence; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1440 Identity. Subpart—Threatening Suits, Not In Good Faith: § 13.2264 Delinquent debt collection.

List of Subjects in 16 CFR Part 13

Debt collection, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 84-23307 Filed 8-31-84; 8:45 am]

BILLING CODE 6750-01-M

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

16 CFR Part 13

[Docket No. C-3142]

Peabody Barnes, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Mansfield, Ohio manufacturer and seller of sump and sewage pumps and pump systems, among other things, to cease offering a warranty whose duration is measured from the date of manufacture, unless the warranty coverage extends for three years from the date of manufacture, or the company clearly discloses in the warranty, either the date the product was manufactured or an explanation as to how a customer can discover the date of manufacture. Any representation that a product's warranty coverage runs for a certain length of time is prohibited, unless the warranty will actually be in effect for that period. The order also requires the firm to treat every claim for warranty service made within 12 months of installation as timely, regardless of the product's date of manufacture, if the warranty document is not in compliance with this order; issue warranties that comply with the Magnuson-Moss Warranty Act; and send a notice explaining the revisions and changes in the company's warranty policy and documents to its dealers and distributors.

DATE: Complaint and Order issued June 22, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H–238, Christopher R. Brewster, Washington, D.C. 20580, (202) 523–1642.

SUPPLEMENTARY INFORMATION: On Wednesday, May 9, 1984, there was published in the **Federal Register**, 49 FR 19679, a proposed consent agreement with analysis In the Matter of Peabody Barnes, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been filed, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Failing to Comply With Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative requirements; § 13.1048–35 Magnuson-Moss Warranty Act. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1852–55 Magnuson-Moss Warranty Act; § 13. § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions.

List of Subjects in 16 CFR Part 13

Pump systems, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Emily H. Rock,

Secretary.

[FR Doc. 84-23306 Filed 8-31-84; 8:45 am]

BILLING CODE 6750-01-M

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

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Fees for Mailed Subscriptions to Weekly Advisory Calendar

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission recently proposed to establish an annual fee of $65.00 for non-media mailed subscriptions to its weekly Advisory Calendar. 49 FR 27776 (July 6, 1984). Having reviewed the public comments on the proposed fee, the Commission is now adopting the fee in final form. The Commission has decided, however, to exempt Congress, federal agencies, state and local enforcement agencies, and educational institutions, as well as the media, from paying the subscription fee. It is anticipated that the $65.00 fee will recover a substantial portion of the actual costs to the Commission in publishing and mailing its weekly Advisory Calendar.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel S. Goodman, Esquire, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: Each week the Commission publishes an Advisory Calendar which includes a schedule of Commission activities, a summary of all Commission legal action, and reprints of all Commission Advisories and news releases. The Commission currently duplicates and mails the Advisory Calendar to all subscribers free of charge, at an annual cost in excess of $170,000.

On July 6, 1984, the Commission published for comment in the **Federal Register** a proposed annual fee of $65.00 for mailed subscriptions to the Advisory Calendar. This fee was designed to recover a substantial portion of the Commission's actual costs in producing and distributing the Advisory Calendar. Under the proposal, media subscriptions would be exempt from the $65.00 fee.

The Commission received four comment letters in response to its proposed fee. One commenter, representing a trade association, supported both the concept of the fee and the $65.00 amount. Two other commenters, one a professor and the other a state enforcement official, indicated that the Advisory Calendar provided useful information but that they would not be able to continue their subscriptions if the $65.00 fee were imposed. The fourth commenter, the president of a futures commission merchant, felt that the cost of informing the public of the Commission's actions should be borne by the government. He also objected to an "arbitrary" fee exclusion for the media.

Upon considering these comments, the Commission has determined to promulgate the $65.00 fee as proposed but to expand the categories of subscribers who will be exempt from the fee. In addition to media subscribers, Congress, federal agencies, state and local enforcement agencies, and educational institutions will be exempt from the annual subscription fee. By expanding the list of exempt subscribers, the Commission believes that it will substantially alleviate the concerns of those commenters who objected to the proposed fee.

The reason for excluding Congress and federal agencies from the subscription fee is to avoid one arm of the federal government charging another for its services, particularly since the subscription fees will go to the U.S. Treasury, rather than to the Commission. It is also logical to exempt state and local enforcement agencies from the subscription fee, inasmuch as these agencies assist the Commission in policing the commodities industry and need timely information about Commission activities to perform this task.

The Commission's decision to exempt educational institutions, such as public libraries and universities, and media subscribers from the subscription fee is consistent with the Commission's policy of widely disseminating information about its activities to the public through media and educational vehicles. The Commission wishes to emphasize that, contrary to the assertion of one commenter, the futures industry will not be "subsidizing" the free media subscriptions. Rather, the Commission itself will bear the costs of the exempt subscriptions, and non-exempt subscribers will pay no more than the actual cost of publishing and mailing the Advisory Calendar to them.[1]

As indicated in the supplementary information accompanying the proposed fee schedule, the $65.00 annual subscription fee will apply to all Advisory Calendars issued on or after October 1, 1984. *See* 49 FR at 27776. The fee for each subsequent fiscal year will be due by September 30 of the preceding fiscal year. Non-exempt subscribers who do not submit a $65.00 check or money order by September 30, 1984 will be removed from the Commission's mailing list. In order to enable it to start collecting subscription fees before the September 30 deadline, the Commission has determined that good cause exists for making this fee schedule effective immediately upon publication. *See* 5 U.S.C. 553(d)(3).

Individuals who wish to begin subscribing to the weekly Advisory Calendar during the middle of a fiscal year will be required to submit a check for $1.25 times the number of weeks remaining in the fiscal year. Back issues and single issues of the weekly Advisory Calendar will be available only for the charges listed in 17 CFR Part 145, Appendix B.

[1] In proposing the $65.00 subscription fee, which amounts to $1.25 per week, the Commission assumed that it would be publishing and mailing 450 exempt subscriptions per week and 1,600 non-exempt subscriptions per week. Using these fugures, the Commission calculated the cost of publishing and mailing one copy of the weekly Advisory Calendar to a non-exempt subscriber to be $1.30. 49 FR at 27776. This figure was rounded down to $1.25 to ensure that the Commission would not recover more than its actual costs. *Id.* More recent information indicates that the Commission has approximately 2,700 mail subscribers to the Advisory Calendar, about 500 of which will be exempt from a subscription fee under this final rule. Based on these figures, the Commission calculates that the total weekly cost per paid mailed subscription is $1.28, a figure which has again been rounded down to $1.25.

Regulatory Flexibility Act

The Commission has determined that the $65.00 annual subscription fee, which is designed only to recover the Commission's actual costs in publishing and mailing its weekly Advisory Calendar, is small enough that it should not have a significant economic impact on any subscriber. Moreover, the Commission notes that free access to the Advisory Calendar will be provided at the Commission's offices and at approximately 70 educational institutions. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 145

Commission records and information, Fees, Freedom of information.

Adding Appendix D to Part 145 of Chapter 1 of Title 17 of the Code of Federal Regulations.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular in sections 2(a)(11) and 8a(5), 7 U.S.C. 4a(j) and 12a(5); in section 26 of the Futures Trading Act of 1978, as amended by section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a; and in the Independent Offices Appropriation Act of 1952, as amended by P.L. 97–258, 96 Stat. 1051 (Sept. 13, 1982) (*see* 31 USCA 9701), the Commission hereby amends Part 145 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding Appendix D, In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 145—COMMISSION RECORDS AND INFORMATION

Appendix D—Schedule of Fees for Weekly Advisory Calendar

(a) The annual cost of a mailed subscription to the Commission's weekly Advisory Calendar shall be $65.00. The cost of a subscription beginning in the middle of a fiscal year shall be $1.25 times the number of weeks remaining in the fiscal year. There shall be no cost to the following categories of subscribers: media, Congress, federal agencies, state and local enforcement agencies, and educational institutions

(b) Annual subscriptions to the weekly Advisory Calendar shall run on a fiscal-year basis, from October 1 through September 30. The fee for an annual subscription must be received by the last day of the preceding fiscal year. The fee shall not be refundable.

(c) Payment shall be made by check or money order in the amount of $65.00 made payable to the Commodity Futures Trading Commission. Checks or money orders should be sent to the Office of Communication and Education Services, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Payment may be accepted only by personnel in the Office of Communication and Education Services.

* * * * *

Issued in Washington, D.C., on August 28, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-23342 Filed 8-31-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Farmland Industries, Inc., providing for manufacturing a 40-gram-per-pound tylosin premix. The premix is used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Farmland Industries, Inc., Kansas City, MO 64116, is sponsor of a supplement to NADA 46-415 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of a 40-gram-per-pound premix subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (iv). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human envronment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(83) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(83) To 021676: 10 grams per pound, paragraph (f)(1)(iv)(*a*) of this section; 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. September 4, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 27, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-23291 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

The Indian School Equalization Program

August 2, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Indian Affairs is publishing an interim rule which revise the present requirements of four (4) "Average Daily Membership" (ADM) count weeks and requires one ADM count week for the timely distribution of funds to Bureau funded schools. The revision will address ADM, count weeks, computation of ADM, provisions for declining enrollment, and the schedule for allotments.

EFFECTIVE DATE: This document will become effective September 4, 1984. Comments are due on or before October 4, 1984.

ADDRESS: Written comments should be directed to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, N.W., Washington, D.C. 20240. If preferred, comments may be delivered to Room 3510, Main Interior Building, 18th and "C" Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Garrett (202) 343-2123.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This interim rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Office of Indian Education Programs during its review and analysis of the student ADM counts of this year and previous years has found that: (1) The differences in ADM among four count weeks are not significant; (2) considerable savings in staff time and funds will be realized by eliminating extra count weeks; (3) the current process delays final allotment until the school year for which the funds were appropriated has virtually ended; and (4) school board members, school supervisors, and Area/Agency personnel have emphasized that instituting effective measures requires earlier notification and allotment of

funds. In order to effect staff time and cost savings in a timely manner, these regulations are issued on an emergency basis and the Bureau finds there is good cause to make these regulations effective immediately and they will expire on September 30, 1986. The effective date provision complies with the exception provided in 5 U.S.C. 533(d)(3).

The policy of the Bureau is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this interim rule to the location identified in the Address section of this preamble. Comments must be received on or before the date specified in the Date section of this preamble.

The Bureau of Indian Affairs has determined that this rule is not a major rule within the terms of Executive Order 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, because of these factors, it does not have a significant economic effect on a substantial number of small entities within the terms of the Regulatory Flexibility Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.*

The primary author of this document is Nancy Garrett, Deputy Director, Office of Indian Education Programs, 18th and "C" Streets, N.W., Washington, D.C. 20240, (202) 343-2123.

List of Subjects in 25 CFR Part 39

Indian education, Schools, Grant programs—education and grant programs—Indians.

25 CFR Part 39 is amended as follows:

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

1. In § 39.30, paragraphs (b), (c) and (d) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 39.30 Definitions.

* * * * *

(b) "Count week" means the last full week in September for the purposes of calculating allotments.

(c) "Final allotment" means that notice of entitlements to funds given to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(d) "Initial allotment" means that notice of entitlements to funds given to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

(e) "Student classification" means any special student need area that receives a separate weighting through the Indian School Equalization Formula.

(f) "Tentative allotment" means that notice given to schools of their entitlements to funds based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

2. Section 39.32 is revised to read as follows:

§ 39.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 39.2(f) shall be determined during the last full school week in September during which all students eligible under the definition shall be counted by student program classification.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices and, in the case of off-reservation boarding schools, Area education offices together with each school's supervisor and school board chairperson where a board exists shall be responsible for certifying the validity of each school's student counts. The September ADM will be used to determine final allotments for the school year.

3. Section 39.35 is revised to read as follows:

§ 39.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the ADM for the September count week of the current year.

4. Section 39.36 is revised to read as follows:

§ 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

5. Section 39.51 is revised to read as follows:

§ 39.51 Notice of tentative allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under Subpart B of this Part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-23214 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 84-37]

Special Local Regulations: River Days, Ohio River Championships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 355.5 to 357.0, Ohio River. Outboard tunnel hull boat races will be held on the days of September 1, 2 and 3, 1984, at Portsmouth, Ohio. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations will be effective on the following days: September 1, 2 and 3, 1984.

FOR FURTHER INFORMATION CONTACT: Lt. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. and 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 355.5 and 357.0 during the "River Days, Ohio River Championships", September 1, 2 and 3, 1984. This event will consist of outboard tunnel hull boat races which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for

the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The revised schedule of events was not received until July 30, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0236 to read as follows:

§ 100.35–0236 Ohio River, miles 355.5 through 357.0.

(a) *Regulated Area:* The area between Mile 355.5 and 357.0 Ohio River is designated the regatta area, and may be closed to commerical navigation or mooring during the following days and (local) times:

September 1, 12:00 noon to 3:00 p.m.
September 2, 10:00 a.m. to 6:00 p.m.
September 3, 12:00 noon to 6:00 p.m.

The above time represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8 MHz) when necessary, by the call sign "COAST GUARD PATROL COMMANDER".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0236 will be effective on the following days and times.

September 1, 12:00 noon to 3:00 p.m.
September 2, 10:00 a.m. to 6:00 p.m.
September 3, 12:00 noon to 6:00 p.m.
All times listed are local time

(33 U.S.C. 407, 411, 1233–1236; 46 U.S.C. 2106–2107, 2302, 4308, 4311 (a) and (c), 49 U.S.C. 1655(b)(1), 33 CFR 100.35, 100.40, 100.50, 49 CFR 1.46(b), 1.46(n)(1))

Dated: August 20, 1984.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 84–23367 Filed 8–31–84; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 100

[CGD11 84–45]

Marine Event; Lake Havasu Water Ski Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish Special Local Regulations for the last two dates in the eight date series of water ski shows at the London Bridge Channel, Lake Havasu City, Arizona. This event was held last year as the London Bridge Days Water Ski Show", and regulations were published in the **Federal Register** on September 1983. The sponsor decided to hold this event ("Lake Havasu Water Ski Show") as a continuing series during this year. There was insufficient time to publish proposed rules for the first four dates of this series; therefore, regulations for the first four dates were published in the **Federal Register** on 4 June 1984, and a notice of proposed rule making for the last four dates was also published on 4 June 1984.

These regulations are needed to provide for the safety of life and property on navigable waters during the periods set forth.

EFFECTIVE DATES: These regulations become effective on 25 August 1984 and terminate on 8 September 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate, Long Beach, California 90822, (213) 590–2331.

SUPPLEMENTARY INFORMATION: On 4 June, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (49 FR 23075). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Comments

Although no official comments were received concerning these regulations one rental boat operation in the regulated area has expressed his concern over lost revenue during this event. Even though he did not reply directly to the proposed rule making, the Coast Guard treated his concerns as comments to this rule. The commenter

claims lost revenue because potential customers are not allowed to transit to his business or operate in his general vicinity due to the intermittent closure of the area for this marine event. Other merchants and members of the community also commented on the increase in business generated through the show. The Coast Guard in considering all the comments has determined that the increase in business to the other 19 entities in the area outweigh the small loss of the one negative commenter. Also, concerns have been expressed over the safety of the event; water skiers do take a risk of injury by performing various acrobatic stunts in an enclosed operating area, a risk which the sponsor and participants are willing to take and make the show entertaining. However, the Coast Guard has made minor changes to the final rule to ensure the safety of spectators in the area.

Discussion of Proposed Regulation

Lake Havasu Water Ski Club "Lake Havasu Water Ski Shows" conducted six shows this year on the London Bridge Channel. Two shows remain on the schedule this year; this regulation will cover these shows which will be on 25 August and 8 September 1984. This event involves the use of 3 tournament ski boats, used to tow approximately 30 skiers during the show, which could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic. Moreover, additional revenue generated by this event as well as increased favorable publicity for the waterfront merchants outweighs expected minimal disruptions in business patterns.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a sustantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following § 100.35–11–84–45

§ 100.35–11–84–45 Lake Havasu Water Ski Show, Lake Havasu, Arizona.

(a) *Regulated Area.* That portion of the London Bridge Channel, Lake Havasu City, Arizona commencing approximately 200 yards north of the London Bridge, thence southerly along the channel to approximately 200 yards south of the London Bridge. Event participants may only transit at high speed under the two center spans of the bridge, other spans may be used to transit at a safe and prudent speed so as to not endanger life or property.

(b) *Effective Date.* The regulated area will be closed intermittently to all vessel traffic from 5:00 PM to 7:30 PM on 25 August and 8 September 1984.

(c) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter, beach or remain in the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by U.S. Coast Guard operated and employed small craft, law enforcement agencies and/or the sponsor's vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect at the end of each period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: August 23, 1984.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 84–23366 Filed 8–31–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 413, 433 and 469

[OW–FRL–2663–7]

Electrical and Electronic Components Point Source Categories and Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; OMB Approval of Information Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rules, technical amendments.

SUMMARY: In the preamble to the Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards, 40 CFR Part 413 and 40 CFR Part 433 promulgated July 15, 1983 and the Electrical and Electronic Components Points Source Category Pretreatment Standards and New Source Performance Standards, 40 CFR Part 469 promulgated December 14, 1983, EPA noted that the information collection requirements were under review at the Office of Management and Budget (OMB). In accordance with the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), those provisions were not effective until OMB approval had been obtained. The Agency is announcing today that OMB has approved these information requirements on June 19, 1984. In conformance with this approval, the Agency is amending the pertinent regulations to include the OMB control number in the body of the rule.

DATE: The following sections are effective as of August 31, 1984: 40 CFR 413.03, 40 CFR 433.12, and 40 CFR 469.32.

FOR FURTHER INFORMATION CONTACT: John C. Newbrough, (202) 382–7188.

Dated: August 24, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

Accordingly, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. At the end of §§ 413.03, 433.12, and 469.32, the following language is added:

"(Approved by the Office of Management and Budget under control numbers 2040–0074.)"

[FR Doc. 84–23329 Filed 8–31–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 63

[CC Docket No. 79-252; FCC 84-394]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order lifts unnecessary burdens of tariff and facilities-authorization filings for domestic satellite, miscellaneous common, and digital electronic message service carriers. This action should promote competition and lower rates to consumers.

DATE: September 4, 1984

FOR FUTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632-6910.

List of Subjects in 47 CFR Part 63

Communications common carriers, Common carrier facilities.

Fifth Report and Order

In the matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor; CC Docket No. 79-252.

Adopted August 8, 1984.

Released August 27, 1984.

By the Commission: Commissioner Rivera absent.

I. Introduction

1. Through a series of notices and orders beginning in 1979, this proceeding has adjusted our tariff and facilities-authorization requirements for nondominant suppliers of domestic, interstate, interexchange telecommunications common carrier services.[1] We have removed regulatory burdens which, in light of market forces, are not necessary to protect customers against unjust, unreasonable, and discriminatory rates. These regulatory burdens imposed costs on customers and impaired efficiency in telecommunications services, contrary to the goals of the Communications Act of 1934, 47 U.S.C. 151.[2]

2. In this proceeding, we have taken a step-by-step approach through which we have gained experience with selectively lessening regulatory burdens. Carriers subject to full regulation were distinguished from carriers subject to nondominant regulation because the Commission found that the latter lacked market power, *i.e.*, the ability profitably to charge and maintain a supracompetitive price. Nondominant regulation has two categories, streamlined regulation and forbearance. Streamlined regulation involves, *inter alia*, tariff filings in 14-days' notice, a presumption of lawfulness for tariffs, and no required prior Section 214 line-specific approval for any domestic line. Forbearance involves, *inter alia*, no required tariff filings and no required prior Section 214 line-specific approval for any domestic line. Among other requirements, all dominant and nondominant common carriers are required to charge just, reasonable, and nondiscriminatory rates; must comply with our other Title II regulatory policies; are subject to our complaint process, 47 U.S.C. 208-09; and are subject to the Title III requirements for radio licenses. We applied forbearance to those nondominant carriers—resellers and specialized common carriers—for which we were confident that tariff filings were not necessary to promote our statutory goals.[3]

3. In this Order, we address petitions for reconsideration of the *Fourth Report and Order*,[4] and petitions for applying forbearance to a domestic satellite carrier (domsat)[5] and a carrier providing Digital Electronic Message Service (DEMS).[6] Also, we examine the application of forbearance to additional categories of carriers. We will address in a separate order the proposal set forth in the *Fourth Further Notice*[7] that carriers subject to forbearance cannot file tariffs at the Commission.

II. Reconsideration of the Fourth Report and Order

4. *Western Union.* In its petition for reconsideration, TRT claimed that Western Union Telegraph Co. (WU) has market power by virtue of its domestic telex/TWX network and should be regulated as a dominant carrier. TRT pointed to WU's postalized (distance insensitive) rates, its 1983 domestic telex rate increases, and the international record carriers' (IRCs') small penetration in domestic telex services as evidence of WU's market power. In opposition to TRT's petition, WU cited the findings in the *Fourth Report* that MTS, WATS, and private line services are demand and supply substitutes for public switched record services. WU claimed that many, if not most, of its potential customers can use alternatives to WU's telex/TWX network. These alternatives include the domestic teletypewriter exchange services of

---

[1] Briefly, our *Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 308 (1979), to reduce or eliminate tariff and facilities applications requirements for carriers subject to effective competition. The *First Report and Order*, 85 FCC 2d 1 (1980), classified common carriers as dominant or non-dominant and applied streamlined regulation to the latter. The *Further Notice of Proposed Rulemaking*, 84 FCC 2d 445 (1981), proposed to reduce Title II regulation, through a forbearance or definitional theory, for virtually all common carriers except MTS/WATS and private line service offered jointly by AT&T and the independent telephone companies, and Telex/TWX service offered by Western Union. The *Second Report and Order*, 91 FCC 2d 59, 62 (1982), applied forbearance to resellers of terrestrial common carrier services, and stated that we were analyzing the appropriateness of forbearance with respect to other carriers and that we expected to address those issues in future orders. In affirming that order on reconsideration, 93 FCC 2d 54, 60-61 (1983), we stated that we would consider additional exercises of our forbearance authority in future orders. Our *Fourth Report and Order*, 95 FCC 2d 554 (1983), extended forbearance to all other resellers and specialized common carriers, and extended streamlined regulation to domestic satellite carriers, miscellaneous common carriers, and facilities-owning interexchange carriers affiliated with exchange telephone companies.

[2] "So long as our regulation imposes costs on some firms, and thus on the public, not exceeded by the benefits generated thereby, the provision of communications service by those firms can never be as 'efficient' nor can the charges be as 'reasonable' as they might be in the absence of such artificial costs." *First Report*, 85 FCC 2d at 13.

[3] In the *Fourth Report*, 95 FCC 2d at 578, we replaced streamlined regulation of specialized common carriers with forbearance. In support of that decision, we cited the fact that, during the application of streamlined regulation to specialized common carriers, we received only five petitions against their tariff filings. Each allegation of unreasonable rates or other terms of service was found to be without merit. We found little or no likelihood of regulatory problems from forbearance for these carriers. We noted that, under these circumstances, forbearance offers consumers benefits over streamlined regulation of carriers in terms of lower costs and less delay in introducing new offerings and rates, and increased competition. *Id.* at 554-56. No petitions for reconsideration were filed objecting to the application of forbearanc to these facilities-based carriers.

[4] We received petitions for reconsideration from Satellite Business Systems (SBS), Allnet Communications Services, TRT Telecommunications Corp., the State of Hawaii, and American Telephone and Telegraph Co. (AT&T). In its petition for reconsideration, AT&T requested that it be regulated as nondominant. The issues of AT&T's market power and the possibility of decreasing our regulation of AT&T have been raised in Long-Run Regulation of AT&T's Basic Domestic Interstate Services, 95 FCC 2d 510 (1983). We expect to address AT&T's petition for reconsideration and the oppositions to it filed by SBS, Allnet, RCA Communications, Association of Data Processing Service Organizations, Independent Data Communications Manufacturers Association, and MCI Telecommunications Corp. in connection with rulemakings flowing from that inquiry. Until some further action, we will continue to regulate all of AT&T Communication's interstate services as dominant.

[5] SBS Petition for Forbearance, CC Docket No. 79-252 (May 25, 1984).

[6] ICOM Petition for Forbearance and Streamlining, and Motion for Expedited Treatment (May 9, 1984); FCC Public Notice, 49 FR 22,837 (June 1, 1984). The Public Notice requested comments on applying forbearance to all DEMS carriers.

[7] 49 FR 11856 (March 28, 1984).

other carriers; facsimile machines, data terminals, or communicating word processors, together with voice or data transmission services; other forms of record communications; private line voice and data services; and switched voice services offered by AT&T and other carriers. WU stated that a recent survey of a sample drawn from its 1000 largest customers disclosed that its revenue from these customers declined from 1980 to 1983 by 60 percent, 28 percent of these customers were using the IRCs for all or part of the traffic that had previously been serviced by WU, and 48 percent of these customers migrated to intra-company telecommunications systems. As for its postalized rates, WU stated that its costs are basically distance insensitive, this rate structure is the norm for record communications carriers, and Graphnet and ITT–DTS employed postalized rates before WU. Finally, WU noted that its earnings were still deficient after the 1983 rate increase.

5. We have received no petitions opposing the tariffs of, or meritorious formal complaints against,[8] WU since it became subject to streamlined regulation in November 1983. For the reasons stated in the *Fourth Report*[9] and WU's Opposition, we affirm our finding that WU is nondominant in its domestic, interstate, interexchange services. These services of WU have close demand and supply substitutes. The evidence indicates that WU faces strong competition for these services with regard to a substantial portion of its potential customers, and that it lacks the ability profitably to raise its rates above the competitive level for its services. These customers can turn to a number of suppliers of voice, record, or data services—including AT&T—to meet their communications demands. WU's domestic, interstate, interexchange services are in the relevant market of domestic, interstate, interexchange telecommunications services defined in the *Fourth Report*, and WU has a small share thereof. To facilitate compliance with the equal-interconnection requirements of the Record Carrier Competition Act and in light of the tariff-filing requirements of the Commission's interim implementation order,[10] we continue at this time to treat the domestic, interstate, interexchange services of WU and all record carriers covered by the interconnection requirements of that Act under streamlined regulations rather than forbearance. That is, these carriers must continue filing tariffs for the domestic services covered by the interconnection requirements of that Act. We deny TRT's petition for reconsideration.

6. *Affiliates of Exchange Carriers.* In the *Fourth Report*, 95 FCC 2d at 575–79, we decided that the domestic, interexchange, interstate services of all carriers affiliated with exchange telephone companies should be regulated as nondominant. Furthermore, we applied forbearance to GTE Sprint (based on our experience in applying streamlined regulation to it) and to resellers affiliated with exchange telephone regulation to it) and to resellers affiliated with exchange telephone companies. In that order, we applied streamlined regulation to the rest of these affiliated carriers. Allnet's position for reconsideration argued that the Commission should protect against improper cross-subsidization from exchange telephone companies' monopoly services to their interexchange services. Allnet proposed that the Commission should prohibit exchange telephone companies from offering interexchange services. Alternatively, Allnet proposed to require structural separation between exchange telephone companies and their interexchange affiliates, and to regulate the interexchange affiliates as dominant. ISACOMM, a subsidiary of United Telecommunications, supported the application of forbearance to interexchange carriers affiliated with exchange telephone companies, and stated that Allnet's attempt to prohibit or impose separation requirements on such carriers is beyond the scope of this proceeding. American Satellite, which is structurally separated from its affiliate, Continental Telephone Corp., opposed Allnet's proposal that it be subject to additional restrictions, and requested that forbearance be extended to it.

7. Several of our decisions have pointed to our concerns about potential cost-shifting and anticompetitive conduct by exchange telephone companies.[11] Of course, the divestiture of the Bell Operating Companies from AT&T and the structural separation of several large independent exchange telephone companies with affiliated interexchange carriers help meet our regulatory goals. *See* notes 20 and 23 *infra*. Additionally, with regard to affiliated interexchange carriers, we have regulatory tools to inhibit cost-shifting and anticompetitive conduct by exchange telephone companies. Exchange telephone companies are required to interconnect with all interexchange carriers and private systems on just, reasonable, and nondiscriminatory terms.[12] Interstate exchange access services are regulated as dominant and subject to full tariff review.[13] We review the interstate exchange access tariffs filed by exchange telephone companies with the policy goals of achieving reasonable revenue requirements, cost-based rates, and just, reasonable, and nondiscriminatory terms and conditions. Unreasonable bundling of exchange and interexchange services is unlawful; so, too, is unreasonable discrimination by an exchange telephone company in favor of any interstate interexchange carrier.[14] Other facilities-based carriers

[8] We dismissed as nonmeritorious two complaints against WU's billing and settlement practices for domestic handling of in-bound telex international traffic: RCA Global Communications and Western Union International v. Western Union, Mimeo No. 3285 (April 3, 1984). We have one outstanding petition for declaratory ruling, filed by ITT World Communications, Inc., on August 11, 1983, regarding WU's prices for its combined basic and enhanced services packages.

[9] 95 FCC 2d at 564–66, 571–72. For the year ending June 30, 1983, WU's telex/TWX total operating revenues were $288 million, and WU's total operating revenues from all its regulated services were $697 million. WU's Return on Investment Report filed with the Commission (December 14, 1983). In 1983, AT&T Communications' interstate revenues were $30.4 billion. AT&T's Interstate Monthly Report No. 1 (December 1983).

[10] *See* 95 FCC 2d at 578; 47 U.S.C. 222; Interconnection Arrangements Between and Among the Domestic and International Record Carriers, 89 FCC 2d 928, 91 FCC 2d 483 (1982), *aff'd in relevant part sub nom.* Western Union v. FCC, 729, F.2d 811 (D.D. Cir. 1984). The equal-interconnection provisions of the Record Carrier Competition Act do not sunset. If our tariff-filing requirements for the domestic services of the international record carriers change, we will consider applying forbearance rather than streamlined regulation to their domestic services.

[11] *See generally* BOC Separation Decision, 49 FR 1190 (January 10, 1984), *recon.*, FCC 84–252 (released June 1, 1984) *aff'd sub nom.* Illinois Bell Tel. Co. v. FCC, — F.2d — (7th Cir. 1984); Second Computer Inquiry, 77 FCC 2d 384, *recon.*, 84 FCC 2d 50 (1980), *further recon.* 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Indus. Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2107 (1983); GTE/SPCC Acquisition, 94 FCC 2d 235 (1983); Application of C & P Tel. to Construct Digital Termination Systems, FCC 84–178 (released May 11, 1984).

[12] *See* Bell System Tariff Offerings, 46 FCC 2d 413, 428 *aff'd sub nom.* Bell Tel. Co. of Penn. v. FCC, 503 F. 2d 1250 (3rd Cir. 1974); AT&T: Offer of Facilities to Other Common Carriers, 92 FCC 2d 46, *mod.*, FCC 83–550 (released December 12, 1983); Lincoln Tel. & Tel. Co., 72 FCC 2d 724 (1979), *aff'd*, 659 F.2d 1092 (D.C. Cir. 1981); AT&T: Restrictions on Interconnection of Private Line Services, 60 FCC 2d 939 (1976); Fort Mill Tel. Co. v. FCC, 719 F.2d 89 (4th Cir. 1983); AT&T: Interconnections with Private Interstate Communications Systems, 71 FCC 2d 1 (1979) (ARINC); AT&T: 1.544 Mbps Channels for Connection with Private Interstate Communications Systems, Mimeo No. 636 (released November 8, 1983).

[13] *Fourth Report*, 95 FCC 2d at 576.

[14] *See generally* 47 U.S.C. 202; ECA Tariff Order, FCC 84–51 (released February 17, 1984); Private Line Rate Structure and Volume Discount Practices, 49 FR 18107 (April 27, 1984); MTS and WATS Market

Continued

and resellers should be able to use exchange facilities on the same terms and conditions as to interexchange carriers affiliated with exchange telephone companies. We have investigated carefully the switched and special exchange access tariffs to protect against provisions by which an affiliate of an exchange telephone company or any other interexchange carrier would be favored by discrimination. Our complaint process is available for any allegations of such discrimination. Also, the interexchange carriers that are affiliated with exchange telephone companies and that are treated as nondominant [15] have small market shares.[16] We have received no petitions opposing the tariffs of interexchange carriers affiliated with exchange telephone companies since the *Fourth Report*, and the only formal complaint filed against an affiliated interexchange carrier concerns billing for calls after five rings even though the calls are not completed.[17] If we find that particular interexchange carriers affiliated with exchange telephone companies have market power or otherwise pose regulatory problems, we could require them to file facilities applications and tariffs subject to dominant regulation, or impose other conditions.

8. Interexchange carriers affiliated with exchange telephone companies have increased competition in interstate interexchange services[18] and thereby benefitted consumers through lower-priced services and new offerings. While structural separation decreases opportunities for cost-shifting and anticompetitive conduct, it can also decrease efficiency and affect the interexchange carrier's ability to compete. In the *Second Computer Inquiry*, we stated our commitment to the minimum necessary degree of separation:[19]

> To the extent there may be efficiencies within [carriers'] structures they should not be precluded from capitalizing on them where countervailing regulatory considerations do not demand stringent separation.

While restrictions on interexchange services offered by the Bell Operating Companies (BOCs) and GTE have developed out of antitrust proceedings,[20] we have not previously prohibited exchange telephone companies from providing interexchange common carrier services, or required full structural separation for such activities for all exchange telephone companies.[21] We will consider the problems posed by individual carriers regarding cost-shifting and anticompetitive conduct and may impose restrictions in particular cases, but we see no evidence at this time that imposing such restrictions on all exchange telephone companies would be necessary to protect competition and promote reasonable rates. Accordingly, neither of Allnet's proposals appears warranted to protect the public interest at this time, and we deny Allnet's petition. Nevertheless, our concerns about cost-shifting and anticompetitive conduct by exchange telephone companies led us to require in the *Fourth Report* a certain amount of separation between exchange telephone companies and affiliated interexchange carriers which are regulated as nondominant. In response to informal requests for clarification, these standards are explained in the next paragraph.

9. The *Fourth Report* made domestic, interstate, interexchange resellers *affiliated* with exchange telephone companies subject to forbearance; facilities-owning domestic, interstate, interexchange carriers *affiliated* with exchange telephone companies were placed under streamlined regulation.[22] We hereby explain what we meant by an "affiliate" of an exchange telephone company for purposes of qualifying for regulation as a nondominant carrier. A carrier affiliated with an exchange telephone company is a carrier that is owned (in whole or part) or controlled by, or under common ownership (in whole or part) or control with, an exchange telephone company. We seek to avoid imposing excessive burdens in establishing conditions for when a carrier affiliated with an exchange telephone company qualifies for forbearance, because such burdens would lessen competition and impose costs on consumers. *See* para. 10 *infra*. In order to provide some, albeit not complete, protection against cost-shifting and anticompetitive conduct, an exchange telephone company's affiliate qualifying for nondominant treatment must have separate books of account, and must not jointly own transmission or switching facilities with that exchange telephone company. If the affiliate uses the exchange telepone company's services, it should acquire them via the exchange telephone company's tariffs. An affiliate qualifying for nondominant treatment is not necessarily structurally separated from an exchange telephone company in the sense ordered in the *Second Computer Inquiry*, 47 CFR 64.702 (*e.g.*, fully-separated personnel and marketing are not necessary for nondominant regulation).[23] Interstate services

---

Structure (CC Docket No. 78-72, Phase I), 93 FCC 2d 241, *recon.*, FCC 83-356 (released August 21, 1983), *further recon.*, FCC 84-36 (released February 15, 1984). In our approval of GTE Corp.'s acquisition of Southern Pacific Communications Co., we concluded: "We also do not find reason for concern that the transfer is likely to give SPCC/SPSC a preference over other interexchange carriers . . . . The potential for unequal treatment will be greatly diminished, if not eliminated, with the implementation of our access charge plan. . . . [I]nterested parties will have the right to petition against these tariff filings and bring to our attention any proposed tariffs they believe likely to result in an unjust discrimination or preference." GTE/SPCC Acquisition, 94 FCC 2d 235, at 255 (1983). In United Telecom./U.S. Telephone Acquisition, FCC 84-272 (released June 20, 1984), we required United to make available access arrangements on the same terms and conditions to all Other Common Carriers, including its affiliate.

[15] For the reasons stated in note 33 *infra*, we regulate as dominant Alascom Inc., a subsidiary of Pacific Telecom., Inc., which owns exchange telephone companies. By the *Fourth Report*, all other interexchange carriers affiliated with exchange telephone companies are nondominant. But see note 23 *infra* regarding the Bell Operating Companies.

[16] *Fourth Report*, 95 FCC 2d at 575. In 1983, AT&T Communications had interstate revenues of $30.4 billion; GTE Sprint had interstate revenues of $740 million; U.S. Telephone (now affiliated with United Telecom.) had interstate revenues of $13 million; and American Satellite had interstate revenues of about $66 million. AT&T's Interstate Monthly Report No. 1 (December 1983); data filed with the Commission pursuant to 47 CFR 67.121; United Telecom./U.S. Telephone Acquisition, *supra*; AT&T Comments in CC Docket No. 83-1147, Appendix A (April 2, 1984).

[17] Bill Correctors, Ltd. v. GTE Sprint, E-84-18. We have not yet decided the merits of this complaint. Similar complaints were filed against MCI, Lexitel, United States Transmission Systems, and Allnet. Pursuant to the *Fourth Report*, all these carriers are subject to forbearance.

[18] *Fourth Report*, *supra*, 95 FCC 2d at 572-73, 576; *GTE/SPCC Acquisition*, *supra*, 94 FCC 2d at 251-62; *United Telecom./ U.S. Tel. Acquisition*, *supra*.

[19] 77 FCC 2d at 476.

[20] The Modification of Final Judgment (MFJ) limits the ability of the BOCs to offer interexchange services. United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983). *See also* n. 23 *infra*. Also, the proposed consent decree agreed to by GTE and the U.S. Justice Department (Civ. Action No. 83-1298, D.D.C.) would require structural separation between the GTE operating companies and Sprint. GTE/SPCC Acquisition, *supra*, 94 FCC 2d at 240. We do not express any opinion here on the reasonableness of these restrictions.

[21] *See United Telecom., supra.*

[22] 95 FCC 2d at 575-76, 579.

[23] We required that the BOCs employ structural separation for the provision of customer-premises equipment (CPE) and enhanced services. *BOC Separation Decision*, *supra*. The BOCs currently are barred by the MFJ from providing interLATA services. *See* United States v. Western Electric Co., Civ. Action No. 82-0192 (D.D.C. July 26, 1984). If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation. We have not required structural separation for the other

Continued

provided directly by exchange telephone companies (not through affiliates) are regulated as dominant.

10. Finally, we address the issue of forbearance for all the domestic, interstate, interexchange services of carriers affiliated with exchange telephone companies. There are three reasons to extend forbearance to these carriers and others. First, we found earlier that, if we are reasonably confident that our complaint process and market forces are sufficient to check a carrier's ability profitably to charge unlawful rates, consumers benefit from forbearance rather than streamlined regulation.[24] Forbearance can reduce the costs and delay of a carrier introducing new services or changing rates. This promotes the ability of carriers to satisfy consumers' demands faster and at lower rates. In addition, forbearance facilitates the entry of new carriers and new offerings designed to meet changing market conditions. Also, forbearance can benefit consumers by stimulating competition. Forbearance can stimulate competition by facilitating entry, price decreases, and improved offerings, and by decreasing the disclosure of competitively-sensitive information to rival carriers. Second, we have had favorable experience [25] in applying forbearance to most resellers since August 1982 [26] and to all other resellers and specialized common carriers since November 1983. The only formal complaints we have received against carriers subject to forbearance involve the practice of charging customers after five rings even though the call is not completed.[27] Third, during the nine months that facilities-owning interexchange carriers affiliated with exchange telephone companies, miscellaneous common carriers, and domestic satellite carriers have been subject to streamlined regulation, the Commission has received no petitions opposing their tariffs or formal complaints against them.

11. Therefore, we find that it would be in the public interest to apply forbearance to all the domestic, interstate, interexchange services of carriers affiliated with exchange telephone companies.[28] However, we require all of these carriers owning transmission lines to file the semi-annual reports on circuits added provided for by 47 CFR § 63.07. This information will contribute to the completeness of our data on the telecommunications industry's structure and help us mold our regulation of common carriers to serve the public interest.[29]

12. *Domestic Satellite Carriers.* SBS' petition for reconsideration requested forbearance rather than streamlined regulation for its domestic, interstate, interexchange services. SBS stated that its specialized-common-carrier and reseller competitors are subject to forbearance and thereby gain a competitive advantage, and that there has been only a single complaint against a SBS tariff filing in over 200 filings.[30] Comments of GTE Spacenet Corp., GTE Satellite Corp., and American Satellite Co. support forbearance for all domsats. These comments cite the costs and delays related to filing tariffs, and the anticompetitive consequences of having tariffs on file. GTE Satellite noted that none of its tariff filings encountered an opposing petition, and urged expeditious application of forbearance to domsats. No party opposed our finding that domsats are nondominant carriers or opposed SBS' petition for forbearance. Subsequent to its petition for reconsideration, SBS petitioned for forbearance by waiver under para. 37 of the *Fourth Report.*[31]

13. Regarding another proceeding by which we decreased regulatory burdens on domsats, in June 1984 the D.C. Circuit Court of Appeals affirmed our *Transponder Sales* order.[32] This order recognized that domsats do not possess the market power required to impair the reasonable availability of transponder supply, and that the public interest would not be served by tariff regulation of all transponder uses. Accordingly, our decision authorized transponder sales on a non-common carrier basis. In similar recognition of domsats' lack of market power, we applied streamlined regulation to them in the *Fourth Report* and stated that our experience with such regulation might later lead us to apply forbearance to them. For the reasons stated in paras. 10–11 *supra* (including

---

exchange telephone companies' CPE activities and enhanced services. For these exchange telephone companies, our treatment of their nondominant interstate, interexchange services would be similar to our treatment of their CPE activities and enhanced services, primarily separate books of account but not structural separation. As noted *supra*, GTE currently employs structural separation between Sprint and the GTE exchange telephone companies, and Continental employs structural separation between American Satellite and the Continental exchange telephone companies. Furthermore, United Telecom. employs structural separation between its interstate, interexchange carriers and its exchange telephone companies. *United Telecom., supra.* While we recognize that this structural separation by these large exchange telephone companies providing interstate, interexchange services impedes cost-shifting and anticompetitive conduct, it appears that a similar requirement for all smaller exchange telephone companies would be unreasonably burdensome. *See Illinois Bell, supra*, slip op. at 19 ("most of the independent companies, apart from GTE, are quite small firms that might find it very costly to establish separate subsidiaries to market customer equipment").

[24] *See Second Report*, 91 FCC 2d at 72–73, *recon.*, 93 FCC 2d at 56, 60; *Fourth Report*, 95 FCC 2d at 555–56, 577–79. While we have not been able to quantify the benefits and costs discussed here, we believe that they are substantial. In the *Further Notice*, 84 FCC 2d at 453–55, we described the effects of prior review of tariffs and required tariff filings in terms of (1) taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (2) impeding and removing incentives for competitive price discounting; (3) imposing costs on carriers that attempt to make new offerings; and (4) increasing the costs of the Commission's operations. All of these effects can harm consumers through higher prices and services which do not meet their needs.

[25] The D.C. Circuit Court of Appeals once referred to "the kind of issue [involving expert opinions and forecasts of the effects of a regulation on businesses] where a month of experience will be worth a year of hearings. . . . [I]t is the obligation of an agency to make re-examinations and adjustments in the light of experienced." American Airlines, Inc. v. CAB, 359 F.2d 624, 633 (D.C. Cir.), *cert. denied*, 385 U.S. 843 (1966). *See also* Geller v. FCC, 610 F.2d 973, 978 n.39, 980 (D.C. Cir. 1979) (the FCC has the "affirmative duty to ascertain whether [our] regulations still serve [] some aspect of the public interest").

[26] *See* comments of AT&T in CC Docket No. 83–1147 at 25 (more than 400 resale carriers have entered). It appears that at least some of these carriers would not have entered and expanded their services if we required tariff filings (involving costs, delays, and uncertainty about the results of our tariff review) and prior certification as common carriers (again involving costs, delay, and the specter of regulatory entanglements).

[27] *See* note 17 *supra.*

[28] In the *Fourth Report*, 95 FCC 2d at 579, we stated: "We may extend forbearance treatment to other categories of non-dominant carriers in the future after observing the costs and benefits of streamlined regulation of different categories of carriers. Within 18 months after issuance of this Order, we will review our experience and decide whether to continue applying streamlined regulation to carriers we today classify as non-dominant." We find that this revision is warranted at this time for the reasons stated in para. 10 *supra.* By this action, we grant the requests for forbearance of ISACOMM and American Satellite. Earlier commenters in this proceeding also requested forbearance for carriers affiliated with exchange telephone companies. *See, e.g.*, Comments of Central Telephone and Utilities Corp. (April 28, 1981).

[29] *See* Long-Run Regulation of AT&T's Basic Domestic Interstate Services, *supra; Fourth Report*, 95 FCC 2d at 578.

[30] The challenged tariff, filed before we applied streamlined regulation to SBS, involved a proposed auction in connection with its offering of transponder capacity service. SBS subsequently withdrew the auction provision from its tariff.

[31] The *Fourth Report* delegated to the Common Carrier Bureau the authority to apply forbearance to a nondominant carrier on a case-by-case basis. 95 FCC 2d at 579.

[32] Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), *aff'd sub nom.* Wold Communications v. FCC, —— F. 2d —— (D.C. Cir 1984). The Court concluded that "the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct Commission regulation in appropriate circumstances." slip op. at 22.

our experience in regulating domsats by streamlined regulation) and in the petitions and comments cited in para. 12 *supra*, we find that the costs/benefits of forbearance are more in the public interest than those of steamlined regulation for domsats. We hereby replace streamlined regulation of domsats' domestic, interstate, interexchange services with forbearance.[33] However, we retain our Title III regulation of domsats, the process for certification of non-common carrier domsat systems established in *Transponder Sales*, and the semi-annual reporting requirements on circuits added (47 CFR 63.07) for domsats. Included within our decision to apply forbearance to domsats are grants of SBS's petitions.

14. *Miscellaneous Common Carriers.* Under the *Fourth Report*, miscellaneous common carriers (MCCs) were found nondominant and made subject to streamlined regulation.[34] We stated that our experience with streamlined regulation of MCCs might later lead us to apply forbearance to them. In June 1984 the Common Carrier Bureau granted Southern Satellite's motion to regulate its MCC services by forbearance; the Bureau found that forbearance for these services was more in the public interest than streamlined regulation.[35] For the reasons stated in paras. 10–11 *supra* (including our experience in regulating MCCs by streamlined regulation), we find that the costs/benefits of forbearance are more in the public interest than those of streamlined regulation for all MCCs. We hereby replace streamlined regulation of MCCs' domestic, interstate, interexchange services with forbearance. We retain our Title III regulation of MCCs. Also, MCCs will be subject to the semi-annual reporting requirement on circuits added (47 CFR 63.07).

15. *Hawaii.* The State of Hawaii requested the Commission to require GTE Sprint Communications Corp. to file tariffs or some other reports so as to assure compliance with the conditions in the GTE/SPCC *Acquisition* order[36] regarding rate and service integration. The State of Hawaii recognizes that satisfying its concerns does not require that GTE Sprint file tariffs at the Commission. GTE Sprint responded that requiring it to file tariffs would reduce its ability to compete and is unnecessary to assure compliance with the conditions in that order. Currently, despite our application of forbearance to GTE Sprint, this carrier has tariffs on file at the Commission. These tariffs should provide the information necessary to check on GTE Sprint's compliance with the rate-and-service integration conditions. In case at some future time GTE Sprint no longer has tariffs on file with sufficient information to address the State of Hawaii's concerns, we require that GTE Sprint make reasonably available sufficient information about its rates and services so that the State of Hawaii and the Commission can ascertain whether the carrier is complying with these conditions. Thus, we grant the State of Hawaii's petition. However, we do not require that such information be filed at the Commission unless we specifically request it. We do not believe that it is necessary for us to specify the format or contents of such information at this time. Nor do we, at this time, specify the means by which GTE Sprint could make the information reasonably available.

16. *Initial Certification.* The present rule regarding Section 214 authority for nondominant carriers, 47 CFR 63.07, requires revision so that the language complies with our orders in this proceeding. After the amendments ordered in the *Fourth Report*, the rule states, *inter alia*, that certain filings are necessary for a nondominant carrier to obtain initial certification to become an interstate communications common carrier, or to constuct lines by cable. We have previously ordered that carriers subject to forbearance are not required to make filings under Section 214.[37] Accordingly, we eliminate the language providing for these filing requirements, but maintain the semi-annual reports on initial circuits and circuits added. The revisions to Part 63.07 are shown in the attachment.

17. *Mixed Characteristics.* Finally, we turn to the provisions of the *Fourth Report* regarding carriers with mixed characteristics, such as a carrier providing international services (subject to full regulation), domestic record carrier services with internaional interconnections (subject to streamlined regulation), and domestic resale services (subject to forbearance).[38] Para. 37 of that Order stated that a carrier with mixed characteristics but "separate affiliates" for its various services could be subject to different levels of regulation among its affiliates. On the other hand, we stated that for a single entity with mixed characteristics, all of its services would be subject to the heaviest burden of regulation applicable to any of its services. The concept of "separate affiliate" has caused confusion. This concept was intended to ease the administration of different amounts of regulation for different carriers during this period in which we are evaluating the competition faced by certain carriers in some or all of their services. It was not intended to require that a carrier with mixed characteristics form structurally-separated subsidiaries in the sense ordered in the *Second Computer Inquiry* in order to benefit from some stramlined regulation or forbearance. Nor was it intended to encourage carriers to balkanize their operations.[39]

18. In the case of exchange telephone companies, the requirement of a separate affiliate for nondominant treatment is warranted by our concerns about cost-shifting, discriminatory exchange access, and the dominance of exchange telephone companies in exchange services. *See* para. 9 *supra*. Similarly, concerns about cost-shifting

[33] A recent report states that there are a substantial number of inactive domestic transponders and that transponder capacity has grown faster than demand. *Transponder Loading Report*, Satellite Week (August 6, 1984) 1–3. However, we will regulate one domsat, Alascom, as dominant. Alascom benefits from the Commission's rate-integration policy for interstate MTS and WATS services to noncontiguous domestic points. Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d 844, 856, 38 FCC 2d 665 (1972), *aff'd sub nom.* Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975); Integration of Rates and Services FCC 83–606 (released January 5, 1984). This policy has led us to inquire into the ability of carriers not receiving rate-integration payments, such as General Communications Inc., to compete in serving Alaska. The current rate-integration arrangements and state of competition warrant regulation of Alascom as dominant. Also, we will continue to regulate the services of AT&T Communications using satellite facilities as dominant. *See* para. 18 *infra*. The domestic services of Communications Satellite Corp. have not been analyzed in this proceeding and, until further action, we will continue to regulate them as dominant. *Notice*, 77 FCC 2d at 311 n. 6.

[34] 95 FFC 2d at 566–67, 575. Earlier comments in this proceeding requested that we apply forbearance to MCCs. *See, e.g.*, Comments of United Video and Comments of Western Tele-Communications (filed April 28, 1981).

[35] Southern Satellite Systems: Petition for Waiver of Certain Common Carrier Regulations, Mimeo No. 4875 (released June 19, 1984).

[36] 94 FCC 2d 235 (1983).

[37] *Second Report*, 91 FCC 2d at 73. Generally, it is contrary to Commission policy to limit entry of common carriers. *See* Specialized Common Carrier Services, 29 FCC 2d 870 (1971), *aff'd sub nom.* Washington Utilities and Transportation Comm'n. v. FCC, 513 F 2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); Domestic Communications Satellite Facilities, 35 FCC 2d 844 (1972); MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (D.C. Cir. 1977), *cert denied*, 434 U.S. 1040 (1978) (Execunet I); MCI Telecommunications Corp. v. FCC, 580 F.2d 590 (D.C. Cir.), *cert. denied*, 439 U.S. 980 (1978) (Execunet II). Also, it is unnecessary to control investments in lines as a means of regulating nondominant carriers rate bases. We have concluded that nondominant carriers' lack the ability profitably to charge unjust or unreasonable rates.

[38] 95 FCC 2d at 579.

[39] *See* Southern Satellite Systems, *supra*; Comments of GTE Sprint on ICOM Petition at 2.

and anticompetitive conduct lead us to regulate all of the common carrier services of AT&T Communications as dominant at this time.[40] However, we believe that these concerns are not as great with regard to other carriers regulated as dominant.[41] For these other dominant carriers, the costs of requiring a separate affiliate (including higher operational costs from a balkanized supply of services and the possibility that some integrated services will not be offered) do not seem justified by regulatory concerns. We find that the information required on the title page of every tariff and tariff revision should be sufficient to identify whether the tariff includes a service covered by full regulation, streamlined regulation, or forbearance (if the carrier chooses to file a tariff for a service subject to forbearance). Under 47 CFR 61.54(b), the title page must contain a brief statement showing each class of service provided therein and the geographical application of the tariff or supplement. A tariff or tariff revision covering a carrier's mix of services, some subject to full regulation and some subject to nondominant regulation, must be filed with the notice period required for full regulation but with cost support only for the services covered by full regulation. If a tariff includes a mix of services and a revision to the tariff covers only services subject to nondominant regulation, the tariff revision may be filed on 14-days' notice and without cost support. These procedures replace the "separate affiliate" provisions of the *Fourth Report* except for carriers affiliated with exchange telephone companies.

[40] The basic services of AT&T Information Systems are subject to forbearance. AT&T: Provision of Basic Services Via Resale by Separate Subsidiary, 49 FR 28,835 (July 17, 1984). AT&T Information Systems is structurally separated from AT&T Communications.

[41] After this Order, dominant regulation applies to, *inter alia*, (1) the international services of carriers, (2) exchange services of carriers, (3) AT&T, Communications, and (4) providers of domestic public land mobile radio services, public coast maritime mobile radio services, multipoint distribution services, and cellular mobile radio services. 95 FCC 2d at 582. We have not yet examined the market power of the carriers described in (4). Many of the carriers described in (4) are small and their ability to engage in anticompetitive conduct or cost-shifting appears limited. Pending our review of their market power, the costs of requiring them to establish and operate through separate affiliates to qualify for nondominant treatment for services that have been classified as non-dominant appear to outweigh the likely benefits. As for the international record carriers, the equal-interconnection requirements of the Record Carrier Competition Act appear to limit potential anticompetitive conduct and cost-shifting, again making separate affiliates unattractive with regard to our regulatory goals. All common carrier services provided by Communications Satellite Corp. are regulated as dominant. *See* note 33 *supra*.

III. Forbearance for DEMS Carriers

19. In 1981 the Commission allocated radio spectrum for nationwide common carrier digital transmission networks (DEMS systems) providing high-speed, two-way transmissions.[42] We anticipated that DEMS systems would be used for document distribution, data communications, and teleconferencing. The intercity links of these networks employ satellite, microwave, fiber optics, or cable facilities, and their intracity facilities include digital termination systems (DTS) and internodal links.[43] Each DTS is a component of a DEMS network. We have allocated 23 channels at 10.6 and 18 GHz for DTS operations in each major city (SMSA), with 14 channels for common carriage.[44] As of May 1984, we have granted approximately 600 construction permits for DTS.

20. In the *Fourth Report*, we noted that the possible nondominance of DEMS carriers had not yet been considered in the *Competitive Carrier Rulemaking*.[45] In May 1984 ICOM filed a petition requesting forbearance treatment for its DEMS, but recommending that we consider DEMS operators' requests for nondominant treatment on a case-by-case basis. ICOM's proposed DEMS system would serve 53 cities in 31 states for voice, data, and fascimile transmissions. ICOM expected that its proposed network will cost about $18.3 million, and that it will face competition from specialized common carriers, private microwave and fiber optic systems, cable television operators, AT&T, WU, value-added resale carriers, domsats, and other DEMS carriers.[46] Our Public Notice [47] requested comments on the application of streamlined regulation or forbearance to DEMS carriers or services generally.[48]

[42] DEMS, 86 FCC 2d 360, 380–61 (1981) (First Report), *petition for review denied sub nom.* Alascom Inc. v. FCC, 727 F.2d 1212 (D.C. Cir. 1984); FCC 83–392 (released September 30, 1983) (Second Report).

[43] *See* Local Area Telecommunications, Tariff F.C.C. Nos. 1 (filed March 16, 1983) and 2 (filed February 20, 1984) (DEMS); ISACOMM, Tariff F.C.C. No. 3 (filed October 19, 1983) (DTS).

[44] Application of C&P Tel., *supra*, at para. 5. Of the 13 channels at 10.6 GHz, seven are for extended networks (30 or more cities) and six are for limited networks (1 to 29 cities).

[45] 95 FCC 2d at 582.

[46] ICOM Petition, *supra*, at 6, 8.

[47] *See* note 6 *supra*.

[48] Digital Terminations Service, Inc., Contemporary Digital Services, Inc., and Local Area Telecommunications, Inc., support forbearance for DEMS provided by all carriers. GTE Sprint and ISACOMM support forbearance for DEMS carriers otherwise eligible for forbearance, and streamlined regulation for DEMS carriers otherwise eligible for streamlined regulation. Tymnet D.T.S., Inc. argued that all DEMS providers offering interstate, domestic, interexchange telecommunications services on a nationwide basis should be subject to streamlined regulation, and that forbearance would be premature until the Commission gained experience in streamlined regulation of DEMS. SBS stated that all similarly-situated non-dominant DEMS carriers should be subject to the same regulatory treatment, and that the Commission should preempt any contrary state regulation. The Association of Long Distance Telephone Companies did not take a position on non-dominant treatment of DEMS, but stated that DEMS carriers should be required to file tariffs with the Commission and must not prohibit resale. Finally, AT&T argued that DEMS should be subject to forbearance when offered by any carrier, including AT&T. SBS, MCI, GTE Sprint, and ISACOMM claimed that the Commission lacks specific information about how AT&T intends to use DTS/DEMS, and that AT&T's request should not be considered in this proceeding. ICOM was renamed as Dama Telecommunications Corp. (DamaNet).

21. We find that the domestic, interstate, interexchange services provided via DEMS have close substitutes. Customers considering DEMS for data, voice, facsimile, or video transmissions have a wide variety of services and suppliers capable of meeting their needs. Instead of using DTS for origination and termination, close substitutes can use switched and special exchange access services offered by exchange telephone companies via wire pair, coaxial cable, microwave, or fiber optics. Or, they can originate and terminate directly to customers' premises using these transmission media or satellite earth stations. DEMS carriers would use the same intercity transmission services as a large number of non-dominant carriers and AT&T. Because of demand and supply substitutability, we find that providers of domestic, interstate, interexchange DEMS services are in the relevant product and geographic markets identified in the *Fourth Report*. None of the commenters in this proceeding dispute this finding.

22. Furthermore, a DEMS carrier offers a new service and will have only a miniscule share of this market.[49] Most directly, the current spectrum allocation and licensing policy provides that any one DEMS common carrier service faces actual or potential competition from 13 other DEMS common carrier services and services using 9 private DTS frequencies. ICOM's estimate that it will cost only $18.3 million for it to construct facilities for its DEMS evidences relatively low cost barriers to entry. Moreover, DEMS carriers compete with established carriers and new entrants using other transmission technologies.[50]

[49] In Nationwide Paging, FCC 84–148, at 8–9 (released May 24, 1984), we found that newly-authorized national paging networks will be nondominant and applied forbearance to them.

[50] *See* note 15 *supra*.

In addition, while our experience with DEMS tariffs has been limited,[51] we have not received any petitions against the DEMS tariffs that have been filed or formal complaints regarding any DEMS service. We conclude that, with two exceptions explained in para. 24 *infra*, all providers of domestic, interstate, interexchange DEMS services should be regulated as nondominant for these services.[52]

23. Finally, we find that forbearance will help promote the entry and expansion of DEMS by relieving carriers of the costs and delay of required tariff filings, and will help promote competition. These developments will benefit consumers. *See* para. 10 *supra*. In many cases, it is most costly for a new carrier to prepare and file its first tariff than any subsequent tariff. The benefits of forbearance over streamlined regulation can be especially great for new carriers. In applying forbearance to DEMS carriers, we are confident that market forces and our complaint process will be sufficient to ensure that these carriers charge just, reasonable, and nondiscriminatory rates. We can impose a requirement of tariff filings and cost support if our experience with DEMS carriers indicates that these regulatory burdens are warranted. For these reasons, we reject Tymnet's contention that we should apply streamlined regulation to DEMS rather than forbearance at this time. Under forbearance, providers of DEMS offerings must charge just, reasonable, and nondiscriminatory rates; DEMS providers must obtain radio licenses under Title III and comply with the procedures and filing requirements we established in General Docket No. 79–188; [53] DEMS services are subject to our complaint process; DEMS providers must file semi-annual reports on their construction progress, 47 CFR 21.43, and on their initial and additional lines, 47 CFR 63.07; and DEMS services must comply with our Title II regulatory policies, including those requiring reasonable, nondiscriminatory interconnections [54] and prohibiting resale restrictions.[55] We apply dominant regulation to intraexchange services provided via DTS, including intraLATA, interstate DTS services of BOCs.[56] Also, we apply dominant regulation when DTS is used to provide interstate exchange access services by an exchange telephone company or by an affiliated carrier in its exchange service area.[57]

24. There are two exceptions to forbearance treatment for all DEMS services. First, exchange telephone companies will be regulated as dominant for their domestic, interstate, interexchange DEMS services which are not provided through affiliated carriers.[58] We expect that exchange telephone companies will continue to be dominant providers of exchange and exchange access services, even with the entry of other DTS carriers. To qualify as a nondominant carrier for its domestic, interstate, interexchange DEMS services, a carrier affiliated with an exchange telephone company must meet the requirements of para. 9 *supra*. Also, AT&T has not filed any applications for DEMS or DTS. We currently apply dominant regulation to AT&T Communications' (ATCOM's) services, and we are uncertain how ATCOM will offer DEMS services or integrate DTS facilities into its other transmission facilities.[59] In light of our concerns about cost-shifting, anticompetitive conduct, and discrimination, we will apply dominant regulation to all of ATCOM's services until we evaluate further the record developed in the AT&T Inquiry and receive specific DEMS applications from AT&T.[60] On the other hand, if AT&T Information Systems provides DEMS services via resale, it can do so subject to forbearance.[61]

25. In their comments and replies, both SBS and Contemporary Digital Services urge that any forbearance be accompanied by preemption of any state regulation inconsistent with that policy. In our orginal DEMS order,[62] we did not preempt any state action at that time. But, we did express our intention to preempt any future state regulation which would interfere with our proposal for the development of end-to-end digital radio common carrier communications services. At the present time, we are not aware of any existing state actions which warrant preemption.

26. We also note that our decision to forbear from requiring Section 214 filings does not in any way relieve applicants from their obligations to obtain a network authorization before proceeding to construct DTS facilities. In our reconsideration of the original DEMS order, we noted that applicants would not have to file separate Section 214 applications because the filing of information required to be submitted in a complete radio application for a DEMS network would be sufficient to make the necessary determinations under Section 214 as well as under Title III.[63] We want to emphasize that our decision today does not in any way affect the network concept of DEMS. Applicants must still seek and receive a network authorization under Title III before any construction may begin.[64] In addition, our decision in no way affects the maximum period for construction, which continues to be no more than 60 months after the grant of construction authority for Extended networks, and 30 months for Limited networks.[65]

IV. Conclusion and Ordering Clauses

27. We believe that the actions ordered today will eliminate unnecessary regulatory burdens, and improve the price and quality of services available to consumers by reducing regulatory costs and delays and promoting competition. We are continuing to examine the costs and benefits of other aspects of our regulation, including regulatory burdens imposed on AT&T, to further the statutory goals of widely-available, reasonably-priced, efficient telecommunications services.

28. It is ordered, pursuant to section 4(i) and (j), 201–205, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 201–205, and 214, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, That the policies set forth herein are adopted, that they are effective on the date of publication in the **Federal Register**,[66] and that § 63.07 of the

[51] *See* note 43 *supra*.

[52] Para. 18 *supra* explains how carriers with mixed characteristics would have their DEMS services subject to nondominant regulation.

[53] *See* note 42 *supra*.

[54] Application of C & P Tel., *supra*, at 9 & n. 14.

[55] *See* Resale and Shared Use, 60 FCC 2d 261 (1976), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert.* denied, 439 U.S. 895 (1978); Resale and Shared Use of Domestic Public Switched Network Services, 83 FCC 2d 167 (1980).

[56] Application of C & P Tel., *supra*; Fourth Report, *supra*, 95 FCC 2d at 557 n.6 (BOCs' intraLATA, interstate services not in the relevant market of domestic, interstate, interexchange telecommunications services).

[57] *Fourth Report*, 95 FCC 2d at 576.

[58] *See* Application of C & P Tel., *supra*, at 5–6 (use of DTS facilities for exchange or exchange access services by an exchange carrier in its own exchange service areas); para. 9 *supra*.

[59] *See* Reply Comments of MCI Telecommunications Corp. to ICOM Petition (MCI uses DTS facilities for its tariffed services just as it uses microwave, fiber, and other transmission facilities).

[60] Long-Run Regulation of AT&T's Domestic Interstate Services, *supra*; note 4 *supra*.

[61] AT&T: Provision of Basic Services Via Resale by Separate Subsidiary, *supra*.

[62] 86 FCC 2d at 389–90, *petition for review denied sub nom.* Alascom, Inc. v. FCC, 727 F.2d 1212 (D.C. Cir. 1984).

[63] 90 FCC 2d at 335, n. 24.

[64] *See* 47 CFR 21.15(i).

[65] 86 FCC 2d at 385–86; 47 CFR 21.43.

[66] The Commission finds that, because these policies relieve restrictions on competition and

Continued

Commission's Rules, 47 CFR 63.07, is amended as set forth in the Attachment.

29. It is further ordered, that carriers treated by forbearance are given permission to cancel their tariffs on file with this Commission. Cancellation shall be by supplement effective upon five days' notice and the supplement shall reference this Order as authority for cancellation. For this purpose, §§ 61.56, 61.58, and 61.59 of the Rules, 47 CFR 61.56, 61.58, and 61.59, are waived.

Federal Communications Commission.

William J. Tricarico,

Secretary.

---

public benefits will be derived from putting them into effect without delay, an immediate effective date is in the public interest and has good cause. 5 U.S.C. 553(d), 47 CFR 1.427.

Attachment

Section 63.07 of Chapter I of Title 47 of the Code of Federal Regulations is revised in its entirety to read as follows:

§ 63.07 Special procedures for non-dominant domestic common carriers.

(a) Any party that would be a non-dominant domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct, acquire, or operate any transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

(b) Any non-dominant carrier that constructs or acquires (not by lease) initial or additional circuits shall report these circuits to the Commission semi-annually. These reports shall be filed on a consolidated basis on February 1 (covering facilities over which service was initiated during the preceding July 1 to December 31 period) and August 1 (covering facilities over which service was initiated during the preceding January 1 to June 30 period) of each year. These reports shall include:

(1) Caption—"Section 63.07 Report," including initial certification file number (if assigned);

(2) Name and address of carrier;

(3) Type, number and terminal points of circuits added; (in addition, if service is provided via satellite, the identity of the satellite(s) and a transponder-by-transponder loading); and

(4) Construction cost.

The Commission may request supplemental information.

[FR Doc. 84-23344 Filed 8-31-84; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, and 1094

Milk in the Georgia, Alabama-West Florida, and New Orleans-Mississippi Marketing Areas; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of a proceeding on proposed suspension of rules.

SUMMARY: This action terminates a proceeding on a proposed suspension that would provide partial regulation, rather than full regulation, of the Savannah, Georgia, plant of Dairymen, Inc., in competing for sales of aseptically processed fluid milk products (UHT milk) with a Visalia, California, plant.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding—Notice of Proposed Suspension: Issued June 20, 1984; published June 25, 1984 (49 FR 25879).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). This proceeding was initiated by a notice of rulemaking published in the Federal Register on June 25, 1984, (49 FR 25879) concerning a proposed suspension of certain provisions of the Georgia, Alabama-West Florida, and New Orlean-Mississippi orders. Interested persons were invited to comment on the proposal in writing by July 2, 1984. The provisions that were proposed to be suspended through December 1985 are as follows:

1. In § 1007.7 the first sentence of paragraph (a), the words, "other than a plant specified in paragraph (d) of this section,".

2. Paragraph (d) of § 1007.7 in its entirety.

3. In the first sentence of § 1093.7(a)(2), the words, "the lesser of a daily average of 1500 pounds or".

4. In the first sentence of § 1094.7(a)(1), the words, "the lesser of a daily average of 1500 pounds of".

Statement of Consideration

The suspension was requested by Dairymen, Inc., which operates a fully regulated plant at Savannah, Georgia, where only aseptically processed fluid milk products (UHT milk) are packaged for distribution in the United States and for export outside the country. The effect of the suspension would be to provide partial regulation for the plant under Federal milk orders.

Comments in opposition to the suspension were received from Borden, Inc., National Independent Dairy-Foods Association, Thompson's Farm Supply, Molinos De Puerto Rico, Inc., Puerto Rico Department of Agriculture, Kinnett Dairies, Inc., Milk Industry Foundation, Mayfield Dairy Farms, Coburg Dairy, Continental Grain Company, Central Soya Puerto Rico, New Jersey Milk Industry Association, the Milk Dealers Association of the Philadelphia Area, Inc., Sociedad Agricola Cooperativa de Puerto Rico and Northeast Dairy Cooperative Federation.

None of the comments supported the Dairymen, Inc., request for suspension. The comments were carefully and fully considered in reaching the conclusion herein.

There are three milk plants in the United States that package UHT milk. The Dairymen, Inc., plant at Savannah, Georiga, is regulated by the Georgia order, and the Gossner Foods plant at Logan, Utah, is regulated by the Great Basin order. These plants are required to pay the Class I prices of the respective orders for all sales of UHT milk.

The Real Fresh plant at Visalia, California, is regulated by the California Milk Board. For UHT milk that is sold outside California in the 47 contiguous states, the California Class II price applies on a temporary basis through December 1985. For UHT milk that is exported outside the United States, the California Class IV price applies.

The suspension of certain order provisions was requested by Dairymen, Inc., because the Visalia, California, plant obtained a contract to supply UHT milk to Fort Stewart, Georgia, by bidding a lower price than Dairymen, Inc. The Real Fresh contract price and the Dairymen, Inc., bid price were not cited in the suspension request.

Suspension of the order provisions requested by Dairymen, Inc., was intended to enable the cooperative to compete more effectively with the Visalia, California, plant for sales of UHT milk in the Georgia marketing area, specifically. The suspension request cited purported competitive difficulties with the Visalia plant in the Georgia market, but it cited no instances of competitive disadvantage in unregulated areas or in export sales with the Visalia, California, plant or with any other competitor.

Dairymen, Inc., claimed that the California Class II price, which was $12.17 a cwt. for March 1984, provides the Visalia plant with a competitive advantage of 4.8 cents a quart for sales outside California in the 47 contiguous states compared with a Georgia Class I price which Dairymen, Inc., must pay for milk that is used in UHT fluid milk products. The Georgia Class I price for March 1984 was $14.35 a cwt.

Dairymen, Inc., claimed that its Savannah, Georgia, plant cannot compete with the Real Fresh plant at such a price difference with the Georgia order Class I price. It is noted, however, that the Dairymen, Inc., comparison does not take into account the Georgia order location value of Class I milk at Visalia, California. When the Georgia order Class I price for March 1984 was $14.35 a cwt., the location value at Visalia, California, was $12.08 a cwt., which was the Georgia Class III price. This was 9-cents a cwt., less than the California Class II price of $12.17.

The suspension action, as proposed by Dairymen, Inc., would result in nonpool status for its UHT milk plant at Savannah. The Dairymen, Inc., plant and the Real Fresh plant would be partially regulated distributing plants in any Federal milk order marketing area where they distribute UHT milk products.

Dairymen, Inc., stated that partial regulation of its Savannah plant by any

Federal milk order would not place the plant at a competitive advantage over regular refrigerated milk sales made within such areas by fully regulated Federal order plants. This is correct, and it applies similarly to the Real Fresh plant at Visalia, California.

All Federal milk orders contain provisions for the orderly movement of unpriced milk into regulated markets. Any nonpool plant that is neither an other order plant nor a producer-handler plant from which Grade A fluid milk products, including UHT milk, are disposed of on routes is designated as a partially regulated distributing plant. Usually, that is a plant which does not have sufficient route disposition in any Federal order marketing area to qualify for pooling under an order.

An operator of a partially regulated distributing plant has three options in meeting the payment obligations of a Federal order for any fluid milk products that such operator disposes of on routes in the marketing area:

(a) The plant incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another milk order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the quantity of milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, a plant operator whose payments for milk are less than the order's obligations may pay the difference either to his own dairy farmers or the producer-settlement fund of the order.

(c) The plant operator may choose to pay the producer-settlement fund the difference between the Class I price and the producer blend price of the order (both prices adjusted for the location of the plant) on all fluid milk products distributed in the marketing area (less any purchases of milk classified and priced under any Federal milk order).

The above options are designed to place handlers operating partially regulated distributing plants and handlers operating fully regulated plants on a comparable basis with respect to the cost of Class I milk distributed in an order's marketing area.

Under the Georgia order, UHT fluid milk products are classified as Class I milk, as are fresh fluid milk products that require refrigeration. As a partially regulated plant under the Georgia order, the Visalia plant could not have a competitive advantage over the Dairymen, Inc., plant at Savannah, Georgia, in the cost of raw milk. Accordingly, no basis exists for suspending order provisions, as requested by Dairymen, Inc., due to the disposition of UHT milk by the Visalia plant to Fort Stewart, Georgia. Further, our information is that the Visalia dispositions to Fort Stewart were during one month only (April 1984), and amounted to a relatively small quantity of milk.

Also, the suspension request contains no factual basis on which to suspend order provisions to accommodate Dairymen, Inc., sales (if any) of UHT milk in areas not covered by federal milk orders. Neither does any factual basis exist in the suspension request for suspensing order provisions to accommodate exports of Dairymen, Inc., UHT milk outside the United States. As indicated in some of the comments received in opposition to the suspension, a proceeding relative to export sales of UHT milk is pending in the Department. One comment pointed out that numerous participants at the hearing of that proceeding opposed the export proposals made by Dairymen, Inc., and filed detailed briefs based on the evidence in the hearing record of the proceeding.

Concerning UHT exports, one comment was that it was incongruous of Dairymen, Inc., to seek lower milk prices, by a suspension order, to export UHT milk when a shortage of milk for fluid use has developed in the southeastern Federal order markets supplied by Dairymen, Inc. As a result of the shortage, a substantial quantity of milk must be imported into the area from other regions of the country with additional, substantial costs for handling and transportation.

Another comment was that a hearing should be held to consider the order changes requested by Dairymen, Inc., rather than to effectuate the change by a suspension order. The comment pointed out that at a public hearing, the need for the order changes could be explored thoroughly by the proponent, by supporters, and by opponents.

Another comment was that no emergency was demonstrated in the proposed suspension document which would require a suspension order rather than a public hearing to consider the proposed order changes. This comment is particularly pertinent when it is considered that as a partially regulated plant, the Visalia operation can have no competitive advantage over Dairymen, Inc., in the cost of raw milk under the order.

We believe that the considerations discussed herein, and the comments cited, establish that there is no basis to conclude that UHT milk from the Visalia, California plant to the 47 contiguous states outside California presents competitive problems to Dairymen, Inc., in the eastern United States insofar as the cost of raw milk is concerned. Also, there is no evidence in this proceeding that the Visalia plant is in the export market competing with Dairymen, Inc. Since the Visalia plant cannot have a competitive advantage over the Dairymen, Inc., plant in the cost of raw milk, there are no emergency conditions that require a suspension of order provisions. Further, the information developed in this proceeding does not establish that disorderly marketing conditions would result if the suspension is not issued.

On the basis of the foregoing considerations, the suspension request is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Parts 1007, 1093, and 1094

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 August 28, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–23371 Filed 8–31–84; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 3]

General Regulations Governing Price Support for the 1978 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR Part 1421 governing the Commodity Credit Corporation (CCC) price support loan and purchase program for the 1978 and subsequent crops of grain and similarly-handled commodities with respect to: (1) The reconcentration of warehouse-stored loan commodities; (2) loan interest rates; (3) producer eligibility for

commodity loans; and (4) the assessment of liquidated damages. This proposed rule would also remove obsolete references to annual commodity supplements, provide forgiveness provisions with respect to certain producer violations, and authorize compensation to be made available to rice producers who are required by CCC to deliver rice to a warehouse beyond the producer's customary delivery point.

DATES: Comments must be received on or before October 4, 1984.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0087 and 0560–0040.

This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC 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 rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Producers are obtaining loans with respect to 1984-crop commodities. Since the proposed changes made by these regulations will be applicable to 1984-crop commodities, the comment period is limited to 30 days. Therefore, comments must be received with respect to this proposed rule through October 4, 1984 in order to be assured of consideration.

Annual Commodity Supplements

The regulations at 7 CFR 1421.1 currently provide that price support shall be made available for a particular crop of a commodity only if an annual commodity supplement applicable to such crop is issued. While these supplements were previously codified, they are now set forth in a notice published in the **Federal Register.**

Accordingly, this proposed rule amends § 1421.1 to provide that price support shall be made available for a particular crop of a commodity as determined and announced by the Secretary of Agriculture.

Reconcentration of Warehouse-Stored Loan Commodity

This proposed rule provides that, at the option of a producer, a commodity which has been pledged as collateral by the producer for a price support loan and which is stored in a CCC-approved warehouse may be reconcentrated in another approved warehouse. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. The reconcentration of warehouse-stored commodities would be approved by CCC by completion of Form CCC–699, Reconcentration Agreement and Trust Receipt.

With respect to reconcentration of warehouse-stored commodities, the proposed rule revises 7 CFR Part 1421 to provide that: (1) Warehouse storage loans will be liquidated by delivery to CCC of new warehouse receipt(s) represnting the commodity reconcentrated; (2) new warehouse receipt(s) issued by the subsequent warehouse must: (a) Represent a commodity which is deemed to be stored commingled, (b) be negotiable, and (c) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse; (3) the quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC–699, Reconcentration Agreement and Trust Receipt; (4) a producer must repay, with interest, the amount by which the value of the commodity pledged as collateral for the new warehouse storage loan is less than: (a) The value of the original warehouse-storage loan in the case of a total loan reconcentration; or (b) the value of the quantity of the commodity which CCC approved for reconcentration in the case of a partial loan reconcentration; (5) responsibility for any loss in quality or quantity shall be resolved solely between the new warehouseman and the producer without any liability on the part of CCC; (6) a producer may redeem all or part of the commodity being reconcentrated by paying to CCC the loan principal plus applicable interest and charges; (7) if the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with §§ 1421.733 and 1421.753; (8) except for wheat, barley, sorghum, and rye, CCC will not increase the amount of the loan to reflect transportation costs when commodities are reconcentrated; (9) CCC will increase or decrease the loan to the producer by the amount by which the loan value of the commodity in the subsequent warehouse is greater or less than the value of the commodity pledged as collateral for the original warehouse storage loan; and (10) the maturity date of the new warehouse storage loan shall be the same as the maturity date for the original warehouse storage loan.

Interest Rates

Section 1421.12(b) of the regulations currently provides that price support loans which have not been repaid by the maturity date or the original date on which settlement is required for loans which have been called in the Farmer-Owned Grain Reserve Program shall bear interest at the higher of: (1) The rate of interest which the U.S. Treasury charges CCC for amounts which it borrows during January of the year in which either the loan matures or settlement is originally required; or (2) the interest rate specified in the loan

document. This proposed rule provides that the interest rate assessed with respect to unsettled loans shall be the same as the rate which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Such interest will be assessed beginning: (1) On the date immediately following the maturity date of the loan, or (2) with respect to loans which have been called, on the original required settlement date. In each instance, interest shall continue until the loan is settled.

Commingling Eligible and Ineligible Commodities

Section 1421.17(b) of the regulations currently provides that a commodity is not eligible for price support if it is commingled with (1) an ineligible quantity of the commodity or (2) a quantity of the commodity on which price support has already been obtained, unless the commodity is stored in an approved warehouse or unless the county ASCS office has granted prior approval for such commingling. In addition, § 1421.17(b) provides that a rice producer who produces rice: (1) On a farm which has an acreage allotment, or (2) on a farm to which a producer allotment has been allocated, in excess of the quantity elilgible to be pledged as collateral for a CCC loan may commingle the eligible and ineligible rice and obtain price support on the quantity of rice which is considered to be eligible for price support. Section 601 of the Agriculture and Food Act of 1981 repealed the provisions of the Agricultural Adjustment Act of 1938, as amended, relating to rice allotments. Accordingly, this proposed rule amends § 1421.17 (b) to delete the current provisions and add new requirements which permit producers to obtain price support loans with respect to eligible commodities which are commingled with ineligible commodities if: (1) The producer receives approval from a representative of the appropriate county ASCS office prior to the commingling of the eligible and ineligible commodities and the eligible or ineligible commodity is measured by a representative of the county ASCS office prior to the commingling of the commodities; or (2) the producer certifies the acreage on all farms in which the producer has an interest. If the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest, the producer must: (1) Provide acceptable evidence of the production or purchase of the commodity in order that the county ASC committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on the respective farms and similiar farms in the same county; or (2) have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

Liquidated Damages

Sections 1421.17(g), 1421.18(a), and 1421.19(a) of the current regulations do not adequately address the issue of the aplication of liquidated damages by CCC or other actions which CCC may take when a producer fails to comply with the terms and conditions of a Farm Storage Note and Security Agreement or a Farm Storage Grain Reserve Agreement. Serious and substantial damage to CCC and to the price support and Farmer-Owned Grain Reserve Programs which are conducted by CCC occur when there is: (1) Unauthorized disposition of farm-stored loan collateral by the producer; (2) failure of the producer to deliver a farm/stored commodity by the delivery date specified by CCC; or (3) failure of the producer to repay a loan by the required date when the commodity pledged as collateral for a price support loan has been released for marketing. When such violations occur, CCC also incurs substantial administrative and other costs which are difficult, if not impossible, for CCC to accurately establish.

Accordingly, it is proposed that §§ 1421.17(g), 1421.18(a) and 1421.19(a) be revised to provide that, if any of the described violations occur, the producer shall pay to CCC, in addition to applicable interest and other charges with respect to the loan, liquidated damages on the applicable quantity of the commodity. Liquidated damages will be assessed at 50 percent of the applicable rate of interest which is charged by CCC with respect to delinquent debts on the date the violation occurs. For unauthorized disposition of loan collateral, liquidated damages will be assessed beginning on the date that the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition cannot be determined, such disposition will be considered to have occurred on the later of: (1) The day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. If a producer fails to deliver a farm-stored commodity by the delivery date specified on Commodity Delivery Notice (Form CCC-691) and the producer subsequently repays the loan before delivery is accomplished, liquidated damages will be assessed beginning on the day following the required delivery date and continuing until such time as the loan is repaid. If a producer fails to repay a loan on a farm-stored commodity for which a Marketing Authorization (Form CCC-681-1) has been issued when the commodity has been delivered to the buyer, liquidated damages will be assessed beginning on the earlier of: (1) The expiration date of the marketing authorization, or (2) the date delivery of the commodity to the buyer is completed and shall continue until the loan is repaid.

Unauthorized Removal and Unauthorized Disposition

When a producer has obtained a commodity loan from CCC by pledging as collateral a commodity which is stored on the producer's farm, the producer must not take any action to impair CCC's security interest in the collateral. If the producer removes or otherwise disposes of the collateral without first obtaining the authorization of CCC, CCC's security interest is substantially impaired. Further, unauthorized removal or disposition of CCC farm-stored collateral undermines the effectiveness as well as the integrity of the entire commodity price support loan program. In order to protect CCC's security interest in farm-stored collateral, § 1421.17(g) currently provides that in the event of the first unauthorized removal or disposition, the county ASC committee may call the loan involved and refuse any further farm-stored loans for the producer on any commodity through the end of the next crop year. With respect to the second unauthorized removal, the county ASC committee shall call the loan involved and approve no further farm-stored loans for the producer through the next crop year. This proposed rule would amend § 1421.17(g) to expand the authority of the county ASC committee to take these actions and to take any other actions deemed necessary. Under the proposed rule, the county ASC committee would also have the authority to refuse any further farm-stored loans for the producer for any commodity for a period of time beyond the end of the next crop year if it is determined that such an action is warranted.

Forgiveness of Violations

The Agricultural Act of 1949, as amended, provides that the county ASC committee may forgive some or all of the penalties which a producer would incur

as a result of an unauthorized removal of CCC loan collateral. This proposed rule adds a new § 1421.17(i) which would authorize county ASC committees to waive some or all of the penalties and requirements that would normally be imposed on producers who sample, turn, move, or replace farm-stored loan collateral in violation of law or regulation if the county committee determines that: (1) The violation occurred inadvertently or accidently, because of lack of knowledge or understanding of the law or regulation, or because the producer or the producer's agent acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the rights or interests of any person.

Loan and Purchase Settlements on Rice

The number of available CCC-approved rice warehouse facilities in some rice producing areas is limited. Therefore, CCC may direct producers to deliver rice to a CCC-approved warehouse beyond the producer's customary delivery point in settlement of a price support loan or purchase agreement. In order to compensate rice producers for this additional expense, it is proposed that 7 CFR 1421.22(a) be amended to provide that rice producers will be compensated for delivery of rice beyond their customary delivery point.

Miscellaneous Provisions

A new § 1421.29 has been added to indicate the numbers assigned by the Office of Management and Budget for the purpose of complying with the recordkeeping requirements as specified by the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs, agriculture, price support programs, surety bonds, warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

1. The authority citation is revised to read:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b, 714c), Secs. 101, 105B, 107B, 201, 301, 401, 405, 63 Stat. 1051, as amended, 95 Stat. 1227, as amended, 95 Stat. 1221, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444d, 1445b–1, 1446, 1447, 1421, 1425).

2. The table of contents to Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops is amended by adding § 1421.29 as follows:

* * * * *

Sec.
1421.29 Paperwork reduction act assigned numbers.

* * * * *

3. Section 1421.1 is revised to read as follows:

§ 1421.1 General statement.

This subpart contains the regulations which set forth the general requirements with respect to price support for the 1978 crop and each subsequent crop of barley, corn, flaxseed, oats, rice, rye, sorghum, soybeans, farm-stored peanuts, farm-stored flue-cured tobacco, and wheat. Price support shall be made available for a particular crop of a commodity based upon the level of support which is determined and announced annually by the Secretary. Farm storage loans will be evidenced by notes and secured by security agreements. In certain cases, chattel mortgages or financing statements will be filed. Warehouse storage loans will be evidenced by notes and security agreements and secured by the pledge of warehouse receipts representing an eligible commodity stored in approved warehouse storage. A producer may sell to CCC any or all of an eligible commodity which is not security for a price support loan by delivering to CCC the commodity or the warehouse receipts representing the commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

4. In § 1421.9, paragraph (b) is revised to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: *Provided, however,* That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.18(c).

* * * * *

5. In § 1421.12, paragraph (b) is revised to read as follows:

§ 1421.12 Interest rate.

* * * * *

(b) Price support loans which have not been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for called loans, whichever is applicable.

* * * * *

6. In § 1421.17, paragraphs (b) and (g) are revised and new paragraphs (h) and (i) are added to read as follows:

§ 1421.17 Farm storage loans.

* * * * *

(b) *Commingling eligible and ineligible commodity.* If an eligible quantity of a commondity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged a collateral for a loan unless: (1) The producer has received prior approval from the county ASCS office to commingle the commodity as evidenced by an approved form CCC–687–1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county ASCS office; or (2) the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production or purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

* * * * *

(g) *Unauthorized removal and unauthorized disposition.* If there has been an unauthorized removal or

unauthorized disposition of any part of farm-stored collateral, the county committee may: (1) Call the loan involved, (2) refuse to approve any further farm-stored loans for the producer with respect to any commodity for a period determined to be appropriate by the county committee, and (3) take other actions deemed necessary.

(h) *Liquidated damages.* If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, or the quantity so disposed beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of: (1) the day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 50 percent of the rate of interest which is charged by CCC with respect to deliquent debts at the time the unauthorized disposition is determined to have occurred.

(i) *Waiver of penalties or liquidated damages.* If penalties or liquidated damages are assessed in accordance with paragraph (h) of this section, the county committee may waive some or all of such penalties or liquidated damages if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or the State committee within sixty days from the date the determinations are received, such determination shall be considererd to have been approved.

7. In § 1421.18, paragraphs (a) and (c) are revised to read as follows:

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose of any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC the principal amount of the loan which is outstanding with respect to the quantity of the commodity released, plus interest. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a produder fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and the commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (1) The expiration date of such marketing authorization, or (2) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

* * * * *

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by repayment of the principal amount of the loan, plus interest, with respect to the quantity of the commodity to be released. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provisions of § 1421.5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC–699, Reconcentration Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. A producer may redeem all or part of the commodity reconcentrated by paying to CCC the loan principal plus applicable interest and charges before the new warehouse receipt is delivered to CCC. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early

redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

8. In § 1421.19, paragraph (a) is revised to read as follows:

§ 1421.19 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to repay the loan or deliver to CCC a sufficient quantity of the eligible commodity having a price support value equal to or greater than the outstanding balance of the loan. Deliveries may be either of the identical commodity which is subject to the note and security agreement or of other eligible commodities of the same kind. Deliveries shall be made in accordance with written instructions issued by the county ASCS office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity in excess of the larger of: (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of the commodity having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity delivered shall be made as provided in § 1421.22. If the producer fails to deliver to CCC the commodity pledged as price support loan collateral by the date specified by CCC on Form CCC–691, Commodity Delivery Notice, and if the producer subsequently redeems the collateral by repaying the loan before delivery is accomplished, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity redeemed. Such liquidated damages shall be assessed beginning on the date following the required delivery date and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the repaid quantity by 50 percent of the rate of interest charged by CCC with respect to delinquent debts on the date the failure to deliver occurred.

* * * * *

9. In § 1421.22, paragraph (a) is revised to read as follows:

§ 1421.22 Settlement.

(a) *General.* Settlement with producers for commodities acquired by CCC as a result of loans made or under purchase agreements entered into under this subpart shall be made as provided in this section and in the applicable commodity regulation. The price support rate at which settlement shall be made shall be determined in accordance with the provisions of the applicable commodity regulations. Settlement shall be made on the basis of the grade, quality, and quantity of the commodity delivered by the producer. In the case of farm-stored peanuts and farm-stored tobacco, paragraphs (b), (c), and (e) of this section shall not apply. In the case of farm-stored rice, paragraphs (b) and (c) of this section shall not apply.

* * * * *

10. A new § 1421.29 is added to read as follows:

§ 1421.29 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Numbers 0560–0087 and 0560–0040 have been assigned.

Signed at Washington, D.C., on August 28, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–23317 Filed 8–31–84; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF THE TREASURY

Comptroller of The Currency

12 CFR Part 3

[Docket No. 84–29]

Minimum Capital Ratios; Issuance of Directives

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: Section 980 of the International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153) codified at 12 U.S.C. 3907, directs the Comptroller of the Currency to establish minimum levels of capital for national banks and to require them to achieve and maintain adequate capital. The Office also is required to analyze capital adequacy in taking action on various types of applications such as mergers and branches and in conducting the Office's supervisory activities related to the safety and soundness of individual banks and the banking system. This proposal: (a) Defines capital; (b) establishes required minimum capital ratios; (c) establishes procedures to set higher required minimum capital ratios for an individual bank; and (d) establishes procedures for issuing a directive to require a national bank to achieve and maintain the minimum capital ratios applicable to it.

DATE: Comments must be received by November 5, 1984.

ADDRESSES: Comments should be sent to Docket No. 84–29, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219, Attention: Lynnette Carter. Comments will be available for inspection and photocopying.

Comments specifically addressing the information collection requirements in §§ 3.7 and 3.12 should be submitted to: Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20500, Attention: Desk Officer for the Office of the Comptroller of the Currency. Those comments also should be directed to the Comptroller's Office at the above address.

FOR FURTHER INFORMATION CONTACT: Susan K. Fetner, National Bank Examiner, or John H. Noonan, Director, Commercial Examinations Division (202 447–1164), or Dorthy A. Sable, Senior Attorney (202 447–1880).

SUPPLEMENTARY INFORMATION:

Background

Capital performs several very important functions in banking institutions. It absorbs losses; helps to maintain confidence in individual banks and the banking system as a whole; and supports growth. Capital also provides protection to depositors in the event of a threatened insolvency.

The Office of the Comptroller of the Currency (Office) has always had a strong concern for the maintenance of adequate capital in individual banks and in the banking system. The protection of depositors and fostering of stability in the financial system are critical to the mission of the Office and capital adequacy plays a key role in the policies and programs used in performing the Office's supervisory functions. A determination of capital adequacy in one of the major objectives of a bank examination and is one of the five components which form the basis of the Uniform Financial Institution Rating System used by the Office in determining the condition of individual banking institutions. Additionally, by enacting the International Lending

Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) (ILSA) Congress has explicitly recognized the importance capital adequacy assumes in the safe and sound operation of the nation's banking system.

Although there is widespread agreement as to the importance of adequate capital, there has been vigorous debate over the years among regulatory authorities, bankers, industry analysts and other regarding what constitutes and adequate level of capital. There is general agreement that the capital of any given bank should be sufficient to maintain public confidence in the institution; support the volume, type and character of the business conducted; provide for the possibilities of loss inherent therein; and permit the bank to continue to meet the reasonable credit requirements of the area served. The quantification of this into an appropriate capital ratio has, however, been the subject of much controversy.

Bank capital ratios, relating the amount of bank capital to bank assets, vary in response to differential growth rates in the numerator—bank capital, and the denominator—bank assets. The growth rate of bank assets is affected by the rate of inflation, credit demand, innovations in bank asset and liability management, and the real rate of growth in the economy. The growth rate of bank capital is a function of the rate of return on assets, the retention rate of earnings, and net new issues of capital securities. The "adequacy" of these bank capital ratios is affected by the economic environment in which banks operate and the magnitude of risk inherent in the structure and operating characteristics of individual institutions.

Several factors have emerged over the past few years which are accentuating the potential demands on bank capital. The decrease in banks' net interest margins, together with a weakening of loan portfolios brought about by shocks in the domestic and world economy have caused a decline in bank profitability and increased levels of risk within the system. The competition for financial services has intensified on both an intraindustry and interindustry basis, placing additional pressures on bank profitability. Further, because of the growing interdependency within the system, problems in one institution can have repercussions on other institutions, arguing for stronger capital levels in both individual banks and the system as a whole. Increasing levels of off-balance sheet risks are also a factor in the need for higher capital.

The Comptroller, the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) have previously adopted and published capital guidelines which, together with the efforts of banks to achieve them, have been successful recently in preventing a decline in bank capital ratios. These policies, while similar, have not been completely uniform and have allowed for some disparity in the treatment of federally regulated banks. Section 908 of ILSA (12 U.S.C. 3907) directs the federal banking agencies to "* * * cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." ILSA also encourages uniformity among the agencies in imposing requirements under the Act. Therefore, pursuant to the Office's authority under ILSA and the authority contained in the National Banking Act, the Office is proposing a regulation on capital requirements. The FRB and the FDIC also have issued similar capital proposals for comment. The proposed regulation is intended to implement the provisions of the ILSA, foster further improvement in bank capital ratios, and eliminate the disparities in treatment of federally regulated banks with respect to capital adequacy. The proposed regulation also sets forth the procedures, pursuant to the authority contained in ILSA, for issuing directives to require banks to achieve and maintain adequate capital.

The proposed regulation will supplement, rather than replace, the Office's supervisory evaluations of capital adequacy. The process of determinig the adequacy of a bank's capital on an ongoing basis begins with a qualitative evaluation of the critical variables that directly bear on the institution's overall financial condition. These variables include the quality, present value, type and diversification of assets; historical and prospective earnings; liquidity (with emphasis on asset/liability management); the quality of management; and the existence of other activities which may expose the bank to risks, including off-balance sheet items, the degree of leverage and risks undertaken by the parent company or other affiliates. Banks with significant weaknesses in one or more of these areas will be expected to maintain higher capital levels than the minimums set forth in the regulation. In addition, the OCC stresses that the capital requirements set forth in this proposed regulation are minimums and that all banks are encouraged to maintain higher levels of capital in order to provide protection against unforeseen adversities.

The Proposal

The regulation would apply to national banks and banks located in the District of Columbia. The regulation would not apply to bank holding companies; however, when considering the condition of or an application from banks which are subsidiaries of holding companies, the activities and condition (including capital adequacy) of the bank holding company will be considered by the Office. Although the proposed regulation would not apply to federal branches and agencies, the Office is considering imposition of a comparable capital equivalency deposit requirement for federal branches and agencies (see Issues for Comment, No. 10).

Under the proposed regulation, the minimum acceptable ratio of total capital to total assets would be established at six (6) percent (%) and the minimum ratio of "primary " capital to adjusted total assets would be established at five and one-half (5 ½) percent (%). These ratios would apply to well-managed banks of all sizes which have no material weaknesses. Based on the December 31, 1983 Call Reports, approximately 95% of all national banks had a primary capital ratio in excess of 6%, a level which would exceed the primary capital requirement established by this regulation. In addition, most of the larger multinational and regional banks (which generally have lower capital ratios than smaller banks) had primary and total capital ratios which would exceed the minimum requirements. A few large banks will be faced with a relatively large dollar shortfall in their capital accounts. While the OCC expects that all banks will make every effort to achieve compliance as rapidly as possible, the Office will consider the individual circumstances and the ability of each bank to achieve compliance.

The proposed regulation represents a change from the interagency guidelines issued by the OCC and the FRB in December 1981 and amended in June of 1983. Regional and multinational banks would be subject to an increase in the primary capital ratio from 5% ot 5½% while community banks would have their minimum primary capital ratio lowered from 6% to 5½%. The new total capital ratio, as proposed, would be 6%. Previously, the guidelines had used a zone concept, based on asset size, to determine the nature and intensity of supervisory action for a particular institution. Multinational and regional banks were presumed to have

inadequate total capital if below a 5½% ratio, and community banks were presumed under capitalized if below 6% total capital. The zone concept provided some guidance for bankers and regulators in monitoring total capital levels and consideration is being given to continuing use of the zones in conjunction with a minimum capital requirement. (See Issues for Comment, No. 9).

Primary Capital Definition

Primary capital in the proposed regulation is defined as the total of common and perpetual preferred stock, capital surplus, undivided profits, contingency and other capital reserves, a limited amount of mandatory convertible debt (as defined), minority interests in consolidated subsidiaries, net worth certificates and the allowance for loan and lease losses; minus intangible assets. The term mandatory convertible debt is defined to include only those subordinated debt instruments that mandatorily convert into the issuing bank's common or perpetual preferred stock. The definition intentionally does not include subordinated debt that merely requires the issuer to sell stock in sufficient amounts to replace the debt obligation, even though these instruments are considered as primary capital under OCC's present guidelines. Furthermore, for purposes of meeting the minimum primary capital requirements of this proposed regulation, mandatory convertible debt would be included only to the extent of 20% of primary capital exclusive of such debt. The proposed regulation limits the amount of mandatory convertible debt that would be included in measuring primary capital because, while these instruments contain many of the features of equity capital, they do not represent equity until actually converted.

The proposed definition of primary capital thus also differs from that contained in 12 CFR 7.1100 which defines capital for statutory and supervisory purposes. The Office will amend that interpretive ruling upon adoption of a final regulation under this proposal (see Issues for Comment, No. 1).

Secondary Capital Definition

The definition of secondary capital would include mandatory convertible debt that is not included in primary capital (in excess of 20%), intangible assets, and, subject to certain restrictions in 12 CFR 7.1100, limited life preferred stock and subordinated notes and debentures. As in the case of primary capital, the definition of secondary capital differs from that contained in 12 CFR 7.1100 (See Issues for Comment, No. 1).

Minimum Capital Ratios

The proposal would require banks to have and maintain a ratio of total capital to total assets (as defined) of at least 6% and a ratio of primary capital to adjusted total assets of at least 5½%. These ratios would apply to all national banks, regardless of size. However, the Office would retain the right to establish higher ratios for individual banks whose circumstances warrant a stronger capital base. In addition, banks which have entered into, or subsequently enter into a written agreement or which are or become subject to a cease and desist order under 12 U.S.C. 1818 (b) or (c) requiring higher minimum capital ratios for the bank, must achieve and maintain those higher ratios. Similarly, if higher minimum capital ratios have been or are required as a condition for approval of an application, the bank will be governed by those ratios.

The ratios must be achieved as of each Call Report date and will be calculated in terms of the bank's reported total capital to its reported average total assets and its primary capital to average total assets as adjusted. During the following quarter, the bank must maintain this ratio. If total assets increase, on average, during the quarter, the bank must increase its capital (unless it is already above the minimum) before the upcoming Call Report date, in order to be in compliance with the required ratios as of the Call Report date for that quarter.

Banks which are not able to achieve the ratios by the effective date of the final rule will be required to submit to the Office an acceptable plan to achieve the minimum capital ratios within a reasonable time. The plan itself must be submitted within 60 days after the effective date of the final rule and must set forth the means and time frames in which the bank will achieve the minimum ratios. The Office understands that banks that will need to raise or generate a substantial amount of capital to achieve the ratios will require a reasonable period of time in which to do so and the Office will take this into account in reviewing individual bank plans. Rather than a formal approval or acceptance process, the proposed rule provides that the bank may consider its plan acceptable to the Office unless it is notified to the contrary. It should be noted, however, that under this provision, the Office may subsequently require changes in a bank's plan, such as an acceleration of the time schedule, in the event of changed circumstances. Because not all banks will have the required ratios at the time the final rule becomes effective, or be able to achieve the ratios quickly thereafter, the rule provides that a bank in compliance with an acceptable plan to achieve the ratios will not be considered to be in violation of the regulation.

Finally, the Office has reserved the authority to permit a bank to operate with capital ratios below the minimums when, in the opinion of the Office, the circumstances justify such action. This provision might apply for example, to a situation in which a bank in compliance with the minimum ratios would not be in compliance if it undertook a proposed acquisition which would dilute its capital or increase its assets. Such an acquisition, however, may be necessary or desirable to alleviate a troubled or emergency situation involving another bank. In such circumstances, when the Office believes that the acquisition should be approved, it may specifically authorize the acquiring bank to have capital ratios below the minimums during a specified period of time, *i.e.*, the time necessary for the bank to absorb the acquisition and increase its capital to again meet the minimums specified in the regulation. This provision is not intended to authorize banks below the required minimums to continue to operate with lower capital ratios or to authorize banks to reduce their capital.

Minimum Capital Ratios for an Individual Bank

As noted above, the general minimum captial ratios are intended to apply to sound banks without any significant risks or problems. Higher minimum captial ratios may be appropriate or necessary for individual banks depending upon their circumstances. The International Lending Supervision Act specifically provides the Comptroller with the authority "to establish such minimum level of capital for a banking institution as the [Office], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." 12 U.S.C. 3907(a)(2). Higher minimum ratios may be estabished for a bank and required as a part of a written agreement or a cease and desist order under 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application. In addition, the proposed rule establishes a procedure for setting higher required minimum capital ratios for an individual bank. This part of the rule sets out examples of situations when higher minimum capital ratios may be necessary or appropriate and examples of the factors which the Office

may consider in deciding what a bank's minimum capital ratios should be. These examples are not intended to be exclusive because it is not possible to predict in advance each situation in which higher capital ratios may be necessary or every factor which should be considered in a particular situation.

The procedure provides for written notice from the Office to the bank indicating the capital ratios which the Office believes are appropriate for the bank, the date when they should be achieved, and an explanation of why those ratios are considered appropriate. The bank will have thirty days in which it may respond to the Office in writing. After the close of the bank's response period, or after the bank's response is received, if sooner, the Office will consider any response from the bank. Unless further information or clarification of the bank's response is required, or the time periods are extended for good cause, the Office will reach a decision within thirty days after the close of the response period and will advise the bank in writing whether higher capital ratios will be required for it and, if so, what those ratios are and when they must be achieved. The Office also may require the bank to submit an acceptable plan to achieve the required ratios established for it. This procedure is intended to provide an informative and fair, but relatively uncomplicated and prompt method of addressing an individual bank's need for higher capital levels.

Directives

A directive is a form of order specifically authorized under the International Lending Supervision Act, 12 U.S.C. 3907(b)(2). Issuance of a directive of discretionary when a bank does not have or maintain capital at or above the level required for it, whether under the general minimum capital ratios set forth in the rule, under a decision establishing higher minimum capital ratios for the bank, under the terms of a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive also may be issued when a bank has failed to submit or is not in compliance with an acceptable plan to achieve its required minimum capital ratios.

Under the proposal, the Office will notify a bank in writing of the Office's intention to issue a directive to the bank. The notice will include reasons for the action and the contents of the proposed directive. The bank will have thirty days in which to respond in writing to the notice. The response may state why a directive should not be issued; may propose alternative provisions for the directive; and/or may include a plan to achieve the bank's required minimum captial ratios. The response should include any information which the bank would have the Office consider in deciding whether to issue a directive or what the provisions of the directive should be. Failure to respond within the allotted time period will be deemed to be a waiver of any objections to the proposed directive. After the close of the bank's response period, or after receipt of the bank's response, if sooner, the Office will consider the bank's response and will decide whether to issue the directive as originally proposed or in modified form. Unless the time periods are extended by the Office, for example, in cases where additional information or a clarification of the bank's response is needed, the Office will issue the directive, or notify the bank that a directive will not be issued, within thirty days after the close of the bank's response period.

The terms of the directive will vary in each individual case. The directive may order the bank to achieve and maintain its required minimum capital ratios by a specified date; comply with a previously submitted plan to achieve those ratios; submit and comply with an acceptable plan to achieve the ratios; reduce assets or the rate of growth of assets, or restrict dividends in order to achieve its required capital ratios; or a combination of any of the above or similar actions.

A directive, or any plan submitted pursuant to a directive, is enforceable to the same extent as an effective and outstanding order issued pursuant to 12 U.S.C. 1818(b) which has become final. In addition, violation of a directive may result in civil money penalties against the bank or its officers, directors, employees, or other persons participating in the conduct of its affairs.

Because of the critical importance of adequate capital to the soundness of a bank's operations, the procedure for issuance of a directive has been designed to reach a resolution in a prompt, but fair manner and the Office intends to actively seek enforcement of directives in the event of noncompliance.

Issues for Comment

Comments are requested on the proposal and specifically on the following issues:

(1) Whether the definitions of capital and its components should be the same for the purposes of determining capital adequacy and for statutory purposes, such as the lending limits in 12 U.S.C. 84. The Office adopted one definition for both purposes in Interpretive Ruling 12 CFR 7.1100 and believes that the definitions in this proposed regulation also should govern the determination of capital for both supervisory and statutory purposes since a common definition would avoid complexity and confusion.

(2) Whether higher minimum capital ratios are appropriate or feasible. The Office believes that the minimum capital ratios proposed are appropriate for the banking industry in general and are feasible to achieve and maintain. However, the Office solicits comment on whether higher minimum ratios than those proposed should be required now or required in the next year or two, and whether and when it would be feasible for banks to achieve such higher capital levels.

(3) Whether the proposed regulation should "grandfather" capital components now considered primary capital but which would not be included in primary capital under the proposed regulation. The proposed regulation would not change a bank's total capital. However, some items currently included in primary capital—by Interpretive Ruling 12 CFR 7.1100 or bank practice—would instead be included in secondary capital. One such item is mandatory convertible debt which must be repaid through the sale of common or perpetual preferred stock. This type of mandatory convertible debt, commonly referred to as "equity commitment notes" has been issued by some national banks with the Office's approval. Under the proposed regulation, this type of debt would continue to be counted as capital but it would be considered secondary capital. The Office believes that banks should be able to continue to include in their primary capital, previously approved and issued equity commitment notes or other similar instruments. Therefore, as a transitional rule, such instruments would be included in primary capital to the extent previously authorized, during the original effective term of the instruments.

The other item included in secondary capital in the proposed regulation is intangible assets. While the Office has not ruled previously that this item is included in primary capital, the Office is aware that banks commonly do not exclude intangible assets in calculating primary capital. Comment is requested on the effect on individual banks if intangible assets are excluded from primary capital and, alternatively, the extent to which intangible assets should be includable in primary capital.

(4) Whether the reserves for loan and lease losses should be excluded from capital. Since the amount of a bank's reserve for loan and lease losses is

specifically tailored to its loss experience as well as estimated potential losses on particular assets, it can be argued that all or at least a portion of the reserve should not be considered as capital because it will be depleted. Traditionally, however, these reserves have been considered as capital since they perform one of capital's primary functions, *i.e.*, to serve as a cushion against losses. The Office requests comment on whether all or any portions of loan and lease reserves should be excluded from the definition of capital.

(5) Whether limits should be placed on the amount of subordinated notes and debentures and limited life preferred stock that is included in secondary capital. Limits may include such factors as requiring a minimum original maturity, discounting the amount that is included in secondary capital based on the remaining maturity, and a percentage limit on the aggregate amount that can be included in secondary capital. Certain limits now are imposed in 12 CFR 7.1100 and the Office believes that those or similar restrictions should be placed on these types of instruments when they are included in a bank's capital.

(6) Whether limits should be placed on the amount of secondary capital that can be included in total capital. For example, should secondary capital be limited to an amount equal to 50 percent of primary capital as is now the case under 12 CFR 7.1100? Because the components of secondary capital do not provide the same degree of protection obtained through primary capital, the Office believes that a limit on secondary capital is warranted, at least when determining total capital (capital and surplus) for statutory purposes. (See Issue no. 1). The Office requests comment on the effects such a limit would have, given the proposed definitions of primary and secondary capital.

(7) Whether the minimum capital requirements should be tailored to the risk composition and liquidity of assets. The proposed minimum capital requirements are neutral with respect to the composition of a bank's assets, *i.e.*, the same capital ratio is required for both liquid and illiquid assets and for both high and low risk assets. The Office is concerned that this neutrality may not provide an incentive for banks to enhance or maintain the liquidity or quality of their assets. Asset liquidity is important since it offers banks an alternative to reliance on short term funding, with its inherently volatile conditions, to meet liquidity needs. While asset composition, including risk and liquidity, will be considered in an Office decision to require capital ratios above the minimums for an individual bank, the Office solicits suggestions on ways in which the general minimum requirements or other regulatory requirements could encourage high quality, liquid bank assets. For example, should relatively risk free or liquid assets be excluded or discounted in computing total assets, with higher minimum capital ratios required for the remaining risk assets?

(8) Whether the capital ratios should be calculated on the basis of average or actual total assets. The proposed ratios are minimums and banks are encouraged to maintain higher levels of capital. However, the Office does not want to require banks at the margin to make calculations prior to each increase in their asset portfolios. Similarly, the Office wishes to minimize the likelihood of inadvertent or technical violations. Therefore, in order to avoid these problems, yet assure that the ratios are maintained on a relatively constant basis, total and primary capital would be computed as of each Call Report date and the capital ratios calculated based on average total assets (or average total assets less intangible assets) for that Call Report period. Capital and average total assets already are required to be stated in Call Reports, however, the capital ratios would not need to be stated.

During the following quarter, to comply with the regulation, the bank need only maintain its capital at the levels necaessary to meet the minimum ratios based on the average total assets figure in its most recent Call Report. However, if the bank's assets, on average, increase during the quarter, it must correspondingly increase its capital (if at the minimum level) before the end of the quarter so that it will be in compliance with the required minimum ratios as of the Call Report date for that quarter. Use of the average total assets figure therefore, should eliminate the potential for inadvertant violations and simplify banks' internal procedures for compliance.

The Office is concerned, however, that some banks may have total assets as of the Call Report dates or otherwise that are substantially higher than their average total assets so that the bank, while technically in compliance with the regulation, actually is defeating its purpose, *i.e.*, to assure that banks have the minimum adequate level of capital to support their operations. Therefore, Call Report and examination data on total assets will be reviewed and compared with the reported average total assets figure. where there is significant disparity between these figures on a repeated basis, the bank may be required to maintain its minimum capital ratios on a constant basis in relation to its actual total assets. The Office seeks comment on the average total asset method or alternative methods to achieve compliance with the regulation.

(9) Whether the zone concept provides useful guidance to banks. The Office is considering whether to issue guidelines in conjuction with the final version of the regulation concerning the degree and type of administrative action which would correspond to particular capital ratio zones. Although these guidelines would be primarily for internal agency purposes, they would be published for the information of bank management. Under the zone concept, the Office would consider banks having a total capital ratio in excess of 7% to be adequately capitalized, absent special circumstances. Banks having a total capital ratio between 6–7% would be monitored to determine whether their capital is adequate in light of the quality of assets, management strength, and other factors. Banks having a total capital ratio of less than 6% (the minimum required in the regulation) would be presumed to be undercapitalized and would be subject to appropriate supervision and administrative action.

The proposed regulation itself indicates the range of adminsitrative or supervisory actions which the Office may take if a bank does not have the minimum capital ratios required for it or has not submitted or complied with an acceptable plan to achieve those ratios. Since the appropriate supervisory action necessarily must be determined on a case-by-case basis, the zone concept as a guide for adminstrative actions may not be particularly useful. However, comment on the past or possible future usefulness to the banking industry of the zone would be of assistance to the Office.

(10) Whether the minimum capital requirement should apply to federal branches and agencies. Under 12 U.S.C. 3102(g), federal branches and agencies are required to maintain capital equivalency deposits which, at a minimum, equal 5% of liabilities. The statutory minimum is roughly equivalent to the 5% minimum primary capital requirement for regional and multinational banks in the Office's current guidelines. However, the International Banking Act of 1978 (IBA) also mandates competitive equality

between national banks and federal branches and agencies. Because the operations of federal branches and agencies are not inherently either more or less risky than those of national banks, the Office believes that federal branches and agencies should be subject to comparable capital adequacy requirements. However, since the IBA requires that the capital equivalency deposit consist of cash or investment securities and be computed as a percent of liabilities, a capital-to-assets ratio would be difficult to implement. Alternatively, comparability could be attained by requiring capital equivalency deposits for federal branches and agencies equal to at least 5½% of liabilities, rather than the current 5%. The Office requests comments on this and other means of establishing relatively comparable capital requirements for federal branches and agencies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) the Comptroller of the Currency has certified that the proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities since nearly all small banks (those with total assets of less than $1 billion) already meet or exceed the primary and total capital ratios proposed in the regulation .

Executive Order 12291

The Comptroller of the Currency has determined that the proposed regulation is a "major rule" and a regulatory impact analysis has been performed in connection with the Office's consideration of this rule. In reviewing the impact of the proposal, the analysis considered that:

(1) 151 national banks have a shortfall, at a minimum, of $3.3 billion in primary capital;

(2) 89 of those banks, plus an additional 111, have a shortfall, at a minimum, of $2.4 billion in secondary capital;

(3) 266 national banks meet both minimums, but face credit and other risks that warrant higher capital ratios (the amount of capital they must raise cannot be easily estimated);

(4) Underwriting costs associated with raising needed capital could approach $200 million, the precise amount depending on the volume of funds raised in capital markets as opposed to the use of retained earnings; and

(5) Until capital ratios are met, dividend payouts could be lower than historical averages.

However, OCC believes the costs of the proposed mandatory minimum capital ratios are outweighed by the benefits. These benefits cannot be easily quantified, but include:

(1) An increased capacity, especially among large banks, to withstand losses associated with credit and other risks that are a normal part of banking;

(2) Increased stability in our financial system; and

(3) Increased capacity to fund economic growth.

The Office is especially interested in receiving additional information bearing on the benefits and costs of this proposal. A copy of the regulatory impact analysis may be obtained from the Office's Communications Division under procedures set forth in 12 CFR 4.17 and 4.17a.

Paperwork Reduction Act

The potential paperwork burdens contained in this rule pertaining to: (1) The preparation of a written plan to increase capital by a national bank that does not have the minimum capital ratios specified in the regulation or individually required for it; and (2) the written response which a bank may make to the Office when notified that higher minimum capital ratios may be required for it; have been submitted to the Office of Management and Budget for review pursuant to 44 U.S.C. 3504(h).

List of Subjects in 12 CFR Part 3

Banks, Banking, Primary, Secondary and total capital, Minimum capital ratios, Procedures for establishing higher minimum capital ratios for an individual bank, Enforcement of minimum capital ratios, Issuance of directives.

This proposal does not duplicate, overlap, or conflict with any existing federal laws and regulations governing national banks with the exception of Interpretive Ruling 12 CFR 7.1100 which will be amended accordingly following adoption of the final version of this proposed regulation.

Authority and Issuance

Accordingly, pursuant to authority under 12 U.S.C. 93a, 3907, and 3909, the Comptroller of the Currency proposes to add a new Part 3 to Title 12 of the Code of Federal Regulations, as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

Subpart A—Authority and Definitions

Sec.
3.1 Authority
3.2 Definitions
3.3 Transitional Rule
3.4 Reservation of Authority

Subpart B—Minimum Capital Ratios

3.5 Applicability
3.6 Minimum Capital Ratios
3.7 Plan to Achieve Minimum Capital Ratios
3.8 Reservation of Authority

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

3.9 Purpose and Scope
3.10 Applicability
3.11 Standards for determination of Appropriate Individual Minimum Capital Ratios
3.12 Procedures
3.13 Relation to Other Actions

Subpart D—Enforcement

3.14 Remedies

Subpart E—Issuance of a Directive

3.15 Purpose and Scope
3.16 Notice of Intent to Issue a Directive
3.17 Response to Notice
3.18 Decision
3.19 Issuance of a Directive
3.20 Amendment of Time Periods
3.21 Change in Circumstances
3.22 Relation to Other Administrative Actions

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93a, 161 and 1818; and 12 U.S.C. 3907 and 3909.

Subpart A—Authority and Definitions

§ 3.1 Authority.

This part is issued under the authority of 12 U.S.C 1 *et. seq.*, 93a, 161 and 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153), 12 U.S.C. 3907 and 3909.

§ 3.2 Definitions.

For the purposes of this Part:

(a) "Bank" means a national banking association or a District of Columbia bank.

(b) "Intangible assets" means those assets within the definition of this term in the "Instructions—Consolidated Reports of Condition and Income" (Call Report).

(c) "Mandatory convertible debt" means subordinated debt instruments which require the issuer to convert such offerings into either common or perpetual preferred stock by a date at or before the maturity of the instrument. The maturity of these instruments must be 12 years or less.

(d) "Primary capital" means the sum of (1) and (2) below, minus intangible assets:

(1) Common stock, perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves, net worth certificates issued by the Federal Deposit Insurance Corporation, minority interests in consolidated subsidiaries, and

allowances for possible loan and lease losses; and

(2) Mandatory convertible debt to the extent of 20% of the sum of (1);

(e) "Secondary capital" means the sum of: mandatory convertible debt that is not included in primary capital, intangible assets, and limited life preferred stock and subordinated notes and debentures having an original weighted average maturity of at least seven (7) years, subject to the amortization schedule set forth in 12 CFR 7.1100(f)(2).

(f) "Total assets" means the average total assets figure required to be computed for and stated in a bank's most recent quarterly "Consolidated Report of Condition and Income" (Call Report), plus the allowance for possible loan and lease losses. "Adjusted total assets" means total assets minus intangible assets.

(g) "Total capital" means the sum of primary capital and secondary capital.

§ 3.3 Transitional Rule.

Funding instruments approved by the Office as primary of secondary capital and issued prior to the effective date of this regulation may continue to be included, to the extent previously authorized, in a bank's primary or secondary capital as the case may be, during the original effective term of the instrument.

§ 3.4 Reservation of Authority.

Notwithstanding the definitions of "primary capital" and "secondary capital" in § 3.2 (d) and (e), the Office may find that a newly developed or modified funding instrument constitutes or may constitute "primary capital" or secondary capital," and the Office may permit one or more banks to include funds obtained through such instrument as primary or secondary capital, permanently or on a temporary basis, for the purposes of compliance with this Part or for other purposes.

Subpart B—Minimum Capital Ratios

§ 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in Subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

§ 3.6 Minimum Capital Ratios.

A bank must have an maintain total capital equal to at least 6 percent of total assets and primary capital equal to at least 5½ percent of adjusted total assets.

§ 3.7 Plan to Achieve Minimum Capital ratios.

Any bank having total or primary capital ratios less than the minimums set forth in § 3.6 shall, within 60 days of the effective date of this regulation, submit to the Office a plan describing the means and schedule by which the bank shall achieve the minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the Office. A bank in compliance with an acceptable plan to achieve the minimum capital ratios will not be deemed to be in violation of § 3.6.

§ 3.8 Reservation of Authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

§ 3.9 Purpose and Scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios for an individual bank above the ratios that would otherwise be applicable to the bank under § 3.6. The Comptroller is authorized under 12 U.S.C. 3907(a)(2) to establish such minimum capital requirements for a bank as the Office, in its descretion, deems necessary or appropriate in light of the particular circumstances of that bank. Proceedings under this subpart may be initiated to require a bank to maintain existing capital ratios which are above those set forth in § 3.6 or other legal authority, as well as to require a bank to reach higher minimum capital ratios.

§ 3.10 Applicability.

Higher minimum capital ratios may be required for an individual bank when the Office believes that the bank's capital is or may become inadequate in view of its circumstances. For example, higher capital ratios than those required in § 3.6 may be appropriate for:

(a) A newly chartered bank;

(b) A bank in need of special supervisory attention;

(c) A bank which has or is expected to have losses resulting in capital inadequacy;

(d) A bank having a high proportion of off-balance sheet risk in relation to other assets and liabilities or a low proportion of liquid assets;

(e) A bank undergoing expansion, either internally or through acquisitions; or

(f) A bank which may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institution which which it has significant business relationships.

§ 3.11 Standards for Determination of Appropriate Individual Minimum Capital Ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Office determination that higher mimimum capital ratios are appropriate or necessary for the bank;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);

(d) The bank's liquidity, capital and other ratios compared to the ratios of its peer group; and

(e) The views of the bank's directors and senior management.

§ 3.12 Procedures.

(a) *Notice.* When the Office determines that minimum capital ratios above those set forth in § 3.6 are necessary or appropriate for a particular bank, the Office will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable); and will provide an explanation why the ratios proposed are considered necessary or appropriate for the bank.

(b) *Response.* (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice.

(2) Failure to respond within thetime period specified in paragraph (b)(1) of

this section shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* Within 30 days after the close of the bank's response period, the Office will decide, based on a review of the bank's response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) *Submission of plan.* The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) *Amendment of time periods.* The Office may shorten the time periods specified in this subpart: (1) When, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time periods; or (2) with the consent of the bank. In its discretion, the Office may extend the time periods for good cause. In particular, the time period for the Office's decision may be extended if, after receipt of the bank's response, further clarification or information is required, or there is a material change in the circumstances affecting either the bank's capital adequacy or its ability to achieve the proposed minimum capital ratios by the proposed date.

(f) *Change in circumstances.* If, after the Office's decision in paragraph (c) of this section, there is a change in the circumstances affecting the bank's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank's plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office's original decision and any plan required under that decision shall continue in full force and effect.

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or crease and desist proceedings under 12 U.S.C. 1818(b) or (c) (12 CFR 19.0–18.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether established in Subpart B of this regulation, in a decision pursuant to Subpart C, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a bank that has failed to submit or comply with an acceptable plan to attain those ratios will be subject to such administrative action or sanctions as the Office considers appropriate, including issuance of a Directive pursuant to Subpart E, other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. Failure to achieve or maintain the minimum primary capital ratio also may be the basis for an FDIC action to terminate federal deposit insurance. See 12 CFR 325.4(c).

Subpart E—Issuance of a Directive

§ 3.15 Purpose and Scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in § 3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to (a) achieve the minimum capital ratios applicable to it by a specified date; (b) adhere to a previously submitted plan to achieve the applicable capital ratios; (c) submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios; (d) take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment of dividends, to achieve the applicable capital ratios; or (e) a combination of any of these or similar actions. A directive issued under this rule, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.16 Notice of intent to issue a directive.

The Office will notify a bank in writing of its intention to issue a directive. The notice will state:

(a) Reasons for issuance of the directive; and

(b) The proposed contents of the directive.

§ 3.17 Response to notice.

(a) A bank may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the bank would have the Office consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the bank. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice.

(b) Failure to respond within the time period specified in paragraph (a) of this section shall constitute a waiver of any objections to the proposed directive.

§ 3.18 Decision.

After the closing date of the bank's response period, or receipt of the bank's response, if earlier, the Office will consider the bank's response, and may seek additional information or clarification of the response. Thereafter, the Office will determine whether to issue the directive as originally proposed or in modified form. A directive will be issued, or the bank advised that the Office has decided not to issue a directive, within 30 days after the closing date of the bank's response period as set forth in § 3.17 unless the response period, or the time for the Office's decision, is extended under § 3.20.

§ 3.19 Issuance of a directive.

(a) A directive will be served by delivery to the bank. It will include or be accompanied by a statement of reasons for its issuance.

(b) A directive is effective immediately upon its receipt by the bank, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Office.

§ 3.20 Amendment of time periods.

(a) The Office may shorten the time periods specified in this subpart:

(1) When, in the opinion of the Office, the condition of the bank so requires, provided that the bank shall be

informed promptly of the new time periods;

(2) With the consent of the bank; or

(3) When the bank already has advised the Office that it cannot or will not achieve its applicable minimum capital ratios.

(b) In its discretion, the Office may extend the time periods for good cause. In particular, the time period for the Office's decision may be extended if, after receipt of the bank's response, further clarification or information is required, or there is a material change in the circumstances affecting either the bank's capital adequacy or its ability to achieve the minimum capital ratios applicable to it by the specified date.

§ 3.21 Change in Circumstances.

Upon a change in circumstances, a bank may request the Office to reconsider the terms of its directive or may propose changes in the plan to achieve the bank's applicable minimum capital ratios. The Office also may take such action on its own motion. The Office may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

§ 3.22 Relation to Other Administrative Actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Office also may, in its discretion, take any action authorized by law, in lieu of a directive, in response to a bank's failure to achieve or maintain the applicable minimum capital ratios.

Dated: August 29, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-23313 Filed 8-31-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AGL-7]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Monroe, Michigan, transition area to accommodate a new RNAV Runway 20 instrument approach to Custer Airport.

The intended effect of this action is to insure segregation of the aircraft using these approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before October 4, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 84-AGL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new RNAV instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 1.5 mile expansion to the existing transition area excluding that portion which overlies the Detroit, Michigan, 700-foot transition area.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AGL-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Monroe, Michigan.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were published in FAA Order 7400.6, Part 1 dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend

§ 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Monroe, MI

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Custer Airport (lat. 41°56'10"N., long. 83°26'15"W.,) excluding the portion which overlies the Detroit, Michigan, 700-foot transition area.

Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on August 13, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84-23278 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 542; Ref: Notice Nos. 522 and 534]

Use of Geographic Brand Names

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

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 522 (49 FR 19330, May 7, 1984). Notice No. 522 proposed a number of alternatives to the present regulation, 27 CFR 4.39(i), governing the use of geographic brand names. Subsequently, on July 12, 1984 (Notice No. 534, 49 FR 28417), ATF reopened the comment period for additional comments in response to three requests. ATF has received another request to extend the comment period from the European Economic Community (Common Market).

DATE: Comments must be received on or before January 2, 1985.

ADDRESS: Comments should be addressed to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 522).

During normal business hours, written comments and Notice No. 522 may be inspected by any person at: Office of Public Affairs and Disclosure, ATF Reading Room (Room 4407), Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Wshington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, ATF published Notice No. 522, proposing alternatives to the present regulation, 27 CFR 4.39(i), governing the use of geographic brand names. This action was based on a petition received from the Wine Institute. On July 12, 1984, ATF published Notice No. 534, reopening the comment period for Notice No. 522 until September 14, 1984. The European Economic Community (Common Market) has requested additional time in which to gether comments from member nations. In addition, ATF believes that a response date of September 14, 1984, during the grape harvest, could result in fewer comments from affected individuals. Therefore, ATF is extending the comment period until January 2, 1985.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended, 27 U.S.C. 205.

Approved: August 27, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-23368 Filed 8-31-84; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty: To Authorize the Guaranty of Certain Manufactured Home Loans Under 38 U.S.C. 1810

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration), in implementing the Veterans' Compensation and Program Improvements Amendments of 1984, is proposing to amend its regulations to provide for the guaranty of some manufactured home loans under 38 U.S.C. 1810 in addition to 38 U.S.C. 1819. Only loans secured by manufactured homes that are permanently situated on a lot (the loan may include the purchase of the lot and must be treated as a single real estate transaction) and are considered to be real property, instead of personal property, in the State where they are located, may be guaranteed under the provisions of 38 U.S.C. 1810 and the corresponding VA regulations. Manufactured home loans that were guaranteed previously under 38 U.S.C. 1819 and meet the above qualifications may be refinanced under 38 U.S.C. 1810 in order to purchase a lot on which to permanently situate the unit or to reduce the interest rate of the original loan.

DATE: Comments must be received on or before October 1, 1984. VA proposes to make these regulations effective 30 days after publication as final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 16, 1984. Persons visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitiors to VA field stations will be informed that the records are available for inspection only in the Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420 (202) 389-3042.

SUPPLEMENTARY INFORMATION: These amendments to the § 36.4300 series of the VA regulations will implement the provisions of section 205 of the Veterans' Compensation and Program Improvements Amendments of 1984 (Pub. L. 98–223, 98 Stat. 37) to provide for the guaranty of certain manufactured home loans under 38 U.S.C. 1810. Loans for manufactured homes are currently authorized only under 38 U.S.C. 1819 with instructions for their processing contained in 38 CFR 36.4200 through 36.4287.

Many States have considered manufactured homes to be personal property and teated then differently from site-built homes. This concept of manufactured homes can be traced back to the time when manfactured homes or "mobile homes" or "house trailers" as they were once called, were readily transportable and could in ordinary usage be moved from place to place. Because of this, different regulations and procedures were needed for processing manufactured home loans. With the advent of larger and better built manufactured homes there has been a growing tendency to transport these homes to a specific site for permanent installation. More and more veterans are purchasing (or already own) land in order to permanently place a manufactured home on a lot instead of renting space in the traditional "park." In certain States such a manufactured home, permanently placed on land owned by the purchaser of the unit, is treated as real property rather than personal property. Therefore, with the implementaion of Pub. L. 98–233, loans for the purchase of manufactured homes that are permanently affixed to a lot owned, or being purchased by a veteran simultaneously with the unit, may be guaranteed under 38 U.S.C. 1810 if under the laws of the State in which they are located they are considered to be real property.

Pub. L. 98–223 authorizes the following purposes for manufactured home loans under 38 U.S.C 1810: The purchase of a manufactured home unit to be permanently affixed to a lot owned by a veteran; the purchase of a manufactured home unit and the lot to which the home will be permanently affixed; the refinancing of an existing manufactured home/lot loan (if considered real estate in the State where they are located) in order to reduce the interest rate; and to refinance a loan, that was made to purchase a manufactured home unit, in order to purchase a lot on which the manufactured home unit will be permanently placed. When a manufactured home and lot are being purchased or when a loan is refinanced in order to purchase a lot, the loan for the home and lot must be considered as one loan.

Since the status of a manufactured home as real versus personal property is not always clear, the revised regulations will permit a lender to have the option of requesting guarantees for manufactured home loans under section 1810 or 1819 of 38 U.S.C.

Some of the advantages for guaranteeing manufactured home loans under 38 U.S.C. 1810 instead of 38 U.S.C. 1819 are:

(1) Manufactured home values would be established by appraisal and not by use of a manufacturer's invoice.

(2) Manufactured home loans would be at lower interest rates instead of the higher rate now in effect under 38 U.S.C. 1819, thereby reducing veterans' costs. Historically, the interest rate for manufactured home loans has been approximately 2 percent higher than the interest rate for site-built home loans.

(3) Loans could be for longer terms which would reduce monthly payments to veterans. Under current law the term of a loan made to purchase a site-built home may be up to 30 years and 32 days. The loan terms for manufactured homes, guaranteed under 38 U.S.C. 1819, vary and include the following maximum terms:

(a) 20 years and 32 days for the purchase of a single-wide manufactured home or to purchase a single-wide unit and lot.

(b) 15 years and 32 days for the purchase of a lot on which to place a manufactured home already owned by a veteran.

(c) 23 years and 32 days for the purchase of a double-wide unit.

(d) 25 year and 32 days for the purchase of a double-wide manufactured home and lot.

(e) The maximum loan term for the purchase of a used manufactured home may not exceed 25 years and 32 days or the remaining physical life expectancy of the unit as established by the Administrator, whichever is less.

(4) GPM's (Graduated Payment Mortgages) are allowed for site-built home loans but not for manufactured home loans. GPM's provide lower initial monthly payments than traditional fixed payment mortgages with a specific period (usually 5 years) during which the monthly payments will increase at a set rate annually. At the end of the graduation period the payments become level and remain so for the rest of the life of the loan. This type of loan permits veterans who otherwise might not qualify for a loan to do so with the lower intial payments. With implementation of Pub. L. 98–223 veterans purchasing manufactured homes/lots that qualify for guaranty under 38 U.S.C. 1810 will be able to obtain GPM's.

(5) Furniture and other nonrealty items or charges such as insurance would not be included in the loan.

(6) Many more mortgage lenders are expected to participate in the VA manufactured home program as a result of the new law. One reason for this is that loans that are guaranteed under 38 U.S.C. 1810 may be guaranteed for up to 60 percent of the loan amount, not to exceed $27,500 while manufactured home loans guaranteed under 38 U.S.C. 1819 may be guaranteed for only 50 percent of the loan amount, up to a maximum of $20,000, We expect that lenders who now make loans only on site-built housing will be willing to finance manufactured homes and lots that are treated as real estate and eligible for guaranty under 38 U.S.C. 1810.

The following gives a brief description of the amendments to the § 36.4300 series of 38 CFR.

Definitions for Lot and Manufactured Home have been added to § 36.4300. The definitions for Dwelling, Real-Estate Loan and Residential Property have been revised to include manufactured homes.

The formulas in § 36.4302(a) and (c)(1), (2) and (3) have been revised to reflect the two different types of manufactured home loans, those guaranteed under 38 U.S.C. 1810 and those guaranteed under 38 U.S.C. 1819, for computation of a veteran's entitlement.

Sections 36.4302(a) and (i)(2) have been changed to reflect the addition of interest rate reduction loans for manufactured home loans guaranteed unde 38 U.S.C. 1810.

Paragraph (g) has been added to § 36.4306 to provide for the refinancing of a manufactured home loan in order to purchase the lot upon which the manufactured home is or will be permanently located.

Paragraphs (a), (a)(3), (b) and (c) of § 36.4306a have been changed to reference interest rate reduction loans for manufactured home/lot loans that were previously guaranteed under 38 U.S.C. 1819 and will now qualify for guaranty under 38 U.S.C. 1810.

Paragraph (a) (4) of § 36.4306a has been revised to allow the term of an interest rate reduction loan, used to refinance a manufactured home loan previously guaranteed under 38 U.S.C. 1819, to exceed the original term of the

loan. In these cases, both the lower interest rate and the longer amortization period will reduce the veteran's monthly mortgage payment.

Section 36.4308(b) has been amended to add a reference to 38 U.S.C. 1810 (a) (9) (B) (i) which provides for interest rate reduction loans for manufactured homes.

Section 36.4311(a) which provides the maximum interest rate that may be charged on home or condominium loans has been amended to include those manufactured home/lot loans guaranteed under 38 U.S.C. 1810.

Paragraph (e) of § 36.4311 is changed to include interest rate reduction loans for certain manufactured home loans.

Section 36.4312(d) (6) (i) is amended to allow discounts on manufactured home/lot refinancing loans guaranteed under 38 U.S.C. 1810.

A notation has been added to § 36.4336(a) (2) (i) to include 38 U.S.C. 1810 (a) (9) (B) (i).

The amendments conform the existing regulations to the requirements of Pub. L. 98–223 and the Administrator has certified that these proposed changes will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code, section 601–612. Pursuant to 5 U.S.C. section 605(b) these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604. The proposed regulations, if adopted, will have no impact on small private and nonprofit organizations and small government jurisdictions and should have a minor but beneficial economic impact upon lenders participating in the Loan Guaranty Program who until now did not make manufactured home loans.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the Public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices for consumers, individual industries or have other 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.

(Catalog of Federal Domestic Assistance Program Number 64.114)

Technical amendments have also been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97–306, 96 Stat. 1429, enacted October 14, 1982.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured home, Veterans.

These amendments are proposed under authority granted the Administrator by sections 210(c), 1810 and 1819 of title 38, United States Code.

Approved: July 3, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4301, the definitions of "Dwelling", "Real estate loan", and "Residential property" are revised and new definitions for "Lot" and "Manufactured home" are added following the definition of "Lien"; so that the revised and added material reads as follows:

§ 36.4301 Definitions

* * * * *

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership thereof, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a the term is limited to one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran that is classified as real property under the laws of the State where it is located. (38 U.S.C. 1810(a)(9) and (f))

* * * * *

Lot. A parcel of land acceptable to the Administrator as a manufactured home site. (38 U.S.C. 1810(a)(9))

Manufactured home. A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of: (1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of the VA regulations, manufactured home/lot loans guaranteed under the purview of §§ 36.4300 to 36.4393, inclusive, must be permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase of a manufactured home and lot it must be considered as one loan. (38 U.S.C. 1810(a)(9))

* * * * *

Real-estate loan. Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4393, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4300 to 36.4393, inclusive, to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 1810(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 1810 (a)(8) (refinancing of a VA guarantee, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 1810(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in States in which manufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans.

* * * * *

Residential property. (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a, (2) any manufactured home permanently affixed to a lot or owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located, and (3) any improved real property (other than a condominium housing development) or a manufactured home and/or lot, or leasehold estate therein as limited by §§ 36.4300 to 36.4393, inclusive, the

primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof, or (4) any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected. (38 U.S.C. 1810(f)(2) and (3))

* * * * *

2. In § 36.4302, paragraphs (a), (c)(1), (2) and (3), (f), (h)(3) and (i)(2) are revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran made guaranteed under 38 U.S.C. 1810 the guaranty may not exceed sixty (60) percent of the original principal amount or $27,500, whichever is less. With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i), the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced. (38 U.S.C. 1803(a), 1810(c))

* * * * *

(c) * * *

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1819 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1819 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 1819; the amount of entitlement used for that loan is subtracted from $27,500. The sum remaining is the amount of available entitlement for home loans or manufactured home/lot loans guaranteed under 38 U.S.C. 1810 only. To determine the amount of entitlement available for manufactured home loans, processed under 38 U.S.C. 1819, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 1819.

(38 U.S.C. 1810(c), 1819(c)(4))

* * * * *

(f) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty. However, on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty. (38 U.S.C. 1803(b) and (d))

* * * * *

(h) * * *

(3) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally. (38 U.S.C. 1810(e)(3))

* * * * *

(i) * * *

(2) An unmarried surviving spouse who was a co-obligor under an existing VA guaranteed, insured or direct loan shall be considered to be a veteran eligible for an interest rate reduction refinancing loan pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i). (38 U.S.C. 1810 (e)(3))

3. In § 36.4306, new paragraph (g) is added to read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

* * * * *

(g) A veteran may refinance (38 U.S.C. 1810(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on which the manufactured home is or will be permanently affixed, provided the following requirements are met:

(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;

(2) The manufactured home upon being permanently affixed to the lot will be considered real property under the laws of the State where it is located;

(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;

(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Administrator; a reasonable discount as authorized in § 36.4312(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4312.

(5) If the loan being refinanced was guaranteed by the VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 1802(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed sixty (60) percent of the new loan. (38 U.S.C. 1810(a)(9)(B)(ii), 1819(a)(1)(G) and (5))

4. In § 36.4306a, the introduction of paragraph (a), subparagraphs (a) (3) and (4), and paragraphs (b) and (c) are revised to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810 (a)(8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the VA loan provided the following requirements are met:

* * * * *

(3) The dollar amount of the guaranty of the 38 U.S.C. 1810(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(4) The term of the refinancing loan (38 U.S.C. 1810(a)(8) may not exceed the original term of the loan being refinanced. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1819 the loan term, if being refinanced under 38 U.S.C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the entitlement used by the veteran to obtain the loan being refinanced. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4350.

(38 U.S.C. 1810(a) (8), (9)(B) (i) and (e))

§ 36.4308 [Amended]

5. In § 36.4308, paragraph (b) is amended by adding "or (9)(B)(i)" following the cite "38 U.S.C. 1810(a)(8)".

6. In 36.4311, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13½ per centum per annum, effective August 13, 1984, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13½ per centum per annum on the unpaid principal balance. (38 U.S.C 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13¾ per centum per annum, effective August 13, 1984, the interest rate of any graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13¾ per centum per annum. (38 U.S.C 1803(c)(1))

(c) Effective August 13, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 15 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

(e) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1810(a)(8) and (9)(B)(i) may specify an interest rate in excess of the rate specified in paragraph (a), (b) and (c) of this section provided the interest rate of the refinancing loan is less than the interest rate of the current VA loan being refinanced. (38 U.S.C. 1803(c)(1) and 1810(c))

7. In § 36.4312, paragraph (d)(6)(i) is revised to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(d) * * *

(6) * * *

(i) To refinance existing indebtedness pursuant to 38 U.S.C. (a)(5), (8), (9)(B)(i) or (ii);

* * * * *

8. In § 36.4336, paragraph (a)(2)(i) is revised to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) * * *

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i), the loan including any scheduled deferred interest added to principal, does not exceed the reasonable value of a new home which is security for a graduated payment mortgage, as appropriate, as determined by the Administrator and

* * * * *

(38 U.S.C. 210(c), 1810, 1819)

[FR Doc. 84-23341 Filed 8-31-84; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2654-5]

Interstate Pollution Abatement; Proposed Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Determination under section 126 of the Clean Air Act (Interstate Pollution Abatement).

SUMMARY: Since air pollution can move freely across State boundaries, the potential exists for sources in one State to affect the air quality in another. Interstate pollution exists when sources located near State lines disperse air pollutants into a nearby State. Interstate pollution also exists when pollutants are transformed and transported over longer distances into other States producing such problems as acid deposition, regional haze, and excessive ozone concentrations.

In sections 110(a)(2)(E) and 126 of the Clean Air Act, Congress provided certain Federal remedies for specific interstate pollution problems. Specifically, a State may petition the Administrator of EPA to find that a major pollution source in another State either (1) prevents it from attaining or maintaining national ambient air quality standards (NAAQS), or (2) interferes with required measures under Part C to prevent significant deterioration of air quality (PSD) or to protect visibility. The Administrator, after public hearing, must grant or deny the petitions. If he finds one or more of these situations to exist, he may prohibit the construction or operation of the offending sources, or he may impose on them compliance schedules designed to reduce emissions enough to remove the interstate injury.

In 1980 and 1980, the States of Pennsylvania, New York, and Maine petitioned the EPA under Section 126, claiming that sources in the Midwest were interfering with their ability to meet NAAQS for sulfur dioxide (SO_2) and total suspended particulates (TSP) and were causing acid rain. In addition, Maine and New York alleged impermissible impacts on visbility in the form of regional haze.

Since sections 110(a)(2)(E) and 126 only apply to pollutants for which EPA has established NAAQS or which are included in the PSD or visibility requirements they cannot apply directly to acid deposition or regional haze. The Administrator finds, based on an analysis of the States' petitions and public comments, that although (SO_2) and TSP do cross State lines into the petitioning States, out-of-State sources have not been demonstrated to be interfering with measures required to prevent significant deterioration or to protect visibility, and the demonstrations of injury are not sufficient to prove that out-of-State sources prevent the petitioning States from attaining or maintaining the NAAQS. Therefore, the Administrator is proposing to deny the petitions.

Although the Agency is proposing to deny the petitions, it recognizes the potential of an interstate SO_2 problem as indicated by Pennsylvania's preliminary study. The Administrator agrees with the State that further study could provide a more conclusive demonstration upon which any future actions could be based. The Agency is therefore soliciting comments on

whether and how additional study should be conducted.

DATE: Comments on this determination must be received by the Central Docket Section, attention Docket A–81–09, at the address listed below, no later than October 4, 1984.

ADDRESSES: Technical and background documents and a transcript of the public hearing are available for public inspection at Docket No. A–81–09, Central Docket Section (LE–131A), West Tower Lobby, Gallery 1, EPA, 401 M Street, SW., Washington DC. 20460; (202) 382–7548. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Standards Implementation Branch (MD–15), Control Programs Development Division, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina, 27711, (919) 541–5540.

SUPPLEMENTARY INFORMATION: .

Table of Contents

1. Background
   - A. Statutory Provisions
     - 1. National Ambient Air Quality Standards (NAAQS)
     - 2. Prevention of Significant Deterioration (PSD)
     - 3. Visibility
     - 4. Section 126
   - B. Procedural History of Present Petitions
   - C. The Petitions' Factual Allegations
     - 1. Pennsylvania
     - 2. New York
     - 3. Maine
   - D. Comments on Petitions
     - 1. Pennsylvania's Claims Relating to Short-Range Transport of Pollutants
     - 2. Claims by the Petitioning States Relating to Long-Range Transport of Pollutants
   - E. Legal Issues Raised by the Petitions

II. Threshold Legal Issues
   - A. Which Pollutant?
     - Section 126 of the Clean Air Act Addresses Pollutants Governed by NAAQS
   - B. What Geographic Area Is at Issue?
     - The Clean Air Act Provides Redress for Violations in Specified Geographic Areas
   - C. What Pollutant Levels Trigger the Section?
     - Section 126 Provides Redress When a NAAQS is Violated or a PSD Increment is Exceeded
     - 1. Violation of a NAAQS
     - 2. Violation of a PSD Increment
   - D. What Role Must an Out-of-State Source Play in Causing a Violation of a NAAQS or PSD Increment?
     - 1. The Clean Air Act Provides Redress When the Contribution of the Out-of-State Source is Significant
     - 2. What is a Significant Contribution?

III. Pennsylvania's Direct SO_2 Transport Claims
   - A. Which Pollutant and What Geographic Area?
   - B. Are There Violations of the NAAQS for SO_2 in These Areas?
     - 1. Designations of Nonattainment Areas for SO_2 in Southwestern Pennsylvania
     - 2. Geogrpahic Areas Predicted by Pennsylvania to Have Violations
   - C. What is the Role of Out-of-State Sources in Alleged NAAQS Violations?
     - 1. Pennsylvania's Predictions of Violations
     - 2. Critique of the Cramer Analysis

Proposed Determination on Pennsylvania's SO_2 NAAQS Violation Claims

   - D. Pennsylvania's Allegations of PSD Measure Violations
     - 1. What Geographic Area?
     - 2. Are There Present or Potential Future Violations of PSD SO_2 Increments?

Proposed Determination on Pennsylvania's SO_2 PSD Allegations

IV. Claims Relating to Long-Range Transport of Sulfates and Particulates
   - A. Which Pollutant?
   - B. What Geographic Area?
   - C. Are There Violations of TSP NAAQS in the Petitioning States?
     - 1. TSP Nonattainment Areas in Pennsylvania
     - 2. TSP Nonattainment Areas in New York
     - 3. TSP Nonattainment Areas in Maine
   - D. What Are the Causes of TSP Nonattainment in the Petitioning States?
     - 1. Evidence Concerning Ambient Sulfate Levels
       - a. Pennsylvania's Evidence on Ambient Sulfate Levels
       - b. New York's Evidence on Ambient Sulfate Levels
       - c. Maine's Evidence on Ambient Sulfate Levels
     - 2. Technical Considerations
     - 3. What is the Relationship of Sulfates to TSP Levels?
     - 4. What Role do Out-of-State Sources in the Named States Play in TSP Violations?
       - a. Problems in Predicting Sulfate Levels and Origins
       - b. Available Evidence on the Contribution of Out-of-State Sources to Ambient Sulfate Levels

Proposed Determination on Long-Range Transport Claims of NAAQS Violations

   - E. Claims of Interference With PSD Measures

Proposed Determination of Long Range Transport PSD Interference

V. Maine's and New York's Allegations of Visibility Impairment

Proposed Determination on Allegations of Visibility Impairments

VI. Conclusion

I. Background

A. Statutory Provisions

The Clean Air Act, section 108–110, 42 U.S.C. 7408, 7409, 7410, makes State implementation plans (SIP's) major instruments for the control of air pollution. The SIP's must include measures (1) to attain and maintain NAAQS, (2) to prevent significant deterioration, and (3) to protect visibility.

1. National Ambient Air Quality Standards (NAAQS)

EPA has the responsibility for establishing NAAQS, the maximum allowable concentrations for specific pollutants, according to certain statutory criteria [Section 108(a)(1), 42 U.S.C. 7408(a)(1)]. There are two types of NAAQS: primary standards, to protect public health, and secondary standards, to protect public welfare. Each State is responsible for enforcing these standards by adopting an implementation plan.

The primary NAAQS for SO_2 are:
- (1) 80 $\mu g/m^3$ annual arithmetic mean
- (2) 365 $\mu g/m^3$ maximum 24-hour concentration not to be exceeded more than once per year (40 CFR 50.4).

The secondary NAAQS for SO_2 is:
- (1) 1,300 $\mu g/m^3$ maximum 3-hour concentration not to be exceeded more than once per year (40 CFR 50.5).

The primary NAAQS for TSP are:
- (1) 75 $\mu g/m^3$ annual geometric mean
- (2) 260 $\mu g/m^3$ maximum 24-hour concentration not to be exceeded more than once per year (40 CFR 50.6).

The secondary NAAQS for TSP are:
- (1) 60 $\mu g/m^3$ annual geometric mean provided as a guide in meeting the 24-hour standard.
- (2) 150 $\mu g/m^3$ maximum 24-hour concentration not to be exceeded more than once per year (40 CFR 50.7).

2. Prevention of Significant Deterioration (PSD)

A second set of Clean Air Act provisions imposes requirements to prevent significant deterioration in areas where the ambient air is cleaner than the levels set by the NAAQS. Sections 160–169, 42 U.S.C. 7470–7479, 40 CFR 51.24. Section 163 (42 U.S.C. 7473) sets maximum increases (increments) by which specific pollutants may exceed certain baseline concentrations. Before a new major emissions source can be built or an existing major source can be modified to increase emissions more than a *de minimis* amount, the new or the existing source must obtain a permit, conditioned in part on a showing that the proposed project will not cause or contribute to an exceedance of the allowable increment. Congress has set PSD increments for two pollutnats: sulfur dioxide and particulate matter. Thus SIP's must assure attainment and maintenance of PSD increments for SO_2 and particulates as well as the NAAQS for these pollutants [40 CFR 51.24(a)].

3. Visibility

Section 169A of the Clean Air Act (42 U.S.C. 7491) gives EPA responsibility for promulgating regulations that specify what States must include in their implementation plans to protect visibility in mandatory Class I Federal areas where visibility is "an important value."[1]

On December 2, 1980,[2] EPA published regulations to implement section 169A (40 CFR 51.300—51.307). These regulations are aimed at controlling so-called "plumb blight," defined as "[s]moke, dust, colored gas plumes, or layered haze emitted from stacks which obscure the sky or horizon and are relatable to a single source or a small group of sources * * *."[3] These regulations cover visibility impairment which can reasonably be attributed to a single source or a small group of sources by visual means or other monitoring techniques.

4. Section 126

The Clean Air Act of 1970, in section 110(a)(2)(E), before it was amended in 1977, required only that each State implementation plan include "* * * adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions" from in-State sources would not "interfere with the attainment or maintenance" of NAAQS in other States. The Act, however, did not specify any enforcement mechanism for controlling out-of-State pollution. The Administrator of EPA implemented this provision by a regulation [40 CFR 51.21(c)], that called only for an exchange of information among States, but no further enforcement measures.

In 1977, the House and Senate separately proposed to revise section 110(a)(2)(E) to prohibit interstate pollution levels that would interfere with PSD and visibility measures as well as NAAQS. They also proposed adding section 126 as an enforcement provision for these prohibitions.[4] A Conference Committee of the House and Senate adopted a version of the two proposals which comprises present sections 110(a)(2)(E) and 126.

Section 126(b) of the Clean Air Act, 42 U.S.C. 7426(b) authorizes any State or political subdivision of a State to "petition the Administrator [of EPA] for a finding that any major source[5] emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E)(i)" of the Act. In turn, section 110(a)(2)(E)(i) requires the implementation plan for each State to contain provisions adequate to prohibit any:

> Stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any * * * national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under Part C [of the Act] to prevent signficant deterioration of air quality or to protect visibility.

After receiving a petition under section 126 and holding a public hearing, the Administrator must either find a violation of section 110 or deny the petition. Section 126 states that the effect of a finding of violation is:

(1) With respect to a proposed new or modified source, to prohibit construction or operation;

(2) With respect to an existing source, to prohibit continued operation for more than 3 months after a finding. The Administrator may permit continued operation beyond 3 months only if the source agrees to an emission limit and meets a compliance schedule designed to reduce emissions enough to remove the interstate injury.

EPA has previously issued one other final determination of a section 126 petition in a decision published in 1982. The Air Pollution Control Division on Jefferson County, Kentucky, filed the petition in 1979, requesting a finding that SO_2 emissions from the Gallagher power plant, located just across the Indiana/Kentucky border in Floyd County, Indiana, were preventing attainment of SO_2 standards in Jefferson County.

After reviewing the record and modeling data, EPA found that the Gallagher plant's contribution to predicted Jefferson County violations of the 24-hour standard for SO_2 was 3–4 percent, and that no violations of the standard were predicted in Jefferson County after Kentucky sources were scheduled to come into compliance with applicable emission limits.[6] EPA therefore determined that:

Since Gallagher's contributions to violations in Jefferson County are so small, the Agency has concluded that emissions from the Gallagher plant are not preventing attainment and maintenance of the SO_2 standards in Kentucky. Furthermore, since there are no PSD requirements presently applicable to Jefferson County, Gallagher's emissions cannot interfere with PSD measures required to be in the Kentucky SIP. The visibility provisions are not applicable in Jefferson County. In sum, Gallagher does not cause interstate pollution in Jefferson County in violation of section 110(a)(2)(E)(i) (47 FR 6625).

Accordingly, the Administrator denied that petition. The U.S. Court of Appeals for the Sixth Circuit recently affirmed this denial, upholding EPA's interpretation of the provisions of section 126 and their application to the record in that case. *Air Pollution Control District of Jefferson County, Kentucky* v. *EPA* No. 82–3214 (6th Cir. 1984), July 10, 1984.

B. Procedural History of Present Petitions

On December 19, 1980, the Commonwealth of Pennsylvania petitioned the EPA Administrator under section 126 for findings of violations with respect to the NAAQS for SO_2 and TSP. On December 22, 1980, and January 16, 1981, the State of New York submitted a total on nine petitions under section 126, requesting findings that various Midwest sources were causing violations of TSP standards in New York. EPA consolidated the Pennsylvania and New York petitions and on May 1, 1981, issued notice of a joint public hearing [46 FR 24602 (1981)].

At the outset of the 2-day hearing, held in Washington, D.C., on June 18–19, 1981,[7] EPA announced a set of informational criteria considered useful to a finding of violation under section 126. These criteria, intended as general guidelines for petitioning States, were:

(1) A demonstration establishing the existence and geographic boundaries of the nonattainment or PSD area which is the subject of the petition;

(2) A demonstration that achievement of ambient air quality standards, or of measures necessary to prevent significant deterioration or to protect visibility, is prevented by the named out-of-State sources; and

[1] EPA has listed those areas at 40 CFR Part 81 Subpart D §§ 81.400—81.437.

[2] 45 FR 80084

[3] 45 FR 80085

[4] *See*, S. Rep. No. 95–127, 95th Cong., 1st Sess. May 10, 1977, 41–42; H.R. Rep. No. 95–294, 95th Cong., 1st Sess., May 12, 1977, 329–311.

[5] "Major source" is defined in the Act to mean: "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)." Section 302, 42 U.S.C. 7602(j).

[6] Interstate Pollution Abatement: Final Determination (47 FR 6625), hereinafter referred to as "*Gallagher*" determination.

[7] The hearing panel consisted of Darryl Tyler, EPA, Acting Director, Control Programs Development Division, Office of Air Quality Planning and Standards; Mary Ann Muirhead, EPA, Office of General Counsel, Joseph Tikvart, EPA, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards; William Baker, Chief, Air Programs Branch, EPA Region II (New York); Sheldon Novick, Regional Counsel, EPA, Region III (Philadelphia); David Kee, Director, Air and Hazardous Materials Division, EPA, Region V (Chicago).

(3) Indications that sources within the petitioning States which impact on the PSD and/or nonattainment areas have been adequately controlled.[8]

On September 11, 1981 (46 FR 45383), EPA upon request extended the public comment period on the petitions until January 4, 1982, to allow the States additional time to examine their petitions and evidence in light of the announced criteria, and to submit additional information in response to the criteria. During this period, on October 7, 1981, the State of Maine filed a petition under section 126.[9] On November 10, 1981, EPA granted Maine's request to consolidate its petition with those of New York and Pennsylvania (46 FR 55551). On January 12, 1982, acting again to allow the States to complete their submissions, EPA further extended the public comment period until March 18, 1982 (47 FR 1304).

EPA received thousands of pages of comments and materials from more than 60 parties supporting and opposing the petitions. The petitioning States submitted technical studies, monitoring data, scientific discussions of long-range transport phenomena, and legal and technical memoranda, as well as rebuttals to comments directed at these submissions. The Administrator received additional comments and similar materials from a number of governmental entities, including the States of Connecticut, Ohio, West Virginia, Massachusetts, Vermont, and Indiana; the Provinces of Ontario and Quebec; and from an array of industry representatives including the Tennessee Valley Authority, the Monongahela Power Company, a group of 14 electric utilities, and a major coal supplier (Peabody Coal Company). The factual and legal issues raised by the petitions and comments are summarized below.

C. The Petitions' Factual Allegations

1. Pennsylvania

Pennsylvania petitioned the Administrator for two separate findings under section 126. First, Pennsylvania asked for a finding that the SO_2 emissions from 38 specific sources—16 in southeastern Ohio and 22 in northwestern West Virginia—prevented attainment and maintenance of SO_2 standards in areas of southwestern Pennsylvania.[10]

Pennsylvania claimed that sources in Ohio and West Virginia caused violations of SO_2 NAAQS in portions of four counties (Washington, Beaver, Fayette, and Westmoreland) in its Southwestern Air Quality Control Region (AQCR),[11] and interfered with its measures to prevent significant deterioration of air quality for SO_2 in three counties (Washington, Beaver, and Allegheny) in the same region.[12] In support of this claim, Pennsylvania relied on a modeling study of the southwestern part of the State conducted by the H.E. Cramer Company.[13] Pennsylvania requested at the hearing that EPA conduct a further study and promulgate emissions limitations as required by the results of the requested study.

Second, Pennsylvania requested a more general finding that Midwest sources emitted particulate matter, including sulfate particulates transformed from SO_2, that prevented it from meeting the NAAQS and from maintaining the PSD increments for TSP.

On June 4, 1984, Pennsylvania amended its petition to expand the list of offending Midwest sources to include all major emitters of SO_2 and TSP, not only in the States of Ohio and West Virginia, but also in Illinois, Indiana, and Kentucky.[14] Pennsylvania named some individual sources, but stated that it "does not believe that only those sources named by the petitioners can be implicated under Section 126(b)" (Pennsylvania Technical Submission, Docket Item II–D–45(b), at 18, n. 3).

In amending its petition, Pennsylvania described the entire State as an "impacted area."[15] It argued that air monitoring data showed that out-of-State sources "dominate Pennsylvania's sulfate concentrations," and that these high sulfate concentrations contribute to violations of the standard for particulate matter.[16] Pennsylvania relied upon air quality monitoring data at a limited number of TSP sampling sites, as well as testimony presented by the State of New York and other technical materials.[17]

With regard to long-range transport of sulfates, Pennsylvania requested that EPA implement "interim cost effective control strategies" such as "coal cleaning, selective mining practices, lease emission dispatching * * *."[18] But Pennsylvania stated that its:

> Petition does not demand immediate remedial action. Instead, the petition requests an affirmative finding of interstate air pollution and proceeding to compile an improved record for resolution of the interstate dispute.[19]

2. New York

In its original petitions New York requested the Administrator to find that 19 named sources in Illinois, Indiana, Michigan, Ohio, Tennessee, and West Virginia emitted sulfur dioxide which converted in the atmosphere into sulfate particulates in amounts preventing New York from attaining the NAAQS for TSP.[20] New York also claimed that sulfates interfered with its program to prevent significant deterioration of air quality for TSP and to protect visibility. In addition, New York complained generally that out-of-State sources were responsible for large quantities of sulfates and acid deposition in New York.

At the June 1981 hearing, New York submitted a list of 59 sources in order to "provide a guide as to plants where initial abatement efforts must be directed." Statement of David R. Wooley, Assistant Attorney General, State of New York, Docket Item II–F–2(a), at 30.

New York subsequently amended its petition to include *all* sources of SO_2 and particulates controlled by State implementation plans in the six States it named originally and Kentucky.[21] Like Pennsylvania, New York described the entire State as affected by sulfates from

[8] Transcript of June 18, 1981 Hearing at 4–5; *see also* 47 FR 6625, 46 FR 38937–38939, and 46 FR 45383. These criteria were applied as well in resolving Kentucky's claim in the *Gallagher* petition (47 FR 6625).

[9] In its notice Maine sought consolidation with the previously filed petitions, and waived its right to a hearing on its petition.

[10] Pennsylvania Petition, Docket Item II–D–1, at 1, 4–5, Technical Submission of Additional Information Pursuant to Pennsylvania's Section 126 Petition (hereinafter Pennsylvania Technical Submission), Docket Item II–D–45(b) at 1–9.

[11] *See* map 1, reference maps for FR notice, Docket Item III–B–1.

[12] *See* map 2, reference maps for FR notice, Docket Item III–B–1.

[13] Pennsylvania stated: The technical basis for Pennsylvania's petition is an air quality study conducted by the U.S. EPA Middle Atlantic Region by the H.E. Cramer Co., entitled, "Calculations from Compliance Emissions of Long and Short-Term SO_2 Concentrations in the Southwest Pennsylvania AQCR" (1981). * * * Pennsylvania Technical Submission, Docket Item II–D–45(b) at 12.

[14] Letter from Clifford Jones, Secretary of the Pennsylvania Department of Environmental Resources, submitting Supplement to Pennsylvania Petition, Docket Item II–D–23, at 2; Pennsylvania Technical Submission, Docket Item II–D–45(b), at 15–16.

[15] *See* map. 3, reference maps for FR notice, Docket Item III–B–1; Pennsylvania Technical Submission, Docket Item II–D–45(b) at 15.

[16] Pennsylvania Technical Submission, Docket Item II–D–45(b) at 15–17.

[17] *Id.* at 17–18.

[18] Transcript of June 18, 1981 Hearing, Vol. 1 at 86–87.

[19] Pennsylvania's Response to Comments, Docket Item II–D–81 at 1–2.

[20] 46 FR 24602, 24603.

[21] *See*, New York State Memorandum of Law, Docket Item II–D–58 at 4, 7, 52.

SO_2 emissions from the Midwest.[22] New York argued that midwestern sources raised the levels of sulfate particulates throughout the State so that they caused and aggravated violations of the NAAQS for particulates.

New York also claimed that sulfates transported from out of State interfered with its program to prevent significant deterioration of air quality by: (1) Increasing baseline levels of TSP and (2) consuming a significant part of available air quality increment.[23] New York also contended that reduced visibility in the State is associated with the movement of regional haze from the Ohio River Basin.[24]

In support of its petitions, New York relied on air quality monitoring data to establish the levels of ambient sulfates and demonstrate the relationship of these sulfates to violations of particulate standards. New York's data were taken primarily from the western counties of Niagara, Erie, and Chautauqua, but there were some data collected in other areas, including Albany, Rochester, and New York City. New York further attempted to demonstrate the contribution of out-of-State sources to ambient sulfate levels, using analyses of emissions, meteorological and air quality data, and a number of long-range transport modeling studies. These modeling studies focused on parts of western New York and the Adirondacks.

In its request for relief, New York stated that it believed "in most instances, the elimination of its interstate pollution problem can be accomplished by means short of shutting down plants in the named States."[25] New York instead suggested a number of conditions which the Administrator could set to allow the Midwest sources to continue to operate after a Section 126 finding. First, New York sought "a large overall reduction in sulfur dioxide emissions" from the midwestern States. New York asked that, at a minimum, the Administrator place a "regional cap" of 4 pounds of SO_2 per million Btu's on the 59 major power plant sources which New York identified in its hearing testimony as "the largest and most poorly controlled" plants "in the seven [named] Midwestern States."[26] In addition, New York requested the following relief:

(1) Denial of all pending SIP revisions for increased SO_2 limits in the named States;

(2) Withdrawal of approval of recent SIP revisions relaxing SO_2 limits for sources in the named States;

(3) That all sources in the named States emitting large quantities of TSP retrofit reasonably available control technology within 3 years;

(4) That EPA place a priority on enforcing SO_2 emissions limits on sources in the named States;

(5) That EPA require coal washing for industrial and utility boilers in the named States by December 1984;

(6) A halt on construction of all stack height increases in the named States;

(7) EPA evaluation to determine need for additional reductions;

(8) That EPA advise the named States of the inadequacy of their SIP's and call for appropriate revisions.[27]

3. Maine

Maine's petition alleged unlawful interstate pollution from SO_2 sources in the seven midwestern States cited by New York and Pennsylvania.[28] In its petition, Maine stated that it:

> Concedes its inability to trace the effects described in the Maine testimony to any individual source, or even to a list of sources.[29]

Maine did not contend that out-of-State pollution caused violations of NAAQS in Maine, but instead claimed that the cumulative effect of emissions from sources in the seven midwestern States interfered with measures required to be included in its SIP to prevent significant deterioration and protect visibility.[30] Like New York, Maine claimed that sulfate particles transported from out of State elevated its baseline TSP levels and also consumer air quality increments that otherwise would be available to Maine sources. Maine identified the affected areas as three AQCR's in the southern part of the State.[31] In support of its allegations, Maine relied principally on sulfate monitoring data for four sites in the southern part of the State.[32]

Maine also asserted that the long-range transport of sulfates from the Midwest interfered with its ability to keep visibility unimpaired at Acadia National Park. Maine relied primarily on a visibility study measuring contrast and light scattering at the park in 1980.

In its request for relief, Maine asked the Administrator to conduct an investigation into the causes of high sulfate levels in Maine, and "to order sulfur dioxide emissions from these sources reduced enough within a period of 3 years to equitably abate these effects in Maine." Maine requested that the Administrator focus specifically on upwind sources with high emission rates and tall stacks.[33]

In summary, the present petitions request three different kinds of findings under Section 126, relating to: (1) Direct transport of SO_2 (Pennsylvania only); (2) TSP emissions, the transformation of SO_2 into sulfates, and the resulting effect on TSP NAAQS and PSD measures (Pennsylvania, New York, and Maine); and (3) visibility impairment by sulfates (New York and Maine).

Although the petitions claimed that midwestern TSP sources were contributing to the TSP problems in the petitioning States, the petitions did not focus on this issue. Therefore the general impact of midwestern TSP sources is not discussed in this determination.

D. Comments on Petitions

1. Pennsylvania's Claim Relating to Short-Range Transport of Pollutants

Parties opposed to Pennsylvania's petitions sought, in part, to refute the factual allegations underlying those petitions.[34] These parties argue that the Cramer study on which Pennsylvania relies for much of its evidence regarding direct transport of pollutants is "discredited" and "was based on highly inaccurate input data."[35] Hence, the

[22] New York's Evidence Summary, Docket Item II-D-50(b) at 61. *See* map 4, reference maps for FR notice, Docket Item III-B-1.

[23] New York Evidence Summary, Docket Item II-D-50(b) at 61, 68-69.

[24] In support of this contention New York cited: a study showing an increase in summertime extinction coefficient over the Ohio River Valley and portions of the northeast United States during the period 1948-1972; an analysis showing the number of days on which one or more NWS stations reported low visibility (between 3 and 6 miles); and several observational studies and analyses of satellite imagery of regional haze episodes [New York Evidence Summary, Docket No. II-D-50(b) at 30-31].

[25] See, New York Memorandum of Law, Docket Item II-D-58 at 49.

[26] *Id.* at 49.

[27] Testimony of David Wooley, June 18, 1981, at 103. New York Memorandum of Law, Docket Item II-D-58, at 52-53.

[28] Maine's Evidence and Argument, Docket Item II-D-51(c) at 1-2 and n. 1, 2.

[29] *Id.* at 2.

[30] *Id.* at 2. Rebuttal Argument of the Petitioners: Maine's Technical Case, Docket Item II-D-82, at 3-8.

[31] Maine's Evidence and Argument, Docket Item II-D-51(c) at Appendix B, Rebuttal Argument of the Petitioners, Maine's Technical Case, Docket Item II-D-82 at 4. *See* maps 5 and 6, reference maps for FR notice, Docket Item III-B-1.

[32] Maine's Evidence and Argument, Docket Item II-D-51(c) at 10.

[33] *Id.* at 41-47.

[34] *See, e.g.*, Ohio's EPA's response to Section 126 Petitions, Docket Item II-D-71; Comments of West Virginia Air Pollution Control Commission, Docket Item II-D-62; Comments of National Steel Corporaion, Docket Item II-D-60.

[35] Comments of Ohio Power Co., *et al.*, Docket Item II-D-72 at ii.

parties assert, Pennsylvania failed to demonstrate that relevant NAAQS violations for SO_2 exist, what quantity of SO_2 comes from the sources it names, and that the violations it alleges could not be caused by local sources.

2. Claims by the Petitioning States Relating to Long-Range Transport of Pollutants

The petitioning States rely heavily on evidence drawn from long-range air transport modeling. The opposing comments stress the difficulties, limitations, and uncertainties endemic in models of this kind. The comments also emphasize what they describe as the shortcomings of the particular long-range transport models on which the petitioning States relied. Likewise, these critics allege there were weaknesses in the air quality analyses submitted by the States. The comments criticize the monitoring and emissions data submitted by Pennsylvania, New York, and Maine as outdated, inaccurate, and in many instances unverifiable and incomplete.[36]

These critics argue, moreover, that the petitioning States fail to provide adequate data to support their contention that high sulfate levels and concentrations can be found in the air over their territory. What little monitoring data the States submit, according to the comments, are flawed as a result of deficiencies in the monitoring techniques. These data, moreover, do not help to discriminate among the possible sources of the sulfates of which the States complain.[37]

The opposing comments also allege that the petitioning States greatly underestimate the contribution they make to their own and to each other's SO_2 and TSP troubles. Comments point to the amounts of sulfates and particulates emitted from local sources; they also argue that sulfates taken as a whole, from whatever source, play an insignificant role in TSP nonattainment. The commentaries also mention the contributions from non-midwestern States and from Canada to sulfate loadings in New York, Pennsylvania, and Maine.[38]

[36] *See, e.g.*, Critique of the Technical Documents Cited by New York and Pennsylvania in Support of their Section 126 Petitions, Smith *et al.*, Docket Item II–D–72, Appendix H. "Critique of Supplemental Submissions by Pennsylvania, New York, and Maine in Support of their Section 126 Petitions Docket Item II–D–72, Appendix A submitted by Ohio Power *et al.*

[37] *See, e.g.*, "Report on Investigations into the Causes of Nonattainment of TSP Standards in Western Pennsylvania and Western New York," Rocco *et al.*, TRC, Docket Item II–D–72, submitted by Ohio Power *et al.*

[38] *See, e.g.*, Comments of Ohio Power *et al.*, Docket Item II–D–72, pp. 172–209.

E. Legal Issues Raised by the Petitions

The petitions and opposing comments raise a number of legal issues concerning the scope and application of Sections 110 and 126 of the Clean Air act. The issues raised and discussed in the petitions and comments include:

(1) The extent to which the Clean Air Act regulates sulfates and acid deposition;

(2) The specificity with which the petitioner must identify an allegedly offending source;

(3) Whether section 126 provides a remedy only for the effect of a single source, or whether it may be applied to the cumulative effect of many sources;

(4) The specificity with which the peritioner must identify the geographic area allegedly affected by the unlawful pollution;

(5) What it means, in the context of sectin 110(a)(2)(E)(i), for an out-of-State source or sources to "prevent" attainment or maintenance of a NAAQS;

(6) What it means, in the context of Section 110(a)(2)(E)(i), for an out-of-State source to "interfere" with measures required to be included in a SIP to prevent significant deterioration or to protect visibility;

(7) Whether relief under Section 126 requires a showing of a violation of a NAAQS, or of a PSD increment or of a visibility measure;

(8) The kind and extent of proof required to establish the causal connection between a source and the alleged unlawful impact;

(9) The extent to which in-State sources must be controlled compared to the out-of-State source or sources;

(10) Procedural issues arising in a proceeding on a Section 126 petition.

The petitions comments, and rebuttals the Agency received contain many detailed arguments concerning the legal issues listed above. It is unnecessary to recite these arguments in detail at this point; rather, we shall discuss them as they relate to the principles and findings upon which this proposed determination is based. In the next part of this notice, however, we shall describe four initial legal issues and the arguments we must consider in order to resolve them. We shall also evaluate those arguments.

II. Threshold Legal Issues

The legal issues raised by the petitioning States and discussed in the comments and refutations are complex and often interrelated. Nevertheless, they concern basic or threshold questions, the answers to which would be crucial in making the kind of finding the States request.[39] These questions are: (1) Which pollutants must we evaluate? (2) What are the geographic areas at issue? (3) What determines an impermissible impact, given the pollutants and areas at issue? (4) What role if any do major out-of-State sources play in any impermissible impact?

A. Which Pollutant?

Section 126 of the Clean Air Act Addresses Pollutants Governed by NAAQS

To make a proper determination under Section 126 of the Clean Air Act, we must distinguish between the kinds of injuries the statute is and is not written to redress. Congress designed Section 126 and Section 110(a)(2)(E) as limited mechanisms to respond to a restricted class of interstate pollution problems. Section 110, as applied through Section 126, requires SIP's to prohibit the transport out of State of pollution which: (1) Prevents attainment or maintenance of NAAQS; or (2) interferes with measures required to be included in a SIP to prevent significant deterioration or protect visibility in any State that receives that pollution. These provisions regulate only those pollutants for which standards have been set or PSD and visibility measures required. This is the plain consequence of the statutory design.[40]

The petitioning States have complained in part of acid deposition [41] and levels of sulfates in the ambient air. These pollutants, however, cannot serve *in themselves* as the basis for a finding under section 126, because NAAQS and PSD restrictions have not been established for them.

[39] A discussion of these issues also serves to explain the function of the guidelines which the Administrator announced for resolving Section 126 petitions (see I.B., *supra*). As EPA has cautioned, "these guidelines are by no means exhaustive, nor do they represent requirements or prerequisites for an affirmative determination under Section 126. Depending on the individual facts surrounding each petition, the Administrator anticipates that each of these criteria, and perhaps additional information will have varying significance in each determination" [47 FR 6625 (February 16, 1982)].

[40] This is apparent from the wording of Sections 110 (a)(2)(E)(i) and 126(b). But even were it not, the legislative history of the Act demonstrates that these sections are pegged to specific pollutants for which national standards have been set. The House-Senate Conference Committee rejected a Senate proposal to extend Section 110(a)(2)(E) to cover other noncriteria pollutants. *See*, S. Rep. No. 95–127, 95th Cong., 1st Sess. 42 (1977); Conference Report [To accompany HR 6161] HR Rep. No. 95–564, 95th Cong., 1 st. Sess. 10 (1977).

[41] While in the atmosphere, sulfates may react with moisture and form a solution of sulfuric acid, which may precipitate as "acid rain." Sulfates may also be deposited in dry form.

EPA, in its May 1, 1981 notice of hearing on the present petitions, highlighted this explicit limitation on the scope of section 126. In that notice, the Agency underscored the absence of NAAQS and PSD increments for acid deposition and sulfates, and it stated that it thus "has no authority under section 126 to regulate emissions solely because of their impacts on acid deposition or sulfates" (46 FR 24603).

The present petitions however *do* allege violations concerning two pollutants covered by the statute: (1) SO_2 (with respect to the Commonwealth of Pennsylvania); and (2) TSP (with respect to all three petitioning States). The present determination is therefore limited to claimed violations of standards for these two pollutants.

Sulfate particulates can and do constitute a portion of TSP and thus are subject to the ambient standard and PSD increments for particulates. To that extent the Administrator will of course consider sulfates in evaluating claims arising of violations of TSP standards and PSD increments. Acid deposition in other forms, however, is not currently directly regulated by EPA. Thus, the Agency's notice of hearing urged the petitioning States not to base "their arguments on the causes and effects of acid deposition and sulfates except for their contribution to air quality levels relative to the NAAQS" (46 FR 24603).

Virtually all the comments received agreed with the proposition that acid deposition is not regulated by current ambient pollutant control standards.[42] New York contended, however, that "control of acid deposition * * * is contemplated by the [Clean Air] Act's regulatory scheme," noting that controls exist for ambient SO_2 and TSP pollutants "and the form in which the sulfates do damage is irrelevant."[43] EPA has considered New York's argument but remains convinced that section 126 addresses only pollutants subject to regulation under section 110, *i.e.*, pollutants that have NAAQS and increments or that are controlled under the visibility regulations.

[42] See *e.g.*, Comments of Tennessee Valley Association, Docket Item II–D–76, pp. 14–15, Response of Peabody Coal Company, Docket Item II–D–46, at 18–19, n. 9, Comments of North American Coal Company, Docket Item II–D–37, at 4–5, Testimony of Ron Shipley on behalf of West Virginia, Transcript of June 18, 1981, hearing at 201.

[43] Reply to Oppositions to New York's Petitions and Comments, Docket Item II–D–15, at 15.

B. What Geographic Area is at Issue?

The Clean Air Act Provides Redress for Violations in Specified Geographical Areas

As we have said, relief under the Clean Air Act must be based on a finding that pollution coming from one State (1) prevents another from achieving or maintaining a NAAQS, or (2) interferes with measures required to be included in the SIP to prevent the significant deterioration of air quality or to protect visibility. Since compliance with NAAQS and SIP requirements is determined on a geographic basis, a finding must then refer to a specific geographic area where a NAAQS is not met or maintained or where out-of-State pollution interferes with required PSD or visibility measures. The first guidelines criterion the Administrator announced, therefore, calls for "a demonstration establishing the existence and geographic boundaries of the nonattainment or PSD area which is the subject of the petition." Only after defining the affected area may we proceed to determine the nature of the violation and the role out-of-State pollution may play in causing it.

C. What Pollutant Levels Trigger the Section?

Section 126 Provides Redress When a NAAQS is Violated or a PSD Increment is Exceeded

As the Second Circuit observed in *Connecticut* v. *EPA, 656 F.2d 902, 909 (2d Cir. 1981):*

> The clear intent of the [Clean Air Act] is to require interstate comity only insofar as is necessary to allow each state to comply with the NAAQS and the Act's PSD provisions.

Section 110(a)(2)(E)(i)

is quite explicit in limiting interstate protection to Federally-mandated pollution standards.

1. Violation of a NAAQS

Section 126 of the Clean Air Act provides redress or relief with respect to interstate pollution that *prevents* attainment or maintenance of a NAAQS. This requirement logically presupposes that the petitioning State has attained or maintained a NAAQS. It is evident that if the standard is being achieved, its attainment or maintenance is not prevented, absent, perhaps, extraordinary circumstances not presented here.[44]

[44] It is possible that a State might seek relief under Section 126 for example, when a new source proposed to be built in a neighboring State would be likely to cause a violation, even if no violation then exists. *But see*, Section 164(e), 42 U.S.C. 7474(e).

Pennsylvania and New York suggest that a State might invoke Section 126 relief on a showing that emissions from a source in another State "adversely affect"[45] potential adverse effect" on its air quality. This interpretation, however, departs from the plain meaning of the statute. As the Second Circuit stated in *Connecticut Fund for the Environment* v. *EPA, 696 F.2d 147, 156, 157 (2d Cir. 1982):*

> Absent strong indications to the contrary, the plain language of a statute is the best index of its meaning.

Section 110(a)(2)(E)(i)(I)

was not intended to do more than prohibit the Agency from approving State implementation plan revisions which will cause violations of the NAAQS in nearby States.[46]

2. Violation of a PSD Increment

The Clean Air Act's PSD program consists primarily of a permit system applicable to new "major" projects, which each State must include in its implementation plan for NAAQS attainment and unclassifiable areas. The permit system prevents the construction of any new "major" project that would cause or contribute to any violation of the SO_2 or TSP increments over baseline concentration levels. The first application for a PSD permit in an area "triggers" the baseline concentration, which is simply "the ambient concentration levels which exist at the time of [that] first application * * *" [Section 169(4), 42 U.S.C. 7479(4)]. Existing pollution, whether or not it enters from out of State, is generally included in the baseline concentration levels.

While SO_2 and TSP concentrations are not to increase above the increments, the State may allocate the permitted increments as it sees fit.[47]

Industry representatives have argued that a finding under Section 126 must be based on actual emissions. The Agency previously has rejected this argument in the *Gallagher* determination:

> Nothing in Section 126 precludes consideration of allowable emissions since its prohibition extends to emissions which may occur in the future. This clearly includes emissions allowable under a SIP (47 FR 6627).

[45] New York Memorandum of Law, Docket Item II–D–5–8 at 14–15; Pennsylvania Analysis of Requirements for a Petition under section 126, Docket Item II–D–45e, at 28–30.

[46] The Sixth Circuit recently agreed that section 110(a)(2)(E) "appears to contemplate interstate pollution abatement actions only where interstate emissions prevent attainment of the NAAQS, *i.e.*, only where the standards are violated." *Jefferson County* v. *EPA, supra*, Slip Opinion at 41.

[47] Congress has set the increments as maximum limitations which must be observed by the States. Section 163 of the Clean Air Act, (42 U.S.C. 7473), but "assuming such compliance, growth-

Continued

However, when concentrations threaten to exceed allowable increments, the State must prevent violations either by refusing to grant permits, or by requiring reductions in emissions it had already permitted or included in the baseline concentration, or in post-baseline emissions not subject to the permit program. These latter reductions would offset the new emissions the State may then permit.

Out-of-State pollution may thus contribute to the baseline concentration over which the allowable increment is calculated; it may also consume a portion of the allowable PSD increment, but in general unless it causes that increment to be exceeded, it will not trigger section 126 relief.

The Clean Air Act must be so interpreted because:

(1) If section 110(a)(2)(E) were read to require EPA enforcement of interference not amounting to a PSD increment violation, it would put the Agency either in the position of enforcing one State's programs against others, or of devising a common law of permissible pollution even below the level of any statutory standards, approaches the Courts have rejected in light of the clear statutory language. As the Second Circuit held in *Connecticut* v. *EPA*, 656 F.2d 902, 909 (2d Cir. 1981).

> Nothing in the Act, however, indicates that a State must respect its neighbor's air quality standards (or design its SIP to avoid interference therewith) if those standards are more stringent than the requirements of Federal law. Indeed, Section 110(a)(2)(E) appears to have been carefully drafted to preclude any such interpretation. *See also Alabama Power* v. *Costle*, 636 F.2d 323, 364 (D.C. Cir. 1979).

Thus Section 110(a)(2)(E) should not be read to lend Federal enforcement power to State programs which provide protection beyond the Federally-set increments by establishing margins for growth or by preserving PSD increment below the statutory ceilings. An out-of-State source cannot be found to be interfering with Federal standards unless there is a violation of PSD increment in the petitioning State. *See Air Pollution Control District of Jefferson County, Kentucky* v. *EPA*, *supra*, Slip Opinion at 28–30 (holding that Clean Air Act does not protect "margins for growth" in absence of PSD increment violation).

(2) The Clean Air Act "strikes a careful balance between Federal and State power" by specifically providing that "the prevention and control of air pollution at its source is the primary responsibility of States and local governments" [Section 110(a)(3); *see also* Section 107(a), *Bethlehem Steel Corporation* v. *EPA*, No. 82–2608 (7th Cir. 1983)]. To interpret section 126 to mandate Federal interference with development in the States not violating Federal standards would upset this balance. In enacting Section 126, Congress was not attempting what it had refrained from doing in the Act as a whole—that is, to establish a comprehensive allocation system for air resources. Rather, it was trying to cope with those instances where one State makes it impossible for another to meet its mandatory obligations under the Act. To interpret Section 126 more broadly would authorize, indeed require, the Administrator to redistribute air resources among the States which, surely, lies beyond the mandate of the Agency.

(3) The prohibition in section 110(a)(2)(E)(i)(II) of interstate pollution which "interferes with PSD measures required to be included in the applicable implementation plan" must be read consistently with the prohibition in section 110(a)(2)(E)(i)(I) of interstate pollution that prevents attainment or maintenance of NAAQS.

Congress did not intend the Clear Air Act to provide the maximum relief from interstate pollution generally, a course which could only end with a total ban on such pollution. Rather, Congress intended to provide relief in situations in which out-of-State contributions prevent a State from meeting the requirements of the law. Thus Congress required a NAAQS violation before the Act may be invoked to relieve interstate pollution that threatens public health and welfare. Congress must also have required a violation of a PSD increment for the Act to be triggered on PSD grounds, again with the potential reservation of circumstances not presented here.[48] We cannot suppose that Congress would require a NAAQS violation but not a PSD increment violation as the condition for relief, since the latter addresses surely no greater or more pressing public concern than the former.

For these reasons, we cannot agree with Pennsylvania's assertion that Section 126 offers relief if "any portion of a PSD increment in a receiving State is consumed by out-of-State emissions."[49]

D. What Role Must an Out-of-State Source Play in Causing a Violation of a NAAQS or PSD Increment?

1. The Clean Air Act Provides Redress When the Contribution of the Out-of-State Source is Significant

The Administrator's second guideline expresses the plain statutory requirement for:

> a demonstration that achievement of ambient air quality standards or measures necessary to prevent significant deterioration or to protect visibility is prevented by the named out-of-State source.

Thus, we must ascertain whether an out-of-State source or sources[50] of pollution are responsible for preventing attainment. The Clean Air Act does not tell us, however, how great the contribution made by an out-of-State source must be to "prevent" attainment. Thus, in the previous determination of Kentucky's section 126 Petition, the Administrator noted:

> The Clean Air Act itself provides no guidance on the levels of pollution which constitute prevention of attainment and maintenance of the NAAQS. However, the legislative history of Section 126 suggests that a strict literal interpretation of the term "prevent" is not intended.[51]

---

management decisions were left by Congress for resolution by the States." [*Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 364 (D.C. Cir. 1979)]. "EPA has authority under the statute to prevent or correct a violation of the increments, but the agency is without authority to dictate to the States their policy for management of the consumption of allowable increments." *Id.* at 361.

[48] It is possible that a State might seek relief under Section 110(a)(2)(E)(i)(II) not when there is an actual violation of its allowable PSD increment but when out-of-State sources contribute or threaten to contribute significantly to a clear potential violation, as, for example, when emissions from a source proposed for construction in a neighboring State would cause a PSD increment violation in the affected State.

[49] Pennsylvania Analysis of Requirements for a Petition under section 126, Docket Item II–D–45(e) at 23, 27.

[50] A finding under Section 126 is limited to any "*major* source" (emphasis added); *i.e.*, one that emits or has the potential to emit 100 tons or more of pollutant a year [42 U.S.C. 7602(j); 47 FR 6626, February 16, 1982].

EPA rejects the argument made by industry representatives and some States that:

> A Section 126(b) finding may be made only if emissions from a single out-of-State source prevent attainment or maintenance of NAAQS, or interfere with required PSD or visibility measures in another State's implementation plan. The Section does not address the collective effect of an aggregation of sources.

Comments of Ohio Power *et al.*, Docket Item II–D–76 at 34. EPA agrees with petitioning States that Section 126 may be applied to cumulative impacts of sources that are sufficiently identified. *See* Pennsylvania Analysis of Requirements for a Petition under Section 126, Docket Item II–D–45(e) at 22; New York Memorandum of Law, Docket Item II–D–58 at 26, 29. The statutory language and legislative purpose reflected in the legislative history support this construction. Moreover, 1 U.S.C. 1 provides in relevant part that:

> "in determining the meaning of any Act of Congress, unless the context indicates otherwise, words importing the singular include and apply to several persons, parties, or things . . . ."

[51] 47 FR 6626 (February 16, 1982).

The petitioning States of New York, Pennsylvania, and Maine, to use their own language, "have presented alternative views of what 'prevent' might mean in the context of Sections 110 and 126 of the Clean Air Act." Rebuttal Legal Argument of the Petitioners, Docket Item II–D–83 at 29. These States, however, agree that:

> a *significant contribution* by out-of-State sources to another State's difficulty in attaining or maintaining the NAAQS constitutes a sufficient basis for an EPA finding that such sources "prevent" the petitioning State from meeting the national air pollution goals. *Id.* (Emphasis in original.)

EPA joins with the petitioning States in believing that where a NAAQS or PSD increment violation occurs it may be sufficient, to trigger Section 126 relief in the circumstances of a given case, for a State to show a significant contribution by an out-of-State source to that violation. The Agency is unconvinced by arguments presented on behalf of Ohio Power *et al.* (Docket Item II–D–72 at 62 *et seq.*) that "(t)he only reasonable interpretation that can be given for the notion of 'preventing attainment or maintenance' is that but for the out-of-State contribution there would be no violation" (*id.* at 62, fn. omitted).

The idea of a "but for" test, as Ohio Power *et al.* present it, is ambiguous between a *necessary* and a *sufficient* condition and between a *logical* and *material* condition of a NAAQS or a PSD increment violation. Accordingly, the appeal to "but for" causality merely adds vagueness and confusion to the concept of prevention it is supposed to explain.

Since the "but for" test therefore fails to assist the task of decision, the Administrator agrees with the petitioning States that a "significant contribution" by an out-of-State source may constitute a sufficient basis for a finding that the source "prevents" the petitioning State from meeting a NAAQS or a PSD increment. This test, applied in *Gallagher*, was recently upheld by the Sixth Circuit (*Jefferson County, Kentucky* v. *EPA*, Slip Opinion at 30–41).

2. What is a Significant Contribution?

A State petitioning under Section 126 for relief from interstate pollution may argue that an out-of-State source prevents it from meeting a NAAQS or a PSD increment only if that source makes a significant contribution to the levels of pollution that cause a NAAQS or PSD increment violation. A "significant" contribution, of course, cannot be merely a *de minimis* contribution. In determining that a contribution is significant, the Administrator will take the following factors, among others, into account:

the location of the named source;

the nature and degree of the violation; its extensiveness; the number of violations to which the named source has or may have contributed;

the amounts or volumes contributed by the named source as compared with the amounts and volumes contributed by in-State and unnamed out-of-State sources;

the relative stringencies of the pollution controls placed on in-State sources compared to those placed upon out-of-State sources; the use of the best available control technologies on those sources;

the historical record of the petitioning State and the named source State with respect to meeting national air quality objectives;

projections concerning future violations or attainments absent a Section 126 determination;

the degree to which a named source meets SIP requirements in its own State;

the degree to which that source uses its allowable emission quota;

the types of sources involved and the dates they begin to emit;

the relative costs of pollution abatement between sources that contribute to a violation.[52]

The Administrator must weigh such considerations and perhaps other factors in determining whether an out-of-State contribution has a significant effect on the failure of petitioning of States to meet a NAAQS or a PSD increment. The size of the out-of-State contribution is important but not necessarily decisive. It is important, however, that the petitioning States make a strong empirical case that the amounts in question do inhibit significantly their efforts to meet the standards or increments in question. The Administrator cannot find in this record a clear demonstration that contributions from sources in the named States exist in amounts large enough to be considered significant in the context of violations of the applicable standards. Without that threshold demonstration, EPA need not analyze this question in further detail.

III. Pennsylvania's Direct SO_2 Transport Claims

Pennsylvania, in one of its two major claims, asserts that sources in Ohio and West Virginia prevent areas of southwestern Pennsylvania from attaining and maintaining SO_2 standards. We shall evaluate this assertion by asking and answering the questions outlined above, first with respect to possible violations of NAAQS, and then with respect to possible violations of PSD requirements.

A. Which Pollutant and What Geographic Area?

In its August 1981 submission, Pennsylvania alleged that out-of-State sources prevent attainment and maintenance of the NAAQS for SO_2 in three areas in the nine-county southwestern Pennsylvania AQCR.[53]

(1) Area A: An area on the Pennsylvania/West Virginia border (a portion of Washington County);

(2) Area B: Lower Beaver Valley Air Basin [54] (Beaver County);

(3) Area C: The Monongahela Valley Air Basin [55] (portions of Fayette, Washington, and Westmoreland counties.)[56]

B. Are There Violations of the NAAQS for SO_2 in These Areas?

To answer this question we must look at two different bases for a response: the present official designations of the areas, and a 1981 study which serves as the primary basis on which Pennsylvania claims violations of the SO_2 NAAQS.

1. Designations of Nonattainment Areas for SO_2 in Southwestern Pennsylvania

Under section 107 of the Clean Air Act [42 U.S.C. 7407], each State, subject to EPA oversight, must designate those areas which attain, fail to attain, or cannot be classified as attaining, based on available information, the national ambient air quality standards for specific pollutants. Section 171 of the Clean Air Act [42 U.S.C. 7501(a)], defines a nonattainment area for a pollutant as "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant." None of the three areas—A, B, or C—cited by Pennsylvania in its petition is at present a designated nonattainment area.

---

[52] As the Administrator noted in the *Gallagher* determination: The "adequacy" of out-of-State controls is a relative matter and may vary depending on a number of circumstances, possibly including social and economic factors [47 FR 6625 (February 16, 1982)].

[53] The southwestern Pennsylvania AQCR consists of the counties of Allegheny, Armstrong, Beaver, Butler, Greene, Fayette, Indiana, Washington, and Westmoreland. *See* map 1, reference maps for FR notice, Docket Item III–B–1.

[54] As defined in Chapter 121 of the Rules and Regulations of the Department of Environmental Resources.

[55] *Id.*

[56] *See* Pennsylvania's Technical Submission of Additional Information, Docket Item II–D–45(b) at 1–2.

Indeed, since the filing of Pennsylvania's petition, there has been a trend toward improvement in air quality in the southwestern portion of the State. In April 1984, EPA approved Pennsylvania's request to redesignate Beaver County (Area B above), located in southwestern Pennsylvania on the border of West Virginia, to attainment status for SO_2. As of May 1984, only portions of two counties in southwestern Pennsylvania are officially designated nonattainment for SO_2 under section 107: one portion of Allegheny County [57] and portions of Armstrong County.[58] Pennsylvania acknowledges a local source to be the problem in Allegheny County and has requested that the relevant portions of Armstrong County be redesignated to attainment status. That request is pending before EPA.

2. Geographic Areas Predicted by Pennsylvania To Have Violations

Pennsylvania relied entirely on a modeling study conducted for Pennsylvania in 1980 by H.E. Cramer (hereafter referred to as the Cramer Analysis)[59] for its identification of areas threatened by short-range SO_2 transport. Of the areas identified by the Cramer Analysis (Areas A, B, and C above), and noted in Pennsylvania's petition, two (Areas A and C) were predicted to be in violation of the NAAQS for sulfur dioxide.[60] In Area C, one receptor was identified as potentially exceeding the annual SO_2 NAAQS. This receptor was located on elevated terrain about 1 kilometer north of the Monessen, Pennsylvania plant of the Wheeling-Pittsburgh Steel.

C. What Is the Role of Out-of-State Sources in Alleged NAAQS Violations?

1. Pennsylvania's Predictions of Violations

Pennsylvania presented no monitoring data showing NAAQS violations in the areas of concern. The Cramer Analysis predicted violations (1) in Area A—an area of approximately 3 x 20 kilometers in Washington County on the Pennsylvania/West Virginia border (Grid 4 in the Cramer Analysis), and (2) in Area C—the Monongahela Valley Air Basin. Table 1 summarizes the status of areas identified by Pennsylvania petition.

TABLE 1.—GEOGRAPHIC AREAS IDENTIFIED BY PENNSYLVANIA PETITION

Geographic area	Section 107 designation	Modeling analysis predictions
1. *Area A:* 3 x 20 kilometer area on Pennsylvania-West Virginia border in Washington County.	Attainment	Nonattainment.
2. *Area B:* Lower Beaver Valley Air Basin: (Beaver County).	do	Attainment.
3. *Area C:* Monongahela Valley Air Basin: (portions of Fayette, Washington, and Westmoreland Counties).	do	Nonattainment at one receptor site.

In Area C, the Cramer Analysis predicted a combined maximum annual SO_2 contribution of 17 $\mu g/m^3$ attributed to out-of-State sources (generally located 50 kilometers away). This is to be compared to the predicted annual contribution of 69.2 $\mu g/m^3$ from Pennsylvania sources.[61] As previously noted, the receptor grid point exceeding the SO_2 NAAQS for the annual average occurred 1 kilometer north of a major SO_2 source at Monessen, Pennyslvania. This source appears to dominate the emissions inventory in this area. Thus, under the Cramer Analysis, in-State sources appear to be responsible for the major portion of maximum annual average concentrations.

The Cramer Analysis predicts that Area A is the area of greatest impact for SO_2 sources located in eastern Ohio and West Virginia. These modeling results predict a maximum annual average SO_2 concentration of 101.4 $\mu g/m^3$, the source contribution analysis from these model estimates indicates contributions as follows: 53 percent from West Virginia sources; 35 percent from Ohio sources; and 12 percent from Pennsylvania sources. We believe that, for the reasons set forth below, these modeling results do not provide a sufficient basis for regulatory action at this time but rather suggest a need for further study.

2. Critique of the Cramer Analysis

The Cramer Analysis used both the LONGZ and SHORTZ dispersion models to estimate annual and short-term SO_2 concentrations respectively. Annual ambient concentrations were predicted using the LONGZ model and applying a 1976–1977 emission inventory and meteorological set. Predicted concentrations were compared to measured air quality at 13 monitor sites from the period 1976–1979. Due to limitations on the availability of long-term records, there was not substantial time period overlap between the modeling analysis and the measured air quality data, thus making evaluation of the model predictions difficult. The SHORTZ (24-hour and 3-hour) model was used to estimate ambient concentrations for a single "worstcase" day (August 28, 1976) and these concentrations were compared only qualitatively to the maximum observed 24-hour and 3-hour values at several nearby monitoring sites. The time periods between model predictions and measured air quality data are also inconsistent. In the final analysis, concentration estimates were made using a 1980 compliance emissions inventory.

As presented in the Cramer analysis, model calculations for the border areas were "preliminary values." Cramer's report accompanying the Analysis expressed uncertainty regarding the assumptions used for worst-case meteorology and uncertainty about the accuracy of the emissions inventories for the facilities located in West Virginia and Ohio. The Report cautioned that "an additional effort beyond the scope of the present study is required to define the magnitude and areal extent of the annual and short-term SO_2 concentrations along the western border of the southwest Pennsylvania AQCR" (Cramer Analysis, at vii).

In addition to and because of the above noted deficiencies, commenters on the petitions cited the limitations of applying the analysis to the specific case presented by Pennsylvania. EPA's technical review also recognizes these limitations. These limitations include

[57] The following portion of Allegheny County is designated nonattainment for SO_2:

(1) Area within 2-mile radius of Hazelwood Monitor.

In addition, two portions of Allegheny County cannot be classified:

(1) that portion of Allegheny County within an 8-mile radius of Duquesne Golf Association Club House in West Mifflin, excluding the nonattainment area 1 above;

(2) the area within a 2-mile radius of the Bellevue Monitor.

[58] At present the following portions of Armstrong County are designated primary nonattainment for SO_2: Madison Township, Mahoning Township, Boggs Township, Washington Township, Pine Township.

[59] "Calculations from Compliance Emissions of Long- and Short-term SO_2 Concentrations in the southwest Pennsylvania AQCR," H.E. Cramer Co. (1981). The main purpose of the Cramer Analysis was to assist EPA and Pennsylvania in determining the attainment/nonattainment status of selected areas in the Southwest Pennsylvania Air Quality Control Region. As an adjunct to the study, some preliminary estimates were made of the SO_2 air quality in two smaller areas on the western Pennsylvania border, one of which is Area A. The technical deficiencies of this analysis which limit its usefulness are considered in Section C.2, *infra*.

[60] The analysis predicted Area B to be in attainment by 4 percent at the point of maximum estimated concentration.

[61] *See* Pennsylvania Technical Submission of Additional Information, Docket Item II–D–45(b), at 8–9.

unresolved questions about the accuracy of the emissions inventory (which is central to the reliability of any model's output), the specific application of worst case meteorology, and the limited model performance evaluation. Although the Cramer Analysis provides an indication that the annual SO_2 standard may be exceeded, the limitations and preliminary nature of the modeling analysis do not provide a sufficient technical basis to support a finding that a NAAQS violation occurs. Accordingly, we conclude that the results of the LONGZ (long term) modeling analysis do not provide a sufficiently reliable basis for granting this Section 126 petition.

EPA further determined that the SHORTZ (short term) model application as presented in the Pennsylvania petition is technically deficient. In addition to more serious questions about the derivation of the short-term inventory, the modeling analysis was performed for only a single day, and suffers from inadequate validation.

Proposed Determination on Pennsylvania's SO_2 NAAQS Violation Claims

Given the limitations previously discussed of the Cramer Analysis, and the limited area and extent of the violations they predict even taken at face value, we find it inadvisable to rely upon them as the basis for such regulatory action as making the finding requested here and setting new emissions limitations for sources in Ohio and West Virginia. Rather, as suggested by Pennsylvania,[62] a new modeling study should be conducted to further evaluate the nature and extent of any current problem, and to provide a basis for establishing revised SIP emission limits, if necessary. Any new study should employ more recent and more reliable emissions inventory data, current and more complete data on meteorological conditions, and should be conducted in accordance with current EPA modeling guidance.

For these reasons, the Administrator proposes to deny Pennsylvania's petition relating to alleged violations of SO_2 NAAQS. Such a denial, however, would not prejudice Pennsylvania's opportunity to file a new petition should a new study with new monitoring data warrant a different decision.

D. Pennsylvania's Allegations of Interferences With PSD Measures

In addition to its allegations concerning the NAAQS for SO_2, Pennsylvania claimed in its petition that out-of-State sources were impermissibly interfering with measures it is required to take to prevent significant deterioration of air quality with respect to that pollutant.[63] An analysis of Pennsylvania's claim with respect to PSD requires us to ask and answer the same questions posed with respect to NAAQS violations.

1. What Geographic Area?

Pennsylvania alleged out-of-State interference with PSD measures required for SO_2 in only one geographic area identified as "Area D."[64] Area D consists of three counties in southwestern Pennsylvania—Beaver, Allegheny, and Washington.[65] Pennsylvania selected this area because the Cramer Analysis predicted that annual concentrations in these areas would exceed 60 $\mu g/m^3$. Since the annual NAAQs is 80 $\mu g/m^3$, and since these three counties are Class II PSD areas subject to an increment of 20 $\mu g/m^3$, Pennsylvania reasoned that "the full PSD increment is not available" in these counties. "Thus, the PSD program in Pennsylvania is interfered with."[66]

2. Are There Present or Potential Future Violations of PSD SO_2 Increments?

There is no evidence of any PSD increment violations in southwestern Pennsylvania. The SO_2 baseline for the southwestern Pennsylvania AQCR—which includes, among others, the counties of Beaver, Washington, and Allegheny—was triggered as of May 1979.[67] Since that time, no projects have been denied permits on increment consumption grounds.

Recent evidence of downward trends in SO_2 emissions indicates that air quality is improving in this region, thereby reducing consumption of PSD increments and lessening the likelihood of a violation.[68] The National Air Quality and Emissions Trends Report, 1982 (March 1984) at 32–36, reports a "steady downward trend" in SO_2 emissions nationwide and in the region encompassing southwestern Pennsylvania, Ohio, and West Virginia. Beaver County has improved from nonattainment to attainment for SO_2. Allegheny County has shown a recent trend in improvement of ambient SO_2 levels. EPA has noted that "SO_2 data have shown a steady and consistent improvement in air quality levels at all monitored sites" [46 FR 30655, 30656, (June 10, 1981)].

Proposed Determination on Pennsylvania's SO_2 PSD Allegations

Because of the lack of a demonstrated violation, the Administrator proposes to find that Pennsylvania has not demonstrated within the meaning of Section 126 that out-of-State sources unlawfully interfere with its PSD measures for SO_2.

IV. Claims Relating to Long-Range Transport of Sulfates and Particulates

Pennsylvania, New York, and Maine allege that particulates and sulfur dioxide transformed into particulates are transported from virtrually all major midwestern sources across State boundaries in amounts violating section 110(a)(2)(E)(i) of the Clean Air Act.

These allegations are much broader than Pennsylvania's short-range transport SO_2 claim and involve additional complexities. The same questions are relevant, however, and in answering them we can determine the validity of the claims.

A. Which Pollutant?

When sulfur dioxide is emitted into the atmosphere it may be converted into so-called "secondary" pollutants by undergoing complex chemical reactions by which it further oxidizes into particulate sulfates. The long-range transport of these sulfates is the focus of the petitioning States' concern.[69]

There is no NAAQS for sulfates *per se*. NAAQS has been set, however, for TSP. TSP (particles smaller than a nominal size of 25 to 45 micrometers in diameter) includes sulfate particles. Although the petitioning States are concerned primarily with SO_2 emissions, the NAAQS for TSP provides the basis on which they seek to invoke Section 126.

---

[62] Pennsylvania's response to comments Docket Item II–D–81 at 1, 2, 37, 38.

[63] Pennsylvania's Technical Submission of additional information, Docket Item II–D–45(b) at 2.

[64] Pennsylvania's Technical Submission of Additional Information, Docket Item II–D–45(b) at 1–2.

[65] As noted above, Beaver and Washington counties are currently designated in attainment for SO_2, as is all but a portion of Allegheny County.

[66] Pennsylvania's Technical Submission of Additional Information, Docket Item II–D–45(a) at 10.

[67] *See* Appendix i to Pennsylvania's Response to Comments, letter dated March 30, 1982, from Robert J. Blaszczak, EPA, Region III, to James Salvaggio, Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources.

[68] Commonwealth of Pennsylvania, Department of Environmental Resources, 1980 Air Quality Report at 56–58.

[69] New York expressly stated that its evidence "is most specifically related to interstate transport of sulfate from sulfur dioxide sources." New York State Memorandum of Law in Support of Petition for Interstate Pollution Abatement Docket Item II–D–58 at 9.

B. What Geographic Area?

The petitioning States have not identified precisely which geographic areas they claim are affected by sulfates transported from the Midwest. Instead, Pennsylvania and New York have alleged that Midwest sources prevent attainment and maintenance of the TSP NAAQS and interfere with PSD measures for TSP throughout their respective territories.[70]

We must identify, then, the nonattainment areas in Pennsylvania and New York, and then assess the evidence that bears on the possible causes of TSP concentrations in those areas.

C. Are There Violations of TSP NAAQS in the Petitioning States?

1. TSP Nonattainment Areas in Pennsylvania

Portions of the following Pennsylvania counties are designated nonattainment for the primary and/or secondary standards for TSP:

Allegheny: primary
Beaver: primary
Berks: secondary
Blair: secondary
Cambria: primary
Chester: secondary
Erie: secondary
Fayette: secondary
Lackawanna: secondary
Lancaster: primary
Lawrence: primary
Lehigh: primary
Luzerne: secondary
Mercer: primary
Montgomery: secondary
Northampton: primary
Philadelphia: secondary
Washington: primary
Westmoreland: primary
York: primary

2. TSP Nonattainment Areas in New York

Portions of the following counties or boroughs in New York at present are designated nonattainment for the primary and/or secondary standard for TSP: [71]

Albany County: secondary
Bronx: secondary
Erie County: primary and secondary
Greene County: secondary
Kings: secondary
New York: secondary
Niagara County: secondary
Onondaga: secondary
Queens: secondary

One county only—Erie—is designated nonattainment for both primary and secondary standards.

These eight counties are scattered throughout the State: Niagara and Erie in the West; Onondaga in the center, Albany and Greene in the East; and Bronx, Kings New York and Queens in the southeast tip in New York City.[72] Moreover, the nonattainment areas in these counties tend to be urban industrial areas.[73]

3. TSP Nonattainment Areas in Maine

TSP nonattainment areas exist in portions of the following four counties in Maine:

Penobscot: primary and secondary
Kennebec: secondary
Knox: secondary
Washington: secondary

Maine did not claim, however, that nonattainment of TSP NAAQS in these counties was due to out-of-State pollution.[74]

C. What Are the Causes of TSP Nonattainment in the Petitioning States?

Petitioners argued that (1) ambient sulfate levels in their States are high, (2) these high sulfate levels cause violations of the standard for TSP, and (3) all major sources in the named midwestern States are responsible for causing these high sulfate levels. We shall examine each of these assertions in turn.

1. Evidence Concerning Ambient Sulfate Levels

The three petitioning States presented monitoring data as evidence of the sulfate concentrations in their air. The following discussion summarizes this evidence.

a. Pennsylvania's Evidence on Ambient Sulfate Levels

Pennsylvania presented data purporting to show that annual average ambient sulfate levels in various sections of the State ranged from 12–16 $\mu g/m^3$, with a general tendency toward high values in the western part of the State. Data on 24-hour levels were not clearly presented and were based on a limited number of sampling days. One study, however, indicates values ranging from 10–49 $\mu g/m^3$ on a few sampling days.[75]

b. New York's Evidence on Ambient Sulfate Levels

New York's data focused on the Niagara Frontier AQCR, consisting of Erie and Niagara Counties. New York also provided limited information for other areas, such as Albany (Albany County) (New York Evidence Summary, Docket No. II–D–50(b) at 53); Jamestown (Chautauqua County); Rochester (Monroe County); Syracuse (Onondaga Country), (*Id.* at 52); New York City, (*Id.* at 62); and the Adirondacks. Annual values for sulfates appear to range from 11–13 $\mu g/m^3$, 24-hour values ranged between 2 and 54 $\mu g/m^3$, based on 1981 data for selected days and sites where the secondary TSP standard was exceeded and sulfate data were available.[76]

c. Maine's Evidence on Ambient Sulfate Levels

Maine stated that its "case is built on monitoring concentrations of the sulfate fraction of TSP." [77]

Maine's data, taken from limited sampling at five sites,[78] showed that the highest sulfate readings for 24-hour values appear to range between 15–43 $\mu g/m^3$.[79]

2. Technical Considerations

Although these date provide some information on sulfate concentrations, problems with the number of samples and the means used to collect them limit their usefulness. Sulfate concentrations

[70] *See e.g.*, Pennsylvania's Technical Submission of Additional Information Docket II–D–45(b), at 15: "Concerning impermissible interstate TSP matter impacts. Pennsylvania is identifying the entire State as an impacted area"; New York's Evidence Summary Docket Item II-D-50(b) at 61: "All areas within the boundaries of the State of New York are affected * * * by midwestern SO_2 emissions."

[71] There currently are no counties in the State of New York which are designated nonattainment for SO_2. The last remaining nonattaining county in New York, Erie County on the Niagara Frontier, was designated nonattainment for SO_2 in March 1984.

[72] *See also* New York's Evidence Summary: Sulfates Transported into New York State, Docket Item II–D–50(b) at 61–62.

[73] For instance, the current TSP nonattainment areas in the Niagara Frontier AQCR are: Buffalo, Lackawanna, Tonawanda, Niagara Falls, Niagara, North Tonawanda, Blasdell, Cheektowaga, West Seneca, and Lockport. See 40 CFR 81.333.

[74] Maine complained not of NAAQS violations, but of interference with required PSD and visibility measures in three southern AQCR's: I—Metropolitan Portland; II—Central Maine; III—Downeast. *See* Maine's Petition: Evidence and Argument, Docket Item II–D–51(c) Appendix B; Rebuttal Argument of the Petitioners: Maine's Technical case, Docket Item II–D–82 at 4:

The boundaries of the affected areas are the AQCR's in which the monitored data was collected, and these are clearly shown on the map that is Appendix B to Maine's "Evidence and Argument."

[75] Report on Investigations into the Causes of Nonattainment of TSP Standards in western Pennsylvania and western New York, Rocco *et al.*, TRC, Docket Item II–D–72.

[76] *See* New York Evidence Summary, Docket Item II–D–50(b) at 44–55.

[77] *See* Petitioners' Rebuttal: Maine's Technical Case, Docket Item II–D–82 at 7.

[78] South Portland, Lewiston, Augusta, Bangor, Acadia National Park.

[79] Petition of the State of Maine—Evidence and Argument, Docket Item II–D–51(c) at 13–18, AQDHS–II Air Quality Data Report.

are estimated by determining the quantity of sulfates collected on a portion of a high-volume sampler filter used to measure total TSP concentrations. Certain glass filters, which were used by the petitioning States, are believed to act as a catalyst in the conversion of SO_2 to sulfates, thus creating an artifact sample of sulfates in TSP. This artifact results in an over-estimation of the true sulfate concentration.[80] The petitioners have not corrected their data for this factor.

3. What is the Relationship of Sulfates to TSP Levels?

Even if we accept, for the sake of continuing the analysis, the petitioners' data on ambient sulfate levels, those levels alone cannot trigger section 126. There must be a showing that these levels are significant in causing TSP standard violations.

The petitioning States argue that the monitored sulfate levels significantly interfere with attainment and maintenance of TSP standards. They present a variety of data from the period 1977–1981 indicating that sulfates constitute 10–15 percent of TSP on an annual basis and 10–50 percent on a 24-hour basis.

A close look at the information presented, however, demonstrates that sulfates are *not* a significant contributor to current TSP nonattainment problems. On those days on which the 24-hour secondary NAAQS is exceeded, the corresponding percentage of sulfate is comparatively low. For instance, in the 1981 air quality data presented by New York, on days when the 24-hour secondary standard for TSP was violated, the amount of sulfate from all sources averaged only 10 percent of the TSP in the samples. On approximately half of those days, the percentage of sulfate was less than 10 percent. On the other days, it was 10–20 percent. Sulfate/TSP ratios higher than that appear to occur on days when TSP levels were considerably below the standard.[81]

Data presented by Pennsylvania showed that on the days when the TSP secondary standard of 150 $\mu g/m^3$ was violated, the average sulfate level resulting from all sources was 18 $\mu g/m^3$, again averaging only about 12 percent of the TSP allowable under the standard.[82]

Pennsylvania claimed it observed violations of the TSP secondary standard from May 1980–May 1981 at 27 TSP monitoring sites where the violations were not directly attributable to major point sources. At 14—more than half—the NAAQS would not have been attained even if sulfates had been *entirely* elimiated.

New York and Pennsylvania presented studies incidating that even if sulfates from all sources—local as well as out of State—were entirely eliminated from TSP, the majority of short-term violations still would have occurred. Sulfates simply do not make up the major portion of either annual or 24-hour TSP values where and when these values exceed the NAAQS. On an annual basis sulfates from all sources do not occur for more than 10–15 percent of TSP. On a 24-hour basis they generally do not appear to account for more than 10 and at most 30 percent of TSP on days when TSP secondary standards are exceeded.

4. What Role Do Out-of-State Sources in the Named States Play in TSP Violations?

We have determined that sulfates make up only a small component of TSP. To complete a review of the evidence, however, we must ascertain how much of this contribution can be attributed to identified or indentifiable out-of-State sources.[83] Examination of the sulfate itself does not tell us where it originated. Interstate, local, and biogenic sources all contribute to sulfate levels. Common sense tells us that some of these sulfates come from sources in the named States. But in addition, some come from in-State sources, Canadian sources, and sources in States not named by the petitioners.

Although the scientific community generally recognizes the phenomenon of long-range sulfate transport, it confronts major obstacles when attempting specific identification and quantification of the sulfate contributions of named sources or source regions. The two major but related problem areas are an incomplete understanding of the atmospheric transport, transformation, and deposition processes involved and an inability, at present, to construct an adequate model that is sufficiently accurate to make a finding here, or to support setting emission limitations. These problems are discussed briefly in the following section, to provide a proper background for the evaluation of the available evidence in this particular case.

a. Problems in Predicting Sulfate Levels and Origins

The scientific community at present lacks a complete understanding of several elements of the process of sulfate conversion, long-range transport, and sulfate deposition needed to adequately characterize that process in mathematical simulation models which could be used to support regulatory actions under section 126. There is an incomplete understanding of the atmospheric chemistry to predict with confidence the rate and extent of the conversion of sulfur dioxide to sulfates. The chemical pathways by which sulfates are formed are not fully understood, particularly as sulfate concentration and production relate to other pollutants and atmospheric variables. Transport and dispersion of such pollutants over distances of hundreds of miles is extremely difficult to quantify accurately. For example, the effect of large-scale weather systems and interaction with cumulus clouds introduce complex but potentially important parameters affecting both pollutant trajectories and formation/removal mechanisms. Furthermore, while the role of both wet and dry deposition of sulfates is generally understood, a sufficiently accurate quantification has not been demonstrated for either form of deposition.

Since the conversion, transport, and deposition processes are not fully characterized, air quality simulation models currently available are not adequate for definitive regulatory action as required under Section 126. Available models, while useful for nonregulatory purposes, have not been demonstrated to simulate with sufficient accuracy ambient sulfate patterns or levels, not to describe adequately the relationship between sulfate levels at given receptors and SO_2 emissions from given sources. These limitations are particularly critical in the context of this section 126 petition.

Even the models now proposed or being developed have not as yet

[80] The error can account for as much as a 6 $\mu g/m^3$ difference, depending upon ambient SO_2 levels, humidity, the specific fiber material, and other factors.

[81] *See* New York *Evidence Summary* Docket Item II-D-50(b) at 55.

[82] "Technical Submission of Additional Information Pursuant to Pennsylvania's Section 126 Petition," Docket Item II-D-45(b) at 16–17.

[83] Commenters on behalf of industry argued that it is necessary under the Clean Air Act to show that actual emissions of specific named sources cause the air pollution complained of. *See e.g.*, Ohio Power *et al.*, Docket Item II-D-72, at 23, 174. They argued, for example that:

> A finding under Section 126(b) may not be made unless it is shown that emissions from a named source contribute to a specific violation in the petitioning state. *Id.* at 23.

The States argued that a source-specific causal connection is unnecessary, and that a violation need only be traced to out-of-State sources in the aggregate. Pennsylvania Analysis of Section 126 Requirements, Docket Item II-D-45(e) at 18–21. For a discussion of Pennsylvania's arguments, see footnote 50 *supra*. Given the record here, it is unnecessary at present for EPA to resolve this question.

undergone extensive field evaluation and have not been recommended for general use. Existing data bases from field studies at medium and long-range transport distances are limited in detail. The application of models to complicated terrain is also problematic. When added to the above, the cited uncertainties resulting from the sulfate chemical conversion process make the difficulties in modeling long-range transport for specific regulatory purposes even more imposing. These are a few of the reasons EPA guidelines on modeling express reservations on the applicability of modeling results projected beyond 50 kilometers for a specific source.[84]

Federal appeals courts have reviewed and acknowledged the present limitations on the ability of the Agency to make predictions based on long-range modeling. The Second Circuit has considered and accepted EPA's explanation that it lacks devices for modeling the impact even on neighboring States of secondary formation of sulfate particulates.[85]

The Agency is evaluating and attempting to improve available modeling techniques. It has engaged Argonne National Laboratory, in a project to be completed in 1986, to evaluate selected long-range transport models against certain available data bases submitted to EPA.

In addition, EPA has an extensive ongoing program of research and development and acid deposition. This program and other efforts to improve long-range transport and visibility models are anticipated to improve greatly the data base and allow EPA to develop and evaluate regional scale models.

b. Available Evidence on the Contribution of Out-of-State Sources to Ambient Sulfate Levels

Because present modeling techniques do not allow us to project long-range sulfate transport with sufficient accuracy, we cannot rely on them in making regulatory determination of the kind the petitioners call upon us to make. Given the concerns of the petitioning States, however, we recognize the importance of considering the best available information even when it is fraught with uncertainty.

Even if we give the petitioners' data the most sympathetic reading, it does not justify a finding under Section 126. These data, even taken at face value, fail to show that sources in the named States are responsibile in any significant way for TSP violations in the petitioning States. Therefore if any sources prevent or interfere with the petitioners' ability to meet standards, we cannot conclude that it is these sources.

A large part of New York's evidence concerning out-of-State sulfate transport centered on the Adirondack region, even though that region does not contain any TSP nonattainment areas. In this region, New York relied primarily on the Phase II modeling results from the U.S./Canadian Memorandum of Intent (MOI) on acid rain to estimate the portion of sulfate contributed to annual ambient sulfate levels by non-New York sources.[86] Although New York fails to establish a definitive relationship between the Adirondack sulfate levels and TSP nonattainment areas in the State, we have reviewed these model results.

The MOI Phase II modeling results suggest that midwestern States contribute at most between 21 and 43 percent to Adirondack annual sulfate levels. These calculations also suggest that Pennsylvania's contribution to these levels lies between 7–13 percent, and that of Eastern Canada lies between 14–45 percent. Sources other than the midwestern States, Canada, and Pennsylvania may account for as much as an additional 25 percent.[87]

The modeling results from the MOI study estimated that Ohio, Illinois, Indiana, Michigan, Kentucky, and Tennessee together contributed a mean (based upon all the modeling analyses) of 36.8 percent of Adirondack ambient sulfate contributions. Calculated on the same basis, the mean estimated contribution of Ontario and Quebec was 27.8 percent; that of Pennsylvania was 10.5 percent; and that of New York, Massachusetts, Connecticut, Rhode Island, and Maine combined was 9.9 percent. Sources in other areas were calculated to contribute 15 percent.

These estimates present EPA with the following problem. While the Agency, for reasons explained above,[88] does not interpret the law so narrowly as to compel the petitioning States to name a specific or a single source as the cause of their grievance, the Agency also does not read the Statute to allow a State simply to point to all of the sources collectively from which it might receive out-of-State pollution.

The question arises, then, how large an area, what number of sources, or how many States a petitioner may aggregate before the complaint is to be regarded as lacking in the specificity required by Section 126. The answer to this question, in part, lies in finding a balance between the extent of the aggregation and the size of the contribution.[89] To be "significant," a contribution from a very large area must have a distinctly larger impact on nonattainment or PSD programs than a contribution from a single source; a correspondingly higher threshold therefore applies.

Sulfates, as we noted above, comprise only 10–15 percent of the annual TSP levels which exceed the NAAQS. If we suppose that the six midwestern States contribute almost 37 percent of this 10–15 percent or approximately 4–6 percent of the TSP levels, we cannot find that this is a significant enough contribution to "prevent" attainment and maintenance of the NAAQS for TSP, given the very large area these six States comprise.[90] We are prevented from making this finding, moreover, by the absence of more reliable and more specific data linking Midwest sources to in-State locations. We must bear in mind, moreover, that we are using the data presented by New York for an area not in violation of the TSP NAAQS.

New York also relies in part on estimates projected by a model focusing on Dunkirk, in New York's western Chautauqua County.[91] On the basis of these estimates, New York argues that total emissions (not limited to major sources) from six of the named States (Ohio, Indiana, Michigan, Illinois, West Virginia, and Kentucky), contributed about 75 percent of Dunkirk's estimated ambient sulfate levels in July 1978.[92] These model estimates, however, are of questionable reliability. They are first approximations at best. They depend on the determination of specific air parcel trajectories—an area of great uncertainty when considering the transport distances involved. By the very nature of meteorological conditions, different sources contribute different levels of pollutants to a

[84] EPA Guidelines on Air Quality Models at 24–46. *See also* 46 FR 8461, 8488.

[85] *Connecticut Fund for the Environment, Inc.* v. *EPA*, 696 F.2d at 175, 177 (2d Cir. 1982). *See also New York* v. *EPA*, 716 F.2d 440, 444 (7th Cir. 1983).

[86] New York Evidence Summary, Docket Item II-D-50(b) at 24–27.

[87] According to the modeling analyses, New York receives more sulfates from its co-petitioner, Pennsylvania, than from two midwestern States, Illinois and Indiana, combined. New York appears to receive from Pennsylvania twice the quantity of sulfates that it receives from Kentucky and Tennessee together. *See*, New York's Evidence Summary, Docket Item II-D-50(b) at 26.

[88] *See* footnote 50, *supra*.

[89] Aggregation of sources should also not be allowed to result in such a loss of individual or group identity that it becomes impossible to fashion a fair remedy.

[90] As noted above, EPA in the *Gallagher* determination found a 3 or 4 percent contribution not significant. (47 FR 6625)

[91] Chautauqua County is in attainment for TSP.

[92] New York's Evidence Summary, Docket Item II-D-50(b) at 25, *see* also Attachment D.

specific area on different days depending on changing wind directions and other meteorological factors. As stated earlier, the ability to identify specific sources in modeling the long-range interstate transport of air pollutants is limited. The daily variations in contributions may be so great, moreover, that general estimates would be difficult, even if the contributions of specific sources could be traced on any particular day.

In many areas, TSP nonattainment is predominantly a local source problem calling for control of local particulate sources of emissions and fugitive dust. Many of the comments the Agency received referred to the contribution of local sources within the petitioning States.[93] Studies and evidence in the record indicate that local sources are responsible for a portion of sulfates in Pennsylvania, New York, and Maine.[94]

Proposed Determination on Long-Range Transport Claims of NAAQS Violations

In sum, the Administrator concludes that: (1) Total sulfates, at the levels alleged by petitioners, are not a major factor in preventing attainment or maintenance of TSP standards in the petitioning States; (2) that sulfates transported from sources in the States named in the petitions have not been shown to make a significant contribution to annual sulfate levels; and (3) that the intrastate, sectional, and regional components of sulfate transport have not been adequately defined. The Administrator therefore proposes to find that out-of-State sources from the named States do not contribute significantly to violations of the TSP NAAQS.

For these reasons the Administrator proposes to deny the petitions with respect to the alleged violations of NAAQS for TSP.

E. Claims of Interference With PSD Measures

Petitioners do not claim and have not shown that any sulfates transported from out of State have caused violations of PSD increments. Rather they claim that sulfates emanating from Midwest sources contribute to consumption of TSP increments in their respective States.[95]

As we have shown earlier, it is not sufficient for States to claim increment consumption absent a violation. Even if it were sufficient, the petitioning States would still have failed to submit evidence showing how much of their TSP increments are consumed by interstate pollution. The States do not demonstrate the extent to which sulfates contribute to the consumption of their overall TSP allotments nor what proportion of these sulfates were transported from out of State.

SO_2 emissions have declined nationally since 1974, while the PSD provisions were added to the Clean Air Act of 1977. Thus, one would expect a decline in the amount of the baseline or increment sulfates consumed, even in the absence of additional regulation.[96]

TSP levels throughout the United States are also declining. *The National Air Quality and Emissions Trends Report, 1982,* noted a decrease in TSP levels between 1978 and 1982:

> The reduction in particulate emissions occurred primarily because of the reductions in industrial processes. This is attributed to a combination of installation of control equipment and reduced industrial activity.

Since the filing of New York's petitions, two counties in that State have been redesignated to attainment from nonattainment status for TSP,[97] and one county, Niagara, in the Niagara AQCR has been redesignated from primary nonattainment to secondary nonattainment.

Likewise in Pennsylvania, SO_2 and TSP levels reflect a trend towards improvement. For example, at Pennsylvania's request the Administrator recently approved a change in the designation from nonattainment to attainment for the primary and secondary TSP standards in Area Number 9, Allegheny County, in the southwestern Pennsylvania AQCR. The Notice of Approval states that: "the air quality improvement in this Region is due to the general improvement in air quality of the industries upwind of this area" [49 FR 9568 (March 14, 1984)]. Another Pennsylvania County, Lycoming, has also recently been redesignated to attainment for TSP.

Proposed Determination of Claims of Long-Range Transport PSD Interference

For the foregoing reasons, the Administrator proposes to deny the petitioners' claims with respect to alleged interference with required PSD measures for TSP.

V. Maine's and New York's Allegations of Visibility Impairment

Maine has alleged that long-range transport of sulfates from the Midwest interferes with measures required to protect visibility in Acadia National Park. Maine complains of "regional haze," which may be described as widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area. New York's petition also claimed that Midwest sulfate emissions interfere with visibility in some areas of the State.[98]

Section 169A of the Clean Air Act, 42 U.S.C. 7491 (Sup. 1 1977) requires EPA to identify mandatory Class I Federal areas "where visibility is an important value" and which therefore merit action to protect visibility. The mandatory Class I Federal areas are set forth in Sections 163 and 169A, 42 U.S.C. 7472(a). Acadia National Park in Maine is such a Class I Area where visibility is an important value (40 CFR 81.413). New York, however, contains no Class I areas covered by measures required to protect visibility. Section 126 therefore does not apply to its claims.

EPA has promulgated regulations designed to protect visibility in mandatory Class I Federal areas, and has required each State containing such an area to revise its SIP in accordance with these regulations [45 FR 80084 (40 CFR 51.300–51.307)]. To date, Maine has not submitted the required SIP revision to protect visibility in Acadia National Park, and thus Maine has taken no steps and promulgated no measure with which out-of-State sources can be found to

---

[93] *See, e.g.,* Comments on behalf of Ohio Power *et al.,* Docket Item II–D–72, at 146–149, 174, 176–181, 207, 210–211.

[94] *See, e.g.,* Energy and Environmental Analysis, Inc., Primary Sulfate Emission Inventory for Southwest Pennsylvania and Western New York State (February 8, 1982); TRC Environmental Consultants, Inc., Report on Investigations into Causes of Nonattainment of TSP Standards in Western Pennsylvania and Western New York at 9–13, 16–25, 32. Both Documents in Docket Item II–D–72.

The local iron and steel industry in New York has been observed to have "the most significant impact on particulate matter primary standard nonattainment in the Niagara Frontier" [45 FR 54372, 54375 (August 15, 1980)].

New York forecasts, nevertheless, that the Niagara Frontier AQCR will be in attainment for primary NAAQS. In Erie County, Bethlehem Steel's Lackawanna Works, a local source, dominates the emissions inventory and is therefore the critical factor in attaining TSP requirements. This plant has recently been closed, resulting in air quality improvement in that area.

In Maine, TSP violations have been linked to local sources in Bangor, Brewer (Penobscot County), Augusta (Kennebec County), and Thomaston (Knox County). The sources range from particulates from streets to emissions from cement plants [45 FR 107669, 107770 (February 1980)].

[95] *See e.g.,* New York's Evidence Summary, Docket Item II–D–50(b) at 68. Rebuttal Argument of Petitioner; Maine's Technical Case Docket Item II–D–82 at 3.

[96] *See* "Acid Deposition—Atmospheric Process in Eastern North America," National Academy of Sciences (1983).

[97] Chautauqua County and Richmond County.

[98] New York contended that reduced visibility is associated with the movement of regional haze from the Ohio River Basin when prevailing winds are from the Southwest. New York Evidence Summary, Docket Item II–D–50(b).

interfere with the meaning of section 126 of the Clean Air Act.

Furthermore, even if Maine had adopted EPA's required SIP measures,[99] these regulations are aimed at visibility impairment reasonably attributable to an emission source by visual observations or other techniques. No such haze in Maine is traceable to stack emissions in the Midwest. Accordingly, the visibility impairment of which Maine complains simply is not the subject of "measures required to be included in an applicable implementation plan" [Section 110(a)(2)(E)(i))II)].

However, while regional haze may not be addressable under Section 126 at this time, it is a recognized phenomenon whose complexities have hindered the development of any programs to address the problem. Aware of the need to address the issue, the Administrator has established an interagency Visibility Task Force whose purpose is to research all available information on the subject and develop recommendations on a long-term strategy to deal with regional haze.

Proposed Determination on Allegation of Visibility Impairment

For the foregoing reasons, the Administrator proposes to deny Maine's and New York's petitions with respect to claimed interference with their visibility protection programs.

VI. Conclusion

After a thorough review of the extensive record in these proceedings, the Administrator has determined that, even giving the most sympathetic reading to the evidence presented by petitioners, Section 126 does not authorize a finding of unlawful interstate pollution. Moreover, a review of the best available data fails to show that pollution sources in the named midwestern States are preventing petitioners from attaining or maintaining TSP or SO_2 NAAQS; nor does it show that these sources are impermissibly interfering with SIP measures required to prevent significant deterioration of air quality or to protect visibility.

For the foregoing reasons, the Administrator proposes to deny the petitions. Denial of these petitions does not prejudice the opportunity of these States to file new petitions should circumstances change.

[99] Alternately, it may be argued that even though Maine has failed to adopt these regulations, they still must be considered "measures *required to be included* in the applicable implementation plan * * * to protect visibility * * *" within the meaning of section 110(a)(2)(E)(i)(II). In either case, our analysis is the same.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hyrdocarbons.

Dated: August 29, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-23346 Filed 8-31-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-6-FRL-2663-8]

Proposed State Implementation Plan Disapproval, Federal Assistance Limitations and Construction Moratorium: State of New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove the inspection and maintenance (I/M) portion of the New Mexico State Implementation Plan (SIP) for attainment of the Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) in Bernalillo County, New Mexico. EPA believes that the I/M portion does not meet the requirements of section 172 of the Clean Air Act (CAA) and that reasonable efforts toward submitting such a plan are not being made. EPA is proposing this determination because the City of Albuquerque repealed the ordinance providing the authority for controlling emissions from motor vehicles in Bernalillo County on March 26, 1984, and closed the inspection facilities on March 28, 1984. The City has initiated informal efforts to reinstate the program; however, after reviewing the facts, EPA has determined that it must find that reasonable efforts have not been made.

This notice also proposes to limit certain federal funding assistance and prohibit the construction or modification of major stationary sources of CO in Bernalillo County as mandated by the CAA. The funding limitations apply to funds provided under the CAA and to the projects and grants under Title 23 of the U.S. Code. This action is being proposed pursuant to sections 110(a)(2)(I) and 176(a) of the CAA because EPA is proposing to disapprove the I/M portion of the New Mexico SIP for Bernalillo County. EPA invites public comment on this action and will hold a public hearing if requests for a hearing are received during the comment period.

If EPA imposes funding restrictions, EPA proposes that these restrictions be removed when either of the following conditions are met:

(a) Implementation of an approved I/M program is achieved in Bernalillo County, or

(b) The County is formally redesignated by EPA to attainment for CO.

The notice also solicits comments on the appropriateness of withholding grants for the construction of sewage treatment works under Section 316(b) of the CAA.

DATES: Written comments or requests for a public hearing must be submitted by October 1, 1984.

ADDRESSES: Written comments or requests for a public hearing should be sent to Jack Divita, Chief, Air Branch, Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270

Copies of this notice are available for public inspection during normal business hours at the following locations:

Air Branch (6AW-AP), Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270

Air Quality Bureau, Environmental Improvement Division, 725 St. Michael's Dr., Crown Building, Santa Fe, New Mexico 87504-0968

Air Pollution Control Division, 924 Park SW., Albuquerque, New Mexico 87103

FOR FURTHER INFORMATION CONTACT: Robert R. Broyles, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of Title I of the Clean Air Act, as amended in 1977.) Consequently, New Mexico requested and received an extension for attainment of the CO standard in this area. The State was then required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that achieved the emission reduction requirement from light duty vehicles and met EPA's program specifications. The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. Subsequently, on July 1,

1983 (48 FR 30365), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County. The approved 1982 CO SIP for Bernalillo County contained City and County ordinances requiring all 1968 and newer gasoline powered light duty vehicles to participate in the program and provided for penalties for noncomplying vehicle owners. The SIP also contained the Albuquerque/Bernalillo County Air Quality Board Regulations governing the I/M program and the Albuquerque Traffic Code amendment pertaining to enforcement of the I/M ordinances.

B. I/M Program Disapproval

On January 3, 1983, the I/M program in Bernalillo County began operation. The following events led to the closing of the inspection facilities on March 28, 1984:

January 4, 1983—A suit was filed in the New Mexico District Court to stop the I/M program on both statutory and constitutional grounds, including illegality on statutory grounds of the inspection fee and illegality on constitutional equal protection grounds of the limit on the cost of repairs required

February 8, 1983—The New Mexico District Court dismissed the suit finding that the City had authority to adopt and implement the I/M program

March 2, 1983—The District Court decision was appealed to the New Mexico Supreme Court

February 24, 1984—State Legislature passed Senate Bill 91, which included an amendment prohibiting inspection fees for vehicles five years or older in I/M programs

March 7, 1984—Governor vetoed Senate Bill 91

March 13, 1984—The State Supreme Court ruled on the appeal and the major outcome pertaining to this proposed action was that the City of Albuquerque did not have the authority to impose a vehicle inspection fee, effective March 28, 1984. The State Legislature was in session when the court decision was announced but did not enact legislation to keep the program in operation

March 26, 1984—The Albuquerque City Council revoked ordinance No. 49-1969, governing the operation of the I/M program

March 27, 1984—State Legislature passed Senate Bill 9, which included an amendment prohibiting inspection fees from being charged by or for a local I/M program

March 28, 1984—The inspection stations closed

March 29, 1984—Governor approved Senate Bill 9

The June 28, 1982, SIP submittal appeared to have satisfied all Section 172 requirements, including a commitment to financial and manpower resources, when it was submitted. However, the New Mexico Supreme Court decision, that the financial resource considerations were beyond the authority of the City of Albuquerque/Bernalillo County, means that the SIP revision was apparently not legally adopted before submission to EPA and the revision apparently does not meet the financial resource requirement of Section 172.

In response to the above events, EPA sent a letter to the Governor of New Mexico on March 29, 1984, notifying him of the apparent situation and of EPA's intention to publish a notice proposing to find that the New Mexico 1982 SIP for CO in Bernalillo County now fails to meet the requirements of Part D, Section 172, and informing him of the possible sanctions that could be imposed in the Albuquerque area.

The Governor responded by letter of April 18, 1984, that the City and County had made good faith efforts to develop an I/M program in Bernalillo County despite the recent State Supreme Court decision preventing the collection of inspection fees by the City. The Governor's letter also stated that EPA should refrain from proposing SIP disapproval and sanctions, as long as the responsible governmental entities make reasonable efforts toward submitting an acceptable revision to the SIP.

EPA reviewed the Governor's response and acknowledges that the State, City and County are currently exploring methods to restart the I/M program in Bernalillo County. The Mayor of Albuquerque has informally proposed a plan to restart a City run I/M program. Further, the City has sponsored several meetings to study the I/M problem and possible solutions. The City sponsored meetings have included City, County, and State officials and staff, and State Legislators. Further, the State Legislature and the New Mexico Environmental Improvement Division have each established a task force to investigate the situation and develop solutions. These actions are clear evidence that the City and State are considering the reestablishment of an I/M program in Bernalillo County. However, to date, neither the City or the State has made any formal commitments necessary for the reestablishment of the program. In fact, the State and City missed several opportunities to take actions which could have enabled the continued operation of the program and, as discussed below, the formal actions taken to date appear to hamper the reestablishment of the I/M program.

As previously indicated in the chronology, the State Legislature was in session when the Supreme Court decision was announced and held a special session before the I/M inspection stations closed. The Legislature did not provide enabling legislation for funding the program in either session. Instead, the Legislature passed bills which hindered the reestablishment of the program. Specifically, the State Legislature at its regular 1984 session attached an amendment, which prohibited the application of the I/M requirements to vehicles over five years old, to a bill which had a primary purpose of allowing articulated trucks on interstate highways. Exclusion of these older vehicles would have resulted in an ineffective program, and the Governor vetoed this bill. In the subsequent special session, after the State Supreme Court had held the fee system to be illegal, the State Legislature passed and the Governor signed a bill which prohibited the charging of any fee by or for a local I/M program. Further, the Albuquerque City Council initiated movement toward continuing the I/M program by holding a meeting to discuss alternative funding or temporary funding, but it concluded the meeting by rescinding the ordinance authorizing the I/M program.

In summary, EPA is aware that the City is giving serious consideration to reestablishing an I/M program, however as detailed above, formal actions taken by the City Council and the State Legislature appear to hamper reestablishment of an I/M program. It is EPA's judgment, based on the available facts, that reasonable efforts have not been made at this time toward adopting an I/M program as required by law. Therefore, EPA is required to propose disapproval of the portion of the New Mexico SIP which provides for attainment and maintenance of the CO NAAQS in Bernalillo County and propose sanctions as required by the CAA. If the State should choose to reestablish the program, it will have ample opportunity to clearly demonstrate its intent in the time between the proposal and the finalization of the action to disapprove the SIP and to institute the various sanctions.

C. Construction Ban and Funding Restrictions

Today, EPA is proposing a construction ban and funding restrictions in Bernalillo County, as mandated by Congress under Sections 110(a)(2)(I) and 176(a) of the CAA, and requesting comments on the appropriateness of proposing funding limitations under Section 316(b), sewage treatment works.

Under section 110(a)(2)(I) of the Clean Air Act, if the emissions of a new or modified source of an air pollutant would cause or contribute to a violation of an NAAQS, then construction of the new source or on the modification may not begin until the SIP meets the requirements of Part D. The present notice proposes a finding that the I/M portion of the New Mexico CO SIP for Bernalillo County does not meet the requirements of Part D. Upon notice that this proposed finding has been made final, the construction moratorium will take effect.

Under section 176(a) of the Clean Air Act, certain restrictions on grants of federal air pollution control funds and highway funds will also be imposed following a finding that the SIP does not meet the requirements of Part D, and if the State is not making reasonable efforts toward submitting such a SIP. These restrictions are mandatory in areas in which a primary NAAQS has not been attained and in which transportation control measures such as I/M are necessary for attainment of the NAAQS. Specifically, the provisions of Section 176(a) would be triggered by the following:

(1) The primary NAAQS for CO is not being met in Bernalillo County.

(2) Transportation control measures, including I/M for light duty vehicles, are needed to reduce CO emissions, because the majority of the CO emissions result from the operation of such vehicles.

(3) As discussed above, the SIP submitted by the Governor does not now adequately "consider" all elements of Section 172 of the Clean Air Act, specifically the financial resources needed to implement the I/M program. Reasonable efforts toward submitting such a plan are not being made.

On April 10, 1980, after prior notice and public comment, EPA published its final policies and procedures governing imposition of the section 176(a) funding restrictions [45 FR 24692]. In this notice EPA stated that the geographic applicability of section 176(a) will be the applicable air quality control region; however, EPA would consider applying the limitations to a smaller area if the purpose of the limitations could thereby be better served [45 FR 24695]. In this case, the area affected would be only Bernalillo County. The notice also discussed what adequate consideration of all the required elements in section 172 would entail, pointing out that the State has an affirmative duty to investigate and compile data on the required elements, analyze that data, and consider and incorporate the required elements into the SIP in a manner consistent with the intent and purpose of the Act [45 FR 24695].

With respect to the reasonable effort requirement, the notice states that if a state made a good faith effort, judged on a case-by-case basis, to consider all of the section 172 elements, then the funding limitations would not be imposed [45 FR 24685]. The City and State have considered actions toward the reestablishment of the I/M program. However, the evidence presently available to EPA appears not to support a finding of reasonable efforts as described above.

Finally, the notice outlines the procedures to be followed in imposing the funding limitations under section 176(a). These include a notice by letter to the state and affected political entities followed by a 30 day negotiating period. That letter was sent to Governor Toney Anaya, with copies to other affected officials on March 29, 1984. In the event a satisfactory solution is not developed, EPA would then publish a formal notice of proposed rulemaking with a comment period of at least 30 days and hold a public hearing if requested, followed by a notice of final action. In addition, the docket will be established for the rulemaking to include the materials described in section 307(d) of the CAA. The other administrative procedures provided for under section 307(d) do not apply to this rulemaking, however, because this is not an action listed or designated by the Administrator under section 307(d)(1) [42 U.S.C. 7607(d)(11)]. Normal notice and comment procedures provided for under the Administrative Procedures Act, 5 U.S.C. 551 et seq. will govern this action.

In addition to sections 110(a)(2)(I) and 176(a), section 316(b) of the Clean Air Act allows EPA to withhold, condition or restrict funds for the construction of sewage treatment works if it determines that, in a nonattainment area, there is not an approved SIP that provides for the increase of air pollutants that are reasonably anticipated to result either directly or indirectly from proposed new sewage treatment capacity. Such action may also be taken by EPA if construction of the proposed treatment works will create new sewage treatment capacity that may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any pollutant in excess of the increase provided for under the SIP. The EPA policy and procedures for implementing section 316(b) were published at 45 FR 53382 on August 11, 1980.

As described in the August 11, 1980, policy mentioned above, the public notification and review for the withholding of any construction grants will be done consistent with the section 176(a) procedures for withholding transportation and air grant funding. EPA's Region 6 office is currently developing procedures and criteria for making case-by-case determinations for projects submitted, consistent with published procedures.

D. Proposed Finding and Action

(1) Disapproval of the I/M Portion of the SIP.

Based on New Mexico's apparent failure to meet the requirements of Part D and failure to make reasonable efforts toward submitting such a SIP, EPA is proposing to disapprove the I/M portion of the 1982 CO plan for Bernalillo County.

(2) *Clean Air Act Funds.* Pursuant to section 176(a) of the Act, EPA is proposing to withhold CAA funds from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department, the agencies which are responsible for the I/M SIP Bernalillo County.

Section 105 of the CAA authorizes EPA to award federal funds to air pollution control agencies to assist them in developing and maintaining their programs. Section 302(b), defines "air pollution control agencies" as State, local, or interstate agencies with powers or duties relating to the prevention and control of air pollution. In some states, EPA awards funds directly to both state and local government agencies. In other States, EPA only awards funds directly to State agencies. In New Mexico, EPA awards funds to both the State and the local agency in Albuquerque.

Section 175 of the Act authorizes EPA to award funds to local agencies with transportation or air quality planning responsibilities to assist them in developing SIP revisions required under Part D. Since all funds appropriated under this section were obligated by EPA as of September 30, 1980, and no additional appropriations have been made, Section 175 grants are not affected by this proposal.

EPA is proposing to calculate the extent of CAA funding limitations, under section 176(a), based on the proportion of the State's population residing in the urbanized area in which I/M is required [44 FR 20376]. This approach was applied in EPA's proposal to withheld certain section 105 grants from the State of Pennsylvania for failure to submit a SIP which included an I/M program for Pittsburgh, Philadelphia, and Allentown-Bethlehem-Easton area [47 FR 9477]. The population residing in the Albuquerque urbanized area will be determined by the 1980 Census.

EPA proposed several methods of withholding section 105 funds on August 3, 1983 (48 FR 35313). Today's notice proposes the use of the method that was indicated as the EPA preferred method in the August 3, 1983 notice. However, EPA is requesting comments on the use of this method and the other methods proposed in the August 3, 1983 notice, as applied to the situation in Bernalillo County.

The following method of determining funding limitations is the preferred method as proposed in the August 3, 1983 notice. The EPA would add all CAA funds which would normally be awarded to all levels of government in the State, and would withhold from that total a percentage which is equal to the percentage of the State's population residing in the I/M urbanized area. Direct grants made to the local government agency responsible for I/M implementation would be affected first, with any remaining restrictions to be applied against State funds.

(3) *Federal Highway Funds.* Pursuant to section 176(a) of the CAA, EPA is proposing to withhold certain federal highway grants. The Regional Administrator of the Federal Highway Administration (FHWA), Region 6 was notified by letter of March 29, 1984, of EPA's initiation of section 176(a) procedures. This letter initiated the 30-day consultation period between EPA and FHWA to negotiate appropriate funding limitations. A meeting was held with FHWA staff on April 6, 1984, to review the procedure for imposing highway funding limitations. Several issues relating to the procedures for imposing the limitations remain unresolved and further meetings are to be scheduled.

(4) *Sewage Treatment Works Funds.* EPA has discretionary authority under section 316(a) of the CAA, to withhold certain grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act (33 U.S.C. 1251 et seq.) to municipalities, sanitation districts, or other eligible grantees. The funding may be withheld in areas which do not have an approved Part D SIP, where emissions associated with a project will contribute directly or indirectly to the violation of any NAAQS, or where treatment capacity will be expanded. If this sanction is imposed, the EPA Regional Administrator may fund a specific project if he finds that it is needed for relief of an immediate public health hazard or improve treatment capability, and will not expand useable treatment capacity by more than one million gallons per day. On November 2, 1983, EPA announced its policy on imposing section 316(b) sanctions, along with policy statements on other sanctions and issues. This policy said that EPA may propose to add section 316(b) restrictions in areas where further inducement to action are needed. These funding limitations, if imposed in Bernalillo County, could amount to approximately $5.0 million for fiscal year 1985.

EPA is proposing to disapprove the New Mexico SIP, with a concomitant finding that the State is not making reasonable efforts to develop an approvable SIP. There would, then, be a nonattainment area (Bernalillo County) without an approved SIP, and in addition, the existing SIP would not provide for the increased emissions which would result from the new treatment capacity. In this situation, EPA believes section 316(b) sanctions may be appropriate. Therefore, EPA is requesting comments at this time on whether the funding limitations allowed by this section should be proposed for the Bernalillo County area. If EPA determines that the imposition of section 316(b) funding limitations are appropriate, they will be proposed in the **Federal Register** at a later date.

(5) *Construction Moratorium.* EPA is proposing to prohibit, as mandated by section 110(a))2)(I), the construction or modification of stationary sources which will cause or contribute to concentrations of CO in Bernalillo County. The ban, when finalized, will apply to all major stationary sources and modifications for CO, which have not yet submitted a complete application for preconstruction permits required under the City/County new source review program for the nonattainment area [See 40 CFR 52.24(a)].

A major stationary source is any source which emits, or has the potential to emit, 100 tons per year or more of a pollutant. [See 40 CFR 52.24(f)(4)]. The moratorium would also prohibit major modifications to existing stationary sources. A major modification is any physical change in a source or change in the operation of a source that would result in a significant net increase of a pollutant [See 40 CFR 52.24(f)(5)]. A significant net increase of CO means a rate of emissions from a source that would equal or exceed 100 tons per year.

E. Summary and Request for Comments and a Public Hearing

EPA will consider any future actions or commitments by the State before making a final determination on this proposal. If the State resumes an approvable I/M program prior to EPA taking final action on this matter, EPA will withdraw this proposal upon approving the revised CO SIP.

EPA is soliciting comments on its proposed finding that the CO SIP in Bernalillo County is no longer approvable, on the proposed sanctions resulting from the determination and on the appropriateness of using section 316(b), sewage treatment works funding limitations in Bernalillo County. EPA will consider all comments and requests for a public hearing received within 30 days of the publication of this notice.

F. Miscellaneous

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. EPA is soliciting public comments on the imposition of funding limitations.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If EPA takes a final action to disapprove the I/M portion of the SIP as proposed today, several sanctions will take effect as outlined below:

(1) A moratorium on the construction and modification of major stationary sources of CO will go into effect in Bernalillo County as required by section 110(a)(2)(I) of the CAA. The moratorium prohibits the construction of sources which would emit, or has the potential to emit, 100 tons of CO per year. The moratorium would also prohibit major modifications to existing major stationary sources of CO, that would result in a significant net increase of CO [40 CFR 52.24(f) (4) and (5)].

EPA does not have sufficient information to determine the impacts a moratorium may have on small entities because it is difficult to obtain reliable information on future plans for business growth. Since the moratorium would be on major stationary sources of carbon monoxide, which are historically rare, we do not expect a substantial number of small entities to be affected. However, because EPA cannot be certain of the potential impact on small entities, the Agency invites comments on this proposed rule.

(2) Clean Air Act funds would be withheld from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department, as required by section 176(a) of the CAA. This sanction would not directly affect a small entity, as the two agencies are part of governments responsible for populations of over 50,000.

(3) A limitation will be placed on federal highway funds in Bernalillo County, as required by section 176(a) of the CAA. A determination of the effect of this sanction on small entities is difficult unless each project is judged for safety, mass transit or transportation improvment project related to air quality improvement or maintenance, as these types of projects would be exempt. However, it is believed that some small entities would be affected.

(4) According to section 316(b), certain grants for the construction of sewage treatement works could be withheld. This sanction, if proposed at a later date, will not affect projects that are needed for relief of an immediate public health hazard or that will improve treatment capability, if the project will not expand capacity for future growth. EPA does not believe this funding limitation, if proposed, will affect a substantial number of small entities, but it could affect some. EPA is requesting comments on whether to propose imposition of section 316(b) funding limitations, and the perceived effect of these sanctions if imposed.

Although EPA believes that a final action would be likely to have some impact on small entities, this impact cannot affect some of the Agency's actions. Under the CAA, the imposition of the construction moratorium and the withholding of air grant funds and highway grant funds is automatic and mandatory whenever the Agency makes the necessary findings.

List of Subjects in 40 CFR Part 52

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

This notice of proposed disapproval is issued under the authority of sections 110, 172, 176(a), 301 and 316(b) of the Clean Air Act, as amended, 42 U.S.C. 7410(d), 7502, 7506(a), 7601, and 7616(b).

Dated: July 3, 1984.

Frances E. Phillips,

Regional Administrator.

[FR Doc. 84-23328 Filed 8-31-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 57

[OAR-FRL 2662-7]

Nonferrous Smelter Orders Covering the Period January 1, 1983-January 1, 1988

AGENCY: U.S. Environmental Protection Agency.

ACTION: Supplemental notice to proposed rules.

SUMMARY: This notice supplements the Notice of Proposed Second Period Nonferrous Smelter Order (NSO) Regulations published in the September 19, 1983 **Federal Register** on page 42050, *et seq.* The notice addresses some of the issues raised by the public during the subsequent comment period, in particular, those issues which EPA believes require clarification and/or further detail. As specified below, this notice:

(1) Makes available or announces the availability of additional background information,

(2) Amends certain parts of the proposed regulations or announces options under consideration which may be significantly different from the initially proposed regulations.

(3) Announces certain technical amendments.

DATES: Public comment on the contents of this notice is invited. Comments should be postmarked no later than October 4, 1984, and sent to the Central Docket Section at the address shown below.

ADDRESSES: Public comments on this supplemental notice are to be directed to the following address and cited for inclusion in Docket No. A-82-35: U.S. Environmental Protection Agency, Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460.

All of the material included in Docket No. A-82-35 is available for public inspection between 8 a.m. and 4 p.m. at this address. A charge may be made for copying of docket items.

FOR FURTHER INFORMATION CONTACT: Mr. Laxmi Kesari, Stationary Source Compliance Division (EN-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone: (202) 382-2887.

SUPPLEMENTARY INFORMATION: The remainder of this notice discusses the additional background information and proposed changes to the proposed second period NSO regulations. EPA solicits public comment on both. Commenters should limit their comments to the material presented in and made available by this notice. The text of the proposed changes to the regulations or proposed options follows this discussion.

The information collection requirements contained in the proposed regulations which this notice supplements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (U.S.C. 3501 *et seq.*) and have been assigned Control No. 2060-0051.

Under Executive Order 12291, EPA must judge whether these regulations require a Regulatory Impact Analysis. EPA already determined that the proposed regulations supplemented by today's notice are not major and thus do not require a Regulatory Impact Analysis. The regulations merely provided for interim relief for some entities and require no expenditures other than those already required under existing regulations promulgated under the Clean Air Act. Today's notice adds nothing to the regulations which would require a Regulatory Impact Analysis. EPA has submitted these regulations to OMB for review in accordance with Executive Order 12291.

As required by the Regulatory Flexibility Act (15 U.S.C. 601) the Agency reviewed the impact of the proposed regulations on small entities. Today's notice does not change EPA's past certification that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 57

Administrative practice and procedure, Air pollution control, Metals, Research.

Background

On September 19, 1983, EPA proposed regulations covering the second NSO period, which runs from January 1, 1983 through January 1, 1988. A number of comments were received which were critical of several elements of the regulations. In light of these comments, EPA is considering certain changes to

the regulations. This supplemental notice sets forth the significant changes under consideration for further notice and comment. In most cases, the changes under consideration have been specifically designated as changes. In one instance, the change under consideration is set forth only as an option which might be adopted in lieu of the proposed regulations.

This notice also clarifies the basis for certain elements of the regulations and announces the availability of additional background information which support the basis for certain aspects of the regulations. Finally, this notice describes certain corrections and technical changes to the regulations. It should be noted that while some aspects of some of the comments on the proposed regulations are addressed in this notice, this notice is not intended to address all comments received. Comments not addressed in this supplemental notice are still under consideration and a detailed response to comments will be provided at final promulgation.

The Agency solicits comments on the changes, options, and additional information described in this notice so that the final promulgated regulations may reflect the best possible approach in implementing Section 119.

Supplements to the Regulations

1. Changes to the Financial Eligibility Test

a. Clarification of Terminology and Changes Concerning Benchmark in Rate of Return Test

Today's notice proposes to make a technical change to the benchmark used in the Rate of Return test by altering the definition of book value of net investment. The change redefines book value of net investment, without the adjustment to book value (i.e., adding back depreciation of SO_2 control investments made after 1977) that was made in the proposal. That is, book value is redefined as total assets minus current liabilities, in accordance with the generally accepted definition of the term. It should be noted that in the proposal, the Agency had intended to define book value of net investment without the adjustment for depreciation on post-1977 pollution control equipment and then define the benchmark used in the test as book value of net investment plus that adjustment.[1]

Two commenters stated that the adjustment to book value (the adjustment which adds back depreciation on investments in SO_2 control equipment made after 1977) discriminates against smelters which made pollution control investments in 1977 or earlier and recommended that depreciation on all pollution control investments, no matter when made, be added to book value. The Agency agrees that the adjustment as it currently exists does not reward smelters for making pollution control investments in 1977 or earlier and that there is no sound reason for treating post-1977 pollution control investments differently from pre-1978 pollution control investments. At the same time, however, the Agency believes that there is no sound reason for adding to book value depreciation on any pollution control investments. Therefore, the provision for adding depreciation on post-1977 pollution control investments will be deleted.

The Agency is also making a technical change to the method of determining book value of net investment. To insure greater consistency in determining the value of inventory investment, the Agency is specifying that inventory shall be valued at current market value.

A revised Appendix A incorporating these changes (as well as other changes to the financial eligibility tests described below) has been placed in the docket (Docket Item No. IV–A–1) and has also been mailed to each party who testified at the hearing or commented on the proposed regulations.

These changes do not alter EPA's conclusions, as indicated in the proposal, that book value of net investment should generally be greater than liquidation value for smelters.

b. Proposed Option To Use Book Value of Net Investment on a Constant Dollar Accounting Basis in the Rate of Return Test

In addition to book value of net investment, the Agency is considering and now proposing as an option for use in the Rate of Return Test a new benchmark which is an extension of book value. This new benchmark is book value of net investment on a constant dollar accounting basis. This benchmark is among the financial data which is required to be reported by Financial Accounting Standards Statement No. 33 of the Financial Accounting Standards Board (FASB). (Docket Item No. IV–A–6d) (See Instructions for historical cost/constant dollar accounting).

Normally, financial statements are based on historical costs and nominal dollars. That is, valuations are measured at the time assets were acquired or liabilities were incurred. The unit of measurement is the nominal dollars expended or received at the time of the transaction. Thus, financial statements may include assets or liabilities whose dollar values represent differing degrees of purchasing power, depending on when the transactions occurred.

Constant dollar accounting also employs valuations at the time of the original transaction—the historical cost. However, the unit of measurement is changed from nominal dollars to constant dollars (i.e., current year's dollars), so that all items are expressed in terms of dollars having the same purchasing power.

As the Agency explained in the notice of proposed rulemaking, only a closure test (i.e., comparison of present value of cash flows to liquidation value) has a firm basis in economic theory in determining NSO eligibility. However, the court in *Kennecott* v. *EPA*, 684 F.2d 1007 (D.C. Cir. 1982) held that NSO eligibility should be based on a test short of a closure test.

The Agency believes that this new benchmark option meets the requirements of the Kennecott case for the same reasons the Agency indicated that book value meets those requirements in the notice of proposed rulemaking. Because the alternative benchmark is expressed in current year's dollars, it will be somewhat larger than book value of net investment, and therefore should provide a somewhat larger cushion against closure. The Agency seeks comments on this alternative benchmark.

The Agency is continuing its evaluation of the comments already received on the previously proposed eligibility tests. It will respond to those comments and comments on this alternative at final promulgation.

A modification of Appendix A incorporating the proposed option has been placed in the docket (Item No. IV–A–1) and has also been mailed to each party who commented or testified on the proposed regulations.

c. Changes to Profit Protection Test Consideration of Post-1977 Pollution Controls

Special provisions were also made in the proposed Profit Protection test for pollution control equipment installed after 1977. In that test, revenues and costs in the pre-control case are based on operating the smelter without any pollution controls installed after 1977.

[1] Book value of net investment is an accounting term defined as total assets minus current liabilities. In the proposal, the Agency incorrectly included the adjustment for depreciation of SO_2 controls installed after 1977 as part of the definition of book value. The Agency had simply intended to define the *benchmark* as book value plus depreciation of post-1977 pollution controls.

These provisions benefit those smelters that invested in pollution controls between the beginning of 1978 and the time of application. Analogously to the adjustment of book value in the Rate of Return Test, the Agency believes that such a benefit implicitly discriminates against those smelters that invested in pollution controls prior to 1977.

The Profit Protection Test has, therefore, been changed so that revenues and costs in the pre-control case are based on the assumption that the smelter is operating with all the SO_2 pollution controls which were installed between 1977 and the time of application for an NSO, in addition to those SO_2 pollution controls which were installed before 1978. (See modified Appendix A, Docket Item No. IV–A–1).

Interest on Long-Term Debt. Commenters correctly pointed out that the profit figure computed in the Profit Protection Test does not include interest on long-term debt as a deductible expense. The Profit Protection Test measures the effect on accounting profits of installing constant SO_2 control. Interest on long-term debt is properly included as an expense in calculating profits, and its omission from the test was an oversight. EPA is changing the calculation of profit so that interest on all debt (short and long-term) that is allocated to the smelter is deducted. (see modified Appendix A, Docket Item No. IV–A–1).

d. Change to Interim Waiver and Rate of Return Tests Overstatement of Horizon Value

Several commenters pointed out that the horizon value computed in the Rate of Return Test may overstate expected cash flows. This would occur when depreciation (for tax purposes) is taken in the last two years of the forecast period but not during the entire horizon period. Depreciation acts to reduce income tax obligations, thereby increasing cash flows. The five-year depreciation life applicable to pollution control investments may end at or near the last year of the forecast period. In such a case, using the last two years of the forecast period as the basis for the horizon period will overstate cash flows over the horizon period.

The degree of overstatement depends on how much depreciation remains over the horizon period. The overstatement is largest when the last year of depreciation is taken in the last year of the forecast period. The overstatement is much smaller when the first year of depreciation occurs in the last year of the forecast period.

This overstatement effects both the Rate of Return Test and the Interim Controls Test. The Agency is therefore changing the horizon value computation in both tests to correct this problem. The horizon value will now be calculated by separating the cash flows related to depreciation of pollution controls and the cash flows from other sources. These latter cash flows will no longer be affected by the timing of the pollution control investment within the forecast period. (See modified Appendix A, Docket Item No. IV–A–1).

e. Change to the Interim Waiver Test

One commenter maintained that the proposed test for a permanent waiver of interim constant controls overstates expected present value of future cash flows, the result being that the test is unfairly difficult to pass. According to the commenter, the test does not consider the real options facing a smelter because it assumes continued operation after 1988 in determining the present value of future cash flows, but it does not take into account the costs of all pollution controls needed to attain full compliance. The commenter further maintained that the test should require an applicant to assume one of two alternatives, comply or shut down by January 1, 1988—whichever alternative gives the greater expected present value of future cash flows.

EPA agrees that the interim waiver test, as currently structured, does not reflect the realistic options facing smelters. Scenarios other than those described by the commenter are possible. However, the Agency believes that it is impractical if not impossible to attempt to structure the interim waiver test so as to exactly track all possible scenarios. As a consequence, the Agency believes that a test structured along the lines suggested by the commenter is reasonable.

Accordingly, the Agency is now proposing that the interim waiver test be modified as follows:

A smelter applying for an interim waiver must assume either (a) cash flows only until January 1, 1988, taking into account interim constant control costs plus the present value of estimated liquidation value as of January 1, 1988 or (b) cash flows until the end of the horizon period, taking into account the costs of interim constant controls plus the costs of any additional SO_2 controls necessary for full compliance (assuming use of controls upon which NSO eligibility was based) by January 1, 1988, whichever set of assumptions gives the higher present value of future cash flows. Thus, a smelter would be eligible for a waiver from the requirement for use of interim constant controls if the higher of the two net present values of cash flows computed under assumptions (a) and (b) is less than liquidation value.

Liquidation value as of January 1, 1988 is taken into account in test (a) because, analytically it must be accounted for in evaluating whether a smelter would choose to close prior to January 1, 1988 rather than on January 1, 1988. Liquidation value at the end of the horizon period is not taken into account in test (b) both because its present value would undoubtedly be only a very small fraction of the present value of future cash flows. For more details on those changes see modified Appendix A (Docket Item No. IV–A–1).

f. Technical Changes

EPA has also made certain minor technical changes in Appendix A; these changes and those discussed above appear in modified Appendix A that has been added to this docket.

2. Forecast Data. A number of commenters have asked for more detail on how EPA arrived at the various forecasts used in the proposed regulations. The commenters desire greater detail on the methodology used, supporting data, expertise of the contractors who produced the forecasts, etc. Outlined below is an explanation of the additional information EPA is today presenting for public review and comment.

a. Toll Smelter Charge Forecasts and Other Forecasts Used in the Regulations

A number of comments were submitted which asked for more detail on the methodology used by EPA's contractor, CRU, Limited, when it developed the forecasts. Today's notice announces that a more detailed description of the methodology, prepared by CRU for EPA, is available and has been placed in the docket (Item No. IV–A–2).

CRU was unable to provide EPA with certain background data and information on some aspects of its methodology because such data and information were proprietary or otherwise confidential in nature. However, the Agency has provided an overall description of CRU's methodology and is making available as much nonproprietary information on CRU's methodology as it reasonably was able to obtain. In any event, the Agency believes that the expertise of CRU, as discussed below, establishes the validity of the methodology used to generate the smelting charge forecasts.

Also placed in the docket (Item Nos. IV–A–3a, IV–A–3b, and IV–J–1) was a description of methodology used by Data Resources, Inc. (DRI) in its development of the forecasts for annual percentage changes in wages, energy costs, and the GNP price deflator, all

elements which are used in the NSO eligibility tests.

We are providing this information for review and comment and to demonstrate the validity of EPA's forecasts in this area.

The Agency believes that the information provided by DRI on its methodology is sufficiently complete. The Agency believes that the validity of DRI's methodology and forecasts is established by DRI's qualifications as a leading expert in the field of economic forecasting (described in more detail below).

b. 1. Guidelines for Smelters To Use in Producing Their own Toll Smelter Charge Forecasts

The proposed regulations permitted smelters to petition the Agency to allow use of their own toll smelter charge forecasts. Several comments were received which demonstrate a concern that EPA may not use a smelter's copper forecasts because EPA's forecasts will be given preferential stature. Appendix A has been modified so as to both make clear that a smelter's smelting charge forecasts will be evaluated on their own merits and to provide more specific requirements which smelting charge forecasts of principal products (i.e., copper, for copper smelter, lead for lead smelter, etc.) must satisfy in order to be found acceptable. The requirements are as follows: (1) The smelter generated forecasts must be prepared by a widely recognized forecasting authority with expertise comparable to that of the forecaster relied upon by EPA (Commodities Research Unit, Ltd.). (2) As much documentation of forecasting methodology as can reasonably be obtained from the forecaster must be made available to EPA. The extent of such documentation must, at a minimum, be comparable to the documentation made available by CRU. (See modified Appendix A, Docket Item No. IV–A–1).

We invite comments on these guidelines and other suggestions for guidelines.

2. Alternative Forecasts of Annual Percentage Changes in Energy, Prices, Wages, and GNP Deflator

Appendix A of the proposal provides that smelters may petition the agency to accept projections of annual percentage change in energy, prices, wages, and GNP deflator other than EPA's projections, provided the projections are fully documented. (Appendix A, Section 2.4.2). In light of DRI's expertise, and extensive data banks and the widespread use of DRI's forecasts, EPA wishes to make clear that alternative forecasts of these indices will be accepted only if very compelling reasons are provided. In any event, such forecast must be prepared by a widely recognized forecasting authority with expertise in forecasting comparable to that of DRI. Moreover, the documentation of that forecaster's methodology must be comparable to that provided by DRI.

c. Qualification of Forecasters

1. *Forecasters of Toll Smelter Charge Forecasts.* EPA believes that the toll smelter charge forecasts by CRU constitute a thorough effort by a highly qualified contractor in the field of economic forecasting for the metals industry. The contractor EPA used to prepare these forecasts (CRU, Limited, New York, N.Y.) has had much experience in international metals market studies, by-product sales and production, and the economics of metals production from the mining stage through final refining. In addition, CRU has extensive databanks on mine, smelter, and refinery capacities in the non-socialist world and has had much experience in making detailed forecasts of supply, demand and prices for the nonferrous metals industry. We announce today that we have placed several documents in the docket (Item Nos. IV–A–4 and IV–A–5), discussing in greater detail, CRU's qualifications in these and other areas of expertise.

We believe the documents demonstrate CRU's expertise in the forecasting field and establish the validity of the methodology and forecasts used in these regulations. The documents also provide guidance to NSO applicants who wish to generate their own forecasts by use of a thoroughly competent, well recognized forecasting authority.

2. *Forecaster of Other Forecast Data Elements.* Data Resources, Inc. (DRI) prepared forecasts of annual percentage changes in wages, emergy costs and, the GNP price deflator, to be used by smelters in the NSO application process. EPA believes that DRI's expertise in this area is excellent and considers their forecasts to be very satisfactory for use in the NSO and Interim Waiver Tests. We announce today that there are available in the docket, several items which further support DRI's expertise in this area. The items are numbered IV–A–3a, IV–A–3d, IV–A–3e and IV–A–3f.

c. Updated Calculations of the Forscast Data Indices for Energy Prices, Wages and GNP Deflator

Forecast of annual percentage changes for energy prices (electricity, natural gas, coal, and fuel oil), wages and the GNP deflator have been updated by DRI. These updated forecasts have been placed in the docket (Item IV–A–6) and have also been incorporated in the updated Appendix A (Item IA–A–1). As noted above, EPA has also made available a description of the methodology used by DRI in preparing these forecasts and documentation of DRI's expertise.

Forecasts of copper smelting charges have not been updated, but may be updated in the future. However, those forecasts, as expressed in nominal dollars, have been changed to reflect the application of the updated GNP deflator. Since no forecasts of smelting charges were provided for the year 1991 by CRU, the Agency intends to allow the use of the average of the forecasts for the years 1989 and 1990 in 199 if the forecast period extends to 1991.

Equity Risk Premium. The proposed financial eligibility tests employ a discount rate for converting future cash flows and profits to their present value equivalents. The formula provided to applicants for calculating the discount rate (weighted average cost of capital) incorporates an estimate of the equity risk premium for the nonferrous metals industry. The risk premium provided in the proposed tests was estimated in a study by Pogue.[1]

There was a concern expressed in the comments that the Pogue estimate was out of date, since it was based on data from 1971 through 1974. The Agency felt that this was a valid point, particularly with regard to the copper industry. The 1971 through 1974 period was a period of high growth and healthy profits for the copper industry. Since then, however, the industry has been in recession, with little growth and low or negative profits.

The Agency asked its contractor, TCS, to re-estimate the equity risk premium for the nonferrous metal industry using more recent data. Applying the methodology described in the Pogue study to more recent data, TCS estimated the risk premium to be 8.6 percent. Pogue had arrived at an estimate of 7.75 percent. This higher figure seems to be in accord with the poor performance of the copper industry since the Pogue study was completed. (A detailed description of the method of recalulation of the risk premium was placed in the docket. See Docket Item No. IV–A–6).

Historical Rate of Return. The historical rate of return used in estimating transfer prices on affiliated party transactions is changed from 10.3 to 8.0 percent. The methodology for

[1] Pogue, Gerald A., *Estimation of the Cost of Capital for Major United States Industries With Application to Pollution Control Investment*, EPA 230/3–76–001, November 1975, pp. 4–22.

calculating this figure is in the rulemaking docket (Item No. IV–A–6).

Horizon Value. The horizon factor is calculated by using the current real weighted average cost of capital. Based upon the changed equity risk premium (as explained above), the nominal cost of capital (from which the real cost of capital is derived) has increased. However, the real cost of capital has not changed. (See explanation in Docket Item No. IV–A–6). Therefore, the horizon factor remains unchanged at 9.6.

3. Deadline for Filing Complete NSO Application

A commenter noted that the 90-day period of time between a smelter submitting a letter of intent to apply for an NSO and submitting a completed application was too long. We agree, given that there was NSO regulations effective during the first NSO period, that the industry is familiar with them, and that the information required here is similar. We today propose to shorten the period of time to 60 days, but, as in the original proposal, allow additional time for good cause.

4. Miscellaneous Corrections

A correction to the first period NSO regulations was inadvertently left out of the proposed regulations. The correction was originally proposed as a supplement to the first period NSO regulations (December 24, 1980; 45 FR 85084) and then promulgated on March 23, 1981 (46 FR 18025). We today amend § 57.403 (a) and (b) to make a smelter owner's consent to liability inapplicable in criminal proceedings.

Section 57.201(d)(2)(i) is also corrected today to cite § 57.201(d)(1) instead of § 57.104(d)(1). This was a typographical error.

Dated: August 24, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

PART 57—[AMENDED]

§ 57.201 [Amended]

1. In § 57.201, paragraph (d)(2)(i) is corrected to read as follows:

* * * * *

(d) * * *

(2)(i) If the smelter is determined to be eligible for an NSO under § 57.201(d)(1), the issuing Agency shall apply the Appendix A financial eligibility tests again before issuing an NSO in order to determine if the smelter can comply with its SIP requirements on or before January 1, 1988 by installing adequately demonstrated technology which is reasonably available.

* * * * *

§ 57.202 [Amended]

2. In § 57.202, paragraph (a) is revised to read as follows:

* * * * *

(a) *Letter of Intent.* To initiate an application for an NSO, the owner or operator of a smelter shall send a letter of intent to an appropriate air pollution control agency. The letter of intent shall contain a statement of the owner's intent to apply for an NSO, and an agreement to provide any information required under this part. The letter of intent shall be signed by a corporate official authorized to make such commitments. Upon receipt of any letter of intent by the issuing agency, the SIP emission limitation for sulfur dioxide, as to that applicant, shall be deemed suspended for 60 days. The 60-day suspension may be extended for good cause at the discretion of the Administrator.

* * * * *

3. Section 57.403 is revised to read as follows:

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

As a condition of receiving a Primary Non-ferrous Smelter Order (NSO) under Section 119 of the Clean Air Act, for the smelter operated by (*name of company*), at (*location*), the undersigned official, being empowered to do so, consents for the company as follows:

(1) In any civil proceeding (judicial or administrative) to enforce the NSO, the company will not contest:

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.

(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obtain data from ambient air quality monitors operated by the company under the requirements of the NSO.

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under Section 307(b) of the Clean Air Act.

§ 57.802 [Amended]

4. In § 57.802, paragraph (f)(1) is revised to read as follows:

* * * * *

(f) * * *

(1) The higher of the two net present values of future cash flows computed under the two alternative sets of assumptions set forth in the instructions to Schedule D.6 in Appendix A is less than liquidation (salvage) value; or

* * * * *

[FR Doc. 84–23050 Filed 8–31–84; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule will implement the crisis counseling provisions of the Disaster Relief Act of 1974 (Pub. L. 93–288), section 413. This will establish Federal Emergency Management Agency (FEMA) regulations on crisis counseling assistance, replacing those which are currently published as Department of Health and Human Service (HHS) regulations (42 CFR Part 38). They are based on formal policy review and on seven years of program experience.

DATES: Interested persons may participate in this rulemaking by submitting comments, which will be accepted until November 5, 1984. Any comment submitted on or before that date will be carefully evaluated prior to publication of the final rule.

ADDRESS: Send comments to the Rules Docket Clerk, Federal Emergency Management Agency, Office of the General Counsel, 500 'C' Street, SW, Washington, DC 20472.

All comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 'C' Street, SW, Washington, DC 20472, 202–287–0555.

SUPPLEMENTARY INFORMATION: Under section 413 of the Act, professional crisis counseling services can be provided to victims of major disasters in

order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The assistance is provided primarily in the form of financial aid to States or local agencies or private mental health organizations. The program is intended to supplement the efforts and available resources of the State and local governments. The assistance is short-term and provided at no cost to eligible disaster victims.

FEMA and its predecessor agencies have been providing crisis counseling services through the National Institute of Mental Health in accordance with regulations published by HHS at 42 CFR Part 38 (41 FR 52052) for seven years. During this time FEMA decided to exert more influence over programs under the Disaster Relief Act, including the crisis counseling program. One way to achieve this is by publishing the governing regulations as FEMA regulations.

At the time these regulations are adopted, the current HHS regulations will be without effect.

The following paragraphs contain a section-by-section explanation of the major changes.

Definitions

Definitions were added to describe new procedures and levels of responsibility in the crisis counseling program.

Agency Policy

This section establishes FEMA's policy in providing crisis counseling assistance and describes the responsibilities of FEMA and HHS in coordination and operation of the program.

State Initiation of the Crisis Counseling Program

This section establishes the requirements for obtaining assistance. It states the primary method of obtaining assistance under section 413 (applications by the Governor, FEMA funding through the Secretary and State administration), but provides for designation of a public or private grantee when a State cannot, for serious reasons, administer the program. It also amends the present application process with additional agreements/certifications by the State and a submission of a plan of services for State administered programs.

Assignment of Responsibilities

This section has been added to clarify the responsibilities of the FEMA Regional Directors, FEMA Headquarters staff, and the Secretary related to oversight, management, and operation of the crisis counseling program.

Time Limitations

Language has been added which extends the program period from 180 days to nine months. Program experience had indicated that 180 days are insufficient to meet the intent of the Act and that nine months are more realistic.

Environmental Considerations

This regulation is procedural and FEMA has determined that there will be no significant impact on the environment caused by implementation of this regulation. Recently, an amendment to FEMA's final rule on Environmental Considerations (44 CFR Part 10) was published. That amendment provided categorical exclusions for Crisis Counseling Assistance and Training.

Regulatory Flexibility Act

This rule has been determined not to be a "major rule" within the sense of the Regulatory Flexibility Act (5 U.S.C. 601), for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It 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.

Therefore, an initial regulatory flexibility analysis will not be prepared.

Authority

This rule is issued under the authority of Section 601 of the Disaster Relief Act of 1974 (Pub. L. 93–288).

Content of the Rule

The rule implements section 413 of the Disaster Relief Act of 1974. It states procedures for obtaining financial assistance for providing crisis counseling services to victims of a major disaster declared under the Act.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

§ 205.51 [Removed]

Accordingly, FEMA proposes to remove 44 CFR 205.51 and add new section 44 CFR 205.59:

§ 205.59 Crisis Counseling Assistance and Training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 413 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of Health and Human Services (HHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who approves or disapproves a request for assistance under section 413 of the Act.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the state mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 413 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster such as those which may be provided at disaster assistance centers. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency prior to and separate from the regular application process for crisis counseling assistance.

(7) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and

beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations alleviating the damage, loss, hardship, or suffering caused thereby.

(8) "Project Officer" means the person assigned by the Secretary, HHS, to monitor a Crisis Counseling Program, provide technical assistance and guidance, and be the contact point within HHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA.

(10) "Secretary" means the Secretary of HHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State initiation of the Crisis Counseling Program*—(1) *Assessment.* To obtain assistance under this section, the governor or his/her authorized representative must initiate an assessment of the need for crisis counseling within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental assistance is required.

(2) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process described in the remainder of this section. The Regional Director shall consult with the Secretary in evaluating the need for immediate services and the State's capability for providing the services. Immediate services are not intended to be a replacement for the regular program. Therefore, funding shall be granted only for that period of time that does not exceed 60 days following the declaration of the disaster except that if an application for the regular program under paragraph (d)(3) of this section, has been submitted, funding for immediate services may continue until a decision has been made on that application.

(3) *Application for Regular Program.* Assistance under section 413 is provided primarily in the form of a grant to a State, local or private mental health organization designated by the Governor to administer the Crisis Counseling Program. The Governor or his/her authorized representative shall submit an application to the Assistant Associate Director, through the Regional Director, and simultaneously to the Secretary, not later than 60 days following the declaration of the major disaster.

(i) The application represents the Governor's agreement and/or certification:

(A) That the requirements are beyond the State and local governments' capabilities;

(B) That the program, if approved, will be implemented according to a plan approved by the Assistant Associate Director;

(C) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(D) To include mental health disaster planning in the State's emergency plan prepared under Title II, Pub. L. 93–288.

(ii) The application must include:

(A) Standard Form 424;

(B) The geographical areas within the designated disaster area for which services will be supplied;

(C) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(D) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; and

(E) A plan of services as described in paragraph (d)(4) of this section.

(4) *Plan of services*—(i) *State Administered Programs.* In accordance with paragraph (d)(3) (ii)(D) of this section, the governor must submit a plan of services to the Regional Director. The plan of services must include:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled; training must be indicated.

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) Training plans. If a training program for staff is planned, it must be described, and the number of workers needing such training;

(D) Facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to both services and training, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(ii) *Public or Private Mental Health Agency Programs.* If the Governor determines, during the assessment, that because of unusual cirmcumstances or serious conditions within the State or local mental health network the State cannot carry out the Crisis Counseling Program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area. In order to obtain the financial assistance requested by the Governor, this agency or organization must submit a plan of services, as in paragraphs (d)(4) of this section. The Governor's application is not complete without this plan of services.

(e) *Assignment of Responsibilities.* (1) The Regional Director shall:

(i) In the case of a request for immediate services, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's request, and obligate and advance funds for this purpose;

(ii) In the case of a regular program application:

(A) Acknowledge receipt of the request;

(B) Request the Secrtary to conduct a review to determine the extent to which assistance requested by the Governor or his authorized representative is warranted;

(C) Based on the recommendation of the Secretary, recommend approval or disapproval of the application for assistance under this section; and forward the recommendation and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance (through the Secretary) if requested to do so; and

(E) Look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) a verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section, and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director and the Assistant Associate Director; and

(vi) Make the appeal determination involving allowable costs and termination for cause as described in paragraph (g)(3) of this section.

(3) The Assistant Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the Department of Health and Human Services;

(iii) Request that the Secretary designate a Project Officer; and

(iv) Maintain liaison with the Secretary.

(f) *Time Limitations*—(1) *Application filing.* The Governor or his/her authorized representative must, not later than 60 days from the date of declaration of a major disaster, submit an application to the Regional Director.

(2) *Program period.* The authorized program period shall not exceed nine months from the first day services are provided, except that upon the request of the Regional Director and the Secretary, the Assistant Associate Director may authorized up to 90 days of additional program period because of documented extenuating circumstances.

(g) *Eligibility guidelines*—(1) *For services.* An individual may be eligible for crises counseling services if he/she was a resident of the designated major disaster area or was located in the area at the time of the major disaster and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) *For training.* (i) Those mental health specialists who are employed under or are consultants to the Crisis Counseling Program are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals.

(ii) All Federal, State and local disaster workers responsible for assisting disaster victims are eligible for the general instruction designed to enable them to deal effectively and humanely with disaster victims.

(h) *Grant Awards.* (1) The amounts of any regular program grant award shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose. The Assistant Associate Director will, depending on availability of funds, advance funds to HHS for regular program funding. The Regional Director may advance funds to a State for immediate services.

(2) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(3) Several other regulations of the Department of Health and Human Services apply to grants under this section. These include, but are not limited to:

45 CFR Part 16—HHS grant appeals procedures
42 CFR Part 50, Subpart D—PHS grant appeals procedures
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services (effectuation of Title VI of the Civil Rights Act of 1964)
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in Federally-assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in Federally-assisted programs
45 CFR Part 91—Nondiscrimination on the basis of age in Federally-assisted programs

(4) Any funds granted pursuant to this section shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(i) *Reporting requirements—(1) Grantees (States/Public or Private Agencies).* The grantees shall submit the following reports to the Secretary and the Regional Director:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary:

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of the audit; and

(v) Such additional reports as the SCO, FCO or Secretary may require.

(2) *The Secretary.* As part of project monitoring responsibilities, the Secretary shall report to the Assistant Associate Director and to the Regional Director at least quarterly on the progress of Crisis Counseling programs, in a report format jointly agreed upon by

the Secretary and the Regional Director. The Secretary may also be required to provide special reports as requested by the Federal Coordinating Officer. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(j) *Financial Accountability.* All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Assistant Associate Director a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(k) *Federal audits.* The Crisis Counseling Program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, the Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

Dated: August 1, 1984.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84-23311 Filed 8-31-84; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Blackside Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on a petition.

SUMMARY: The Service reports the initial finding that has been made on the substantiality of information in a petition to list the blackside dace (*Phoxinus cumberlandensis*) which occurs in Kentucky and Tennessee. This petition was received by the Service on May 16, 1984. This notice reports the Service's 90-day finding as required by the Endangered Species Act Amendments of 1982.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240; (703/235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires that the Service make a finding whether a petition to list, reclassify, or delist a species presents substantial scientific or commercial information that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be published promptly thereafter in the **Federal Register.** Similarly, section 4(b)(3)(D)(i) of the Act requires a finding within 90 days on a petition to revise critical habitat, with prompt publication of the finding. When a positive finding is made on a petition to list, reclassify, or delist a species, the Service is required to promptly commence a review of the status of the species.

The petition to list the blackside dace (*Phoxinus cumberlandensis*) as threatened was submitted by Mr. George Burgess, Secretary-Treasurer of the Southeastern Fishes Council, on May 11, 1984, and was received by the Service on May 16, 1984. The service has reviewed the petition and found that the information submitted was substantial in indicating the petitioned action may be warranted. The administrative record for this finding was completed on July 24, 1984. The criteria in 50 CFR 424.14 were used to define and evaluate the petition and to distinguish it from comments.

For the blackside dace, the required status review began with the December 30, 1982, vetebrate notice of review (47 FR 58454-58460). The blackside dace is a rare minnow with a restricted geographic range in the upper Cumberland River drainage of Kentucky and Tennessee, and has relatively narrow habitat requirements. The blackside dace was discovered in 1975 and described as a new species in 1978. *Phoxinus cumberlandensis* is an inhabitant of small upland streams of the upper Cumberland drainage of southeastern Kentucky and adjacent extreme northern Tennessee. Most populations occur above Cumberland Falls, where the species is believed to have originated. A small number of populations occur in various tributaries below the Falls. General habitat requirements are small streams, moderate gradient with ample pool areas, relatively clean and predominantly rocky substrates, cool maximum water temperatures, and probably at least moderate amounts of periphytic production for food. These requirements are in turn linked to relatively stable, well-vegetated watersheds and adequate riparian growth to ensure shading and cooling of streams.

The Service hereby solicits data concerning this species now under review for listing. Especially sought is information regarding distribution, threats and any recommended critical habitat for the species. Comments received will be considered in any future actions for this species.

If a petition is found to present substantial information indicating that an action may be warranted, the Service must decide within 12 months of its receipt whether the requested action is warranted in accord with sections 4(b)(3)(B) and 4(b)(3)(D)(ii) of the Act, as amended.

This notice was prepared by Dr. James D. Williams of the Service's Office of Endangered Species in Washington (703/235-1975), with evaulations by appropriate staff biologists in the Washington Office and Endangered Species Program staff of the Service's Regional Offices and Field Stations.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

(Endangered Species Act of 1973, as amended; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

Dated: August 24, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23285 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered With Critical Habitat Status for Asclepias Welshii (Welsh's milkweed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and reopening of comment period.

SUMMARY: Sec. 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if requested within 45 days of the publication of a proposed rule. The Service gives notice that a public hearing will be held in Kanab, Utah on the proposed determination of endangered with critical habitat status for *Asclepias welshii* (Welsh's milkweed), and that the comment period on the proposal will be reopened.

DATES: The public hearing will be held on Septemger 18, 1984, from 6:00 p.m. to 9:00 p.m. Comments on the proposal must be received by September 28, 1984.

ADDRESS: The public hearing will be held at the Kane County Courthouse, District Courtroom, 70 N. Main, Kanab, Utah. Written comment and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours, by appointment at the Regional Endangered Species Division, 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. 25486, DFC, Denver, Colorado 80225, (303/234–2496).

SUPPLEMENTARY INFORMATION:

Background

Asclepias welshii (Welsh's milkweed) is an herbaceous perennial plant, 2.5–10 cm. tall, with large oval leaves and cream colored flowers that are rose-tinged in the middle. The plants grow on sand dunes in the Coral Pink Sand Dunes, Kane County, Utah. The species is jeopardized by ORV use and livestock grazing. The Service proposed a determination of endangered with critical habitat status for *Asclepias welshii* in the **Federal Register**, June 6, 1984 (49 FR 23399–23402). The period for submission of public comments on the proposal was originally scheduled to end on August 6, 1984. Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On July 23, 1984, the Service received a letter from Milo A. Barney, Associate Director for Resource Management, Utah Department of Natural Resources, requesting a hearing on the proposal to determine endangered with critical habitat status for *Asclepias welshii*. The Service has scheduled this hearing for September 18, 1984, for 6:00 p.m. to 9:00 p.m., at the Kane County Courthouse, District Courtroom, 70 N. Main, Kanab, Utah. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing.

In order to accommodate the hearing, the Service also reopens the public comments period on the proposal. Written comments may now be submitted until September 28, 1984, to the Service's Office in the **ADDRESS** section.

Author

The primary author of this notice is Dr. James L. Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, Colorado 80225 (303/234–2496).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 28, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23273 Filed 8–31–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Oregon Department of Agriculture (OR) and Southern Illinois Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Oregon Department of Agriculture (Oregon), and Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The April 2, 1984, issue of the **Federal Register** (49 FR 13061) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Oregon's and Southern Illinois' designations termination on September 30, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by May 2, 1984.

Oregon and Southern Illinois were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the June 1, 1984, issue of the **Federal Register** (49 FR 22840). Comments were to be postmarked by July 16, 1984.

No comments were received regarding Oregon's and Southern Illinois' designation renewal.

FGIS has evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with section 7(f)(1)(B), has determined that Oregon and Southern Illinois are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the April 2, **Federal Register** issue.

Effective October 1, 1984, and terminating September 30, 1987, Oregon and Southern Illinois are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Oregon Department of Agriculture, Agriculture Building, Salem, OR 97310
Southern Illinois Grain Inspection Service, Inc., 5900 North Illinois Street, P.O. Box 3099, Fairview Heights, IL 62208

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: August 17, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84–23253 Filed 8–31–84; 8:45 am]
BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Areas Currently Assigned to Agricultural Seed Laboratories, Inc. (AZ), Decatur Grain Inspection, Inc. (IL), and South Carolina Department of Agriculture (SC)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Agricultural Seed Laboratories, Inc. (Agri Seed), Decatur Grain Inspection, Inc. (Decatur), and South Carolina Department of Agriculture (South Carolina).

DATE: Comments to be postmarked on or before October 19, 1984.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. 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., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determination not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The July 2, 1984, issue of the **Federal Register** (49 FR 27190) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in

the areas currently assigned to the official agencies. Applications were to be postmarked by August 1, 1984.

Agri Seed and South Carolina, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

Two applications were received requesting designation in the Decatur area. Decatur requested designation for the entire geographic area currently assigned to that agency. In addition, Ronald D. and Ruth E. Eddings, proposing to do business as Eddings Grain Inspection Service also applied for designation for the entire geographic area currently assigned to the Decatur agency.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All coments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than October 19, 1984.

Comments and other avialable information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: August 17, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84–23254 Filed 8–31–84; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Alabama Department of Agriculture and Industries (AL) and D.R. Schaal Agency (IA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Alabama Department of Agriculture and Industries and D. R. Schaal Agency.

DATE: Applications to be postmarked on or before October 4, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Department Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. The Alabama Department of Agriculture and Industries (Alabama), Beard Building, P.O. Box 3336, Montgomery, AL 36109, was designated under the Act as an official agency for the performance of inspection and weighting functions on March 1, 1982; and the D. R. Schaal Agency (Schaal), 219 River Avenue North, P.O. Box 213, Belmond, IA 50421, for inspection functions on that date.

The agencies' designations terminate on February 28, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alabama, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Alabama, except those export port locations within the State.

The geographic area presently assigned to Schaal, in the State of Iowa, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. 169; U.S. Route 169 north to the northern Kossuth County line.

The following location, outside of the foregoing contiguous geographic area is presently assigned to Schaal and is part of this geographic area assignment: Farmers Co-op Company, Eagle Grove, Wright County.

Exceptions to the described geographic area are the following locations situated inside Schaal's area which have been and will continue to be serviced by the following official agencies:

Central Iowa Grain Inspection Service, Inc.:

1. Farmers Co-op Elevator Company, Chapin, Franklin County;
2. Hampton Farmers Co-op Company, Hampton, Franklin County; and
3. Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

A. V. Tischer and Son, Inc.:

1. Cargill, Inc., Algona, Kossuth County;
2. Big Six Elevator, Burt, Kossuth County;
3. Farmers Elevator, Goldfield, Wright County; and
4. Farmers Co-op Elevator, Holmes, Wright County.

Interested parties, including Alabama and Schaal, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic

areas are for the period beginning March 1, 1985, and ending February 29, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Secs. 8, 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: August 17, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84–23255 Filed 8–31–84; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Le Bois, the Resort at Cascade Lake, Boise National Forest, Valley County, Idaho; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the proposed Le Bois, The Resort at Cascade Lake on the Cascade Ranger District near Cascade, Idaho.

An application proposing a four-seasons resort near Cascade Lake has been received from a private developer. The resort would include downhill ski facilities on National Forest land and a marina located on land administered by the Bureau of Reclamation. Associated facilities on private land could include a ski lodge, condominiums, public overnight accommodations, a snowmobile and cross-country ski center, food and beverage services, stables, tennis courts, and a golf course.

The range of alternatives for this site will be considered in the environmental impact statement, including maintenance of the current management (no ski or marina development). Other alternatives will consider a resort with some or all of the ski or marina facilities. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed in the environmental impact statement.

2. Elimination of insignificant issues or those which have been covered by a previous environmental review.

3. Determination of potential cooperating agencies and assignment of responsibilities.

The Bureau of Reclamation, Department of Interior, will participate as a cooperating agency in development of the environmental impact statement to evaluate impacts on water quality, the reservoir fishery, recreational use of the reservoir, and related matters.

Public meetings to provide opportunity for comments will be held at the Hall of Mirrors, 700 West State Street, Boise, Idaho, at 7 p.m., Monday, September 24; and at the Donnelly School, Donnelly, Idaho, at 7 p.m. Tuesday, September 25.

John J. Lavin, Forest Supervisor of the Boise National Forest in Boise, Idaho, is the responsible official.

The analysis is expected to take about 12 months. The draft environmental impact statement should be available for public review by October 1985.

Written comments and suggestions concerning the analysis should be sent to John J. Lavin, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702, by October 14, 1984

Questions about the proposed action and environmental impact statement should be directed to Chuck Jones, District Ranger, Cascade Ranger District, phone 208–382–4271.

John J. Lavin,

Forest Supervisor.

[FR Doc. 84–23304 Filed 8–31–84; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Allegheny Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and 7 CFR Part 1794, REA's Environmental Policies and Procedures, has made a Finding of No Significant Impact (FONSI), with respect to a request for financing assistance to Allegheny Electric Cooperative, Inc. (Allegheny), of Harrisburg, Pennsylvania. This proposed financing assistance will be used by Allegheny for the construction of a 20.3 MW conventional hydroelectric generating facility at an existing multipurpose dam located on the Raystown Branch of the Juniata River in Huntingdon County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA), along with Allegheny's Borrower's Environmental Report (BER), and other related material may be reviewed in, or requested from the Office of the Director, Northeast Area—Electric, REA, South Agriculture Building, Room 0243, Washington, D.C. 20250, telephone: (202) 382–1420, or at the offices of Allegheny (Mr. William F. Matson, President), P.O. Box 1266, Harrisburg, Pennsylvania 17108, telephone: (717) 233–5704.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Allegheny and determined that it represents an accurate evaluation of the environmental impacts of the proposed hydroelectric project. REA has also determined that the proposed hydroelectric project will have no adverse impact on threatened and endangered species, wetlands, important farmland, or known historic and archeological sites. Construction of the powerhouse and tailrace will occur within the downstream floodplain. However, REA has determined there are no practicable alternatives to constructing hydroelectric facilities within a floodplain. Impacts to air and water quality as a result of construction will be short-term and are not expected to be significant.

The alternatives evaluated by REA included no action, other hydroelectric sites, and coal-fired generation. After evaluating these alternatives, REA has determined that construction of the hydroelectric project, as proposed, represents an acceptable alternative when environmental, economic, and technical factors are balanced.

In accordance with 7 CFR Part 1794, Environmental Policies and Procedures, the project was advertised in a newspaper with general circulation in Huntingdon County, Pennsylvania. No comments were received.

Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA has concluded that if the proposed financing assistance is approved, it will not represent a major Federal action significantly affecting the quality of the human environment. An Environmental Impact Statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 27, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23374 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-15-M

The Big Horn County Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration; USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Big Horn County Electric Cooperative, Inc. (Big Horn), of Lodge Grass, Montana. The project consists of the construction of approximately 56 km (35 miles) of 69 kV transmission line and would be located in Big Horn County, Montana.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from the office of the Director, Western Area—Electric, REA, South Agriculture Building, Washington, D.C. 20240, telephone: (202) 382-8848, or the office of Big Horn County Electric Cooperative, Inc., (Mr. Duane A. Portwood, Manager), Lodge Grass, Montana 59050, telephone: (406) 639-2341, during regular business hours.

SUPPLEMENTARY INFORMATION: REA has reviewed the Borrower's Environmental Report (BER) submitted by Big Horn and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project would consist of approximately 56 km (35 miles) of 69 kV transmission line between the Hardin Substation and the Lodge Grass Substation. The new line would be built on an existing 69 kV transmission line right-of-way after the present line is dismantled. Possible REA actions could include providing financing assistance to Big Horn for the proposed project, approving construction contracts, power rate contract, etc., related to utilization of the proposed facilities.

The BER and EA adequately consider potential impact of the proposed project to resources including threatened and endangered species, important farmland, prime forest land, prime rangeland, cultural resources, floodplains, and wetlands.

Alternatives examined included no action, reconductoring the existing transmission system, energy conservation, alternative transmission routes and plans, and underground construction. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative because it meets Big Horn's needs with a minimum adverse impact.

Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the environment.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, dated March 13, 1984, Big Horn advertised the availability of its BER in the local newspaper. No comments were received.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 28, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23383 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-15-M

Homer Electric Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Homer Electric Association, Inc. (Homer Electric), of Homer, Alaska. The project consists of constructing about 96 km (59 miles) of 115 kV transmission line in the southern portion of the Kenai Peninsula, Alaska.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from Mr. William E. Davis, Director, Western Area—Electric, REA, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 382-8848, or the office of Homer Electric Association, Inc. (Mr. B. Kent Wick, Manager), 3977 Lake Street, Homer, Alaska 99603, telephone: (907) 639-2341, during regular business hours.

SUPPLEMENTARY INFORMATION: REA has reviewed the Borrower's Environmental Report (BER) submitted by Homer Electric and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project would consist of approximately 96 km (59 miles) of 115 kV transmission line between the Fritz Creek Substation and the Soldotna Substation in the southern portion of the Kenai Peninsula, Alaska. REA may provide financing assistance to Homer Electric for the proposed project.

The BER and EA adequately consider potential impacts of the proposed project to resources including prime farmland, forest land, rangeland, water quality, air quality, vegetation, floodplains, wetlands, cultural resources and threatened or endangered species.

Alternatives examined included no action, rebuilding the existing transmission system, building generating facilities, energy conservation, alternative voltages, alternative corridors, and underground construction. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative because it meets Homer Electric's need with a minimum of adverse impact.

Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, dated March 13, 1984, Homer Electric advertised the availability of its BER in the local newspaper. No comments were received.

This program is listed in the Catalog of Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 27, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23381 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Tainter Lake Critical Area Treatment RC&D Measure, Wisconsin; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Enviornmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tainter Lake Critical Area Treatment, RC&D Measure, Dunn County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cliffton A. Maguire, State Conservationist, Soil Conservation Service, 4607 Hammersley Road, Madison, Wisconsin, 53711, telephone (608) 264–5351.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Cliffton A. Maguire, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns the primary objective to stop the gully advancement and control erosion thus protecting the town road and culverts from potential loss from erosion; the secondary objective is to reduce sediment deposition into Lake Tainter. This action will improve the quality of water, maintain the effectiveness of the fishery resource and reduce property damages and losses which diminish the quality of life for the local residents. The purpose of this measure is critical area treatment. The planned works of improvement include unstable gullies to be shaped and seeded. Runoff waters from the watershed will be controlled through a drop inlet structure, a grassed diversion and conservation treatment of the croplands.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cliffton A. Maguire.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: July 26, 1984.

[FR Doc. 84–23331 Filed 8–31–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed; Week Ended August 24, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date Filed	Docket No.	Description
Aug. 20, 1984	42435	Tower Travel Corporation d/b/a Atlantic Express, c/o Jerrold Scoutt, Jr., Zuckert, Scoutt, Rasenberger and Johnson, 888 Seventeenth Street, NW., Washington, D.C. 20006–3959. Application of Tower Travel Corporation d/b/a Atlantic Express pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity to provide scheduled interstate, overseas and foreign air transportation and charter air transportation, for a fitness determination, and for such approvals of interlocking and ownership relationships as may be required by section 408 and 409 of the Act; Applicant requests issuance of a certificate to authorize it to engage in: (a) Scheduled foreign air transportation of passengers, property and mail, as follows: Between points within the United States of America including, but not limited to, the following coterminal points: New York, New York; Miami, Florida; and points in: France, including Paris, Nice and Marseille; and beyond; (b) Scheduled interstate and overseas air transportation of passengers, property and mail between all points in the United States of America, its territories and possessions; and (c) Worldwide charter air transportation of persons and property to and from points in the United States of America. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 17, 1984.
Aug. 22, 1984	42291	Royalcoach Airline, c/o Morton L. Caplan, Caplan and Overlander, 727 West 7th Street, Suite 255, Los Angeles, California 90017. Supplement No. 1 to the Application of Royalcoach Airline pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations to engage in scheduled interstate/overseas air transportation. Answers may be filed by September 19, 1984.
Aug. 24, 1984	42361	Viacao Aerea Sao Paulo, S. A. (VASP), c/o Robert D. Papkin, Squire, Sanders and Dempsey, 1201 Pennsylvania Avenue, NW., Washington, D.C. 20004. Supplement No. 1 to the Application of VASP for a foreign air carrier permit. Answers may be filed by September 21, 1984.
	42194	Air Via, Inc., c/o John W. Simpson, Kelley Drye and Warren, 1333 New Hampshire Avenue, Washington, D.C. 20036. Amendment No. 4 to the Application of Air Via, Inc. Answers may be filed by September 21, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–23378 Filed 8–31–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42125; Order 84-8-110]

Connie Kalitta Services, Inc. Application; Foreign Charter Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Application of Connie Kalitta Services, Inc. in Docket 42125 for certificate authority under section 401 of the Federal Aviation Act to offer foreign charter air transportation of property, and mail. Order 84-8-110.

SUMMARY: The Board has tentatively found and concluded that (1) the award of certificate authority to Connie Kalitta Services, Inc. to conduct foreign charter air transportation of property and mail is consistent with the public convenience and necessity, and (2) that Connie Kalitta Services, Inc., is fit, willing, and able to provide such service. The complete text of Order 84-8-110 is available as noted below.

DATES: Objections to the Board's tentative findings and conclusions shall be filed by September 14, 1984. Answers to objections shall be filed by September 21, 1984.

ADDRESS: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 42125.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5445.

SUPPLEMENTARY INFORMATION: The Complete text of Order 84-8-110 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-8-110 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23376 Filed 8-31-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-8-107; Docket 42445]

Temporary Certificates of Public Convenience; American Airlines, Inc. et al.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Show-Cause Proceeding: Order 84-8-107, Docket 42445.

SUMMARY: The Board is instituting the *Temporary Certificate Extension Show-Cause Proceeding* to consider extending the duration of certain authority contained in the following certificates of public convenience and necessity: American Airlines, Inc. for Routes 234 and 266; Continental Air Lines, Inc. for Route 256; Delata Air Lines, Inc. for Route 178; Eastern Air Lines, Inc. for Routes 239, 240, and 258; Evergreen International Airlines, Inc. for Route 236; Northwest Airlines, Inc. for Route 179; Pan American World Airways, Inc. for Routes 132, 133, 218, and 267; Trans World Airlines, Inc. for Route 147; United Air Lines, Inc. for Routes 229 and 238; and Western Air Lines, Inc. for Route 222.

DATES: Objections to the proposed action shall be filed by September 13, 1984. Replies shall be filed by September 20, 1984.

ADDRESS: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42445, *Temporary Certificate Extension Show-Cause Proceeding.*

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Gaynes, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., NW., Washington, D.C. 20428, (202) 673-5154.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-8-107 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428.

By the Civil Aeronautics Board: August 27, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23377 Filed 8-31-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Open Meeting; Correction

On July 31, 1984, a notice was published in the **Federal Register** (49 FR 30560) announcing a meeting of the Importers and Retailers' Textile Advisory Committee on Tuesday, September 11, 1984 at 1:30 p.m., Herbert C. Hoover Building, Room 6802. The purpose of this notice is to advise that the room number for that meeting has been changed to Room 3407.

Dated: August 29, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-23312 Filed 8-31-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Modification No. 1 to Permit No. 431; University of Maine

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 431 issued to Dr. James R. Gilbert, Division of Wildlife, University of Maine, Orono, Maine 04469, on August 15, 1983 (48 FR 38529), is modified to increase the species authorized to be collected.

Accordingly, section A-3 is added:

"3. Up to 50 dead marine mammals per year of the following species may be collected when legally taken incidental to commercial fishing operations:

a. gray seal (*Halichoerus grypus*);

b. white-sided dolphin (*Lagenorhynchus acutus*);

c. common dolphin (*Delphinus delphis*);

d. white-beaked dolphin (*Lagenorhynchus albirostris*); and

e. pilot whale (*Globicephala melaena*)."

This modification becomes effective upon publication in the **Federal Register.**

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 28, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-23384 Filed 8-31-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Additions

Correction

In FR Doc. 84-21912, beginning on page 32897, in the issue of Friday, August 17, 1984, in the third column, the eighth line from the bottom should read *"SIC 7349".*

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Personal Property Program; International Through Government Bill of Lading (ITGBL)

August 24, 1984.

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of Deadline Extension for Service Organization Certificate.

Reference: **Federal Register** Notice, July 26, 1984, Volume 49, No. 145, page 30088.

SUMMARY: As outlined in referenced notice, all carriers were requested to provide MTMC a notarized copy of the revised Service Organization Certificate (SOC) by August 25, 1984.

MTMC is considering modifications to the new SOC. In view of this, the time frame for submitting the SOC has been extended to November 26, 1984. The SOCs which have been received and accepted by MTMC will remain as part of the carrier's files. However, provisions of the SOC will not become effective until November 26, 1984. In the event that modifications are made, previously submitted SOCs will become invalid, and new SOCs will be provided for resubmission. The effect of this extension is to keep in place the previously existing qualification and common financial and administrative control policies and procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanie Bell, Military Traffic Management Command, ATTN: MT-PPQ (Room 423), Washington, DC 20315.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc. 84-23394 Filed 8-31-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

[ACN: 01-30002]

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent to Repay to the Rhode Island State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under Section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Rhode Island State Department of Education (SEA) an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination issued on July 7, 1983 by the Assistant Secretary for Elementary and Secondary Education. This notice describes the SEA's plan, submitted on behalf of the Providence School Department (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before October 4, 1984.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245-9846.

SUPPLEMENTARY INFORMATION:

A. Background

On July 7, 1983, the Assistant Secretary for Elementary and Secondary Education issued a final audit determination against the SEA, finding that the LEA had improperly spent $62,273 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA during Fiscal Year 1982 conducted by the Department's Inspector General Audit Agency.

The Assistant Secretary concluded in his final audit determination that an amount of $34,683 was expended by the LEA for Title I computer-assisted instruction for services to children who were not in greatest need of assistance or who were not identified as educationally deprived, in violation of 34 CFR 201.70 (1981). Although § 201.71(d) provided for the limited participation of non-Title I students, the auditors found that the SEA did not demonstrate that the requirements of the regulations were met for the participation of non-Title I students.

It was further concluded by the Assistant Secretary that the SEA was required to refund $25,716 for disallowed costs which represented Title I teacher and teacher aide salaries and indirect costs associated with excessive and prohibited noninstructional duties that failed to comply with the requirements in 34 CFR 200.61 (1981) of the Title I regulations. The SEA was also required to refund $1,874 improperly expended for resource assistance and training for ineligible special education staff. On August 25, 1983, the SEA made full payment in the amount of $62,273 to the Department.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On May 2, 1984, the SEA formally requested in writing repayment of $46,704 (75 percent of the $62,273 returned to the Department as a result of the final audit determination) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEA that resulted in the final audit determination have been corrected and that the LEA is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a detailed budget prepared by the LEA for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA, in its May 2, 1984 request, submitted a plan on behalf of the LEA outlining the LEA's intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (Chapter 1).

The final audit determination against the LEA resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The plan demonstrates that the LEA proposes to provide an additional remedial reading specialist at one selected middle school site. The funds will be used to pay the salary and fringe benefits for the remedial reading specialist, buy related supplies and materials, and support appropriate indirect costs. The selected site, Roger William School, has the greatest number of pupils with documented reading difficulties as indicated by the LEA's needs assessment results. Supplementary reading services will be provided for approximately 50 additional students who are reading below their grade level. Services will be provided, to the extent possible, to those eligible Chapter 1 children who were affected by the misexpenditures that resulted in the final audit determination.

Equitable services will be provided to approximately ten additional children in private schools.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under Section 456 of GEPA, including the SEA's discharge of its payment obligations to the Department in August 1983, the SEA's assurances described in Part C of this notice, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The LEA has corrected the practices and procedures that resulted in the final audit determination, and the LEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEA for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the Chapter 1 children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the Federal Register a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $46,704, which is 75 percent of the funds the Department has recovered as a result of the Assistant Secretary's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under Section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with Section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by June 30, 1985.

(3) The SEA, on behalf of the LEA, must, not later than January 1, 1986, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Rhode Island SEA on behalf of the Providence LEA. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before October 4, 1984.

(Catalog of Federal Domestic Assistance No: 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: August 28, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-23349 Filed 8-31-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of fiscal year 1985 new awards.

Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions

of higher education, and other nonprofit agencies.

Closing Date for Transmittal of Applications

An application for a new award must be mailed or hand delivered on or before November 9, 1984.

Applications Delivered by Mail

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available Funds

An applicant for a grant may propose a project period of up to 36 months. Generally, awards will be made for a period of 24 to 36 months. Since fiscal year 1985 appropriation levels have not been determined yet, accurate estimates of funding under each priority are not available. It is expected that funding will be available to award new grants at the funding levels indicated under the application notice for each priority. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Priorities for Funding

The regulations provide that the Secretary, in any fiscal year, may select one or more of the ten published priorities, or any combination of those priorities, for funding. A separate competiton will be held for each priority. In fiscal year 1985 the Secretary will award new grants in accordance with the following priorities included under § 318.11 of the regulations. Funding is available only for institutions and agencies which meet State and professionally recognized standards for the training of special education and related services personnel.

84.029 BH—Preparation of Special Educators

Program Information

This priority supports projects designed to provide preservice training of personnel for careers in special education of handicapped children and youth. The priority includes the preparation of special educators of the handicapped, including personnel trained in speech, language, and hearing impairments, and adaptive physical educators.

Available Funds

About 50 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average grant is expected to be about $60,000.

84.029FH—Preparation of Related Services Personnel

Program Information

This priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

Available Funds

About 10 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average grant is expected to be about $60,000.

84.029QH—Preparation of Personnel To Provide Special Education and Related Services to Newborn and Infant Handicapped Children/Preparation of Related Services Personnel

Program Information

This priority supports projects that address both the Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Handicapped Children priority and the Preparation of Related Services Personnel priority. The first priority area supports the preservice preparation of personnel who will serve newborn and infant handicapped children, or newborn and infant children who are determined to be at high risk of being handicapped, or both. Personnel may be prepared to provide short-term special education and related services as necessary in an intensive care nursery, or long-term special education and related services which extend into a preschool program. Projects supported under this priority prepare personnel for employment in programs characterized by strong interaction of the medical, educational, and related services communities, and by involvement of parents or guardians who are the primary care givers for their children. The second priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

An application which does not address both priorities will not be considered. If an application addresses both the combined priority areas and a non-priority area, the Secretary will consider only that portion which addresses the combined priority areas.

Available Funds

About 10 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average award is expected to be about $65,000.

Application Forms

Application forms and program information packages for new applications are scheduled to be available for mailing on September 17, 1984. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732-1068. (20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: August 28, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-23350 Filed 8-31-84; 8:45 am]

BILLING CODE 4000-01-M

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of fiscal year 1985 new awards—Parent Organization Projects.

Applications are invited for new awards for parent organization projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth. Section 631(c)(1) of the Act authorizes the Secretary to make grants to private nonprofit organizations for the purposes of providing training and information services to parents of handicapped children and volunteers who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children.

Applications may be submitted by nonprofit parent organizations, as defined in 34 CFR 318.2(b).

Closing Date for Transmittal of Applications

An application for a new award must be mailed or hand delivered on or before March 21, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

This priority supports grants to parent organizations, as defined in § 318.2(b), for the purpose of the Parent Organization Projects priority in § 318.11(b)(8). This priority is directed at providing training and information to parents of handicapped children and youth, and to volunteers who work with parents to enable those individuals to participate more effectively with professionals in meeting the educational needs of handicapped children and youth. These projects must be designed to meet the unique training and information needs of parents of handicapped children and youth, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

In selecting projects under this priority, the Secretary ensures that grants will be—

(A) Distributed geographically to the greatest extent possible throughout all the States; and

(B) Targeted to parents of handicapped children and youth in both

urban and rural areas, or on a State or regional basis.

Parent training and information projects assisted under this priority must assist parents to—

(A) Better understand the nature and needs of the handicapped conditions of their handicapped child or youth;

(B) Provide followup support for their handicapped child's or youth's educational programs;

(C) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) Participate in educational decisionmaking processes including the development of their handicapped child's or youth's individualized education program under 34 CFR 300.340–300.349;

(E) Obtain information about the programs, services, and resources available to their handicapped child or youth, and the degree to which the programs, services, and resources are appropriate; and

(F) Understand the provisions for the education of handicapped children and youth as specified under Part B of the Education of the Handicapped Act and 34 CFR Part 300.

Available Funds

About 5 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average award is expected to be about $65,000.

Application Forms

Application forms and program information packages for new applications are scheduled to be available for mailing on October 9, 1984. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732–1068. (20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: August 28, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84–23351 Filed 8–31–84; 8:45 am]

BILLING CODE 4000–01–M

Training Personnel for the Education of the Handicapped Program

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of fiscal year 1985 noncompeting continuation applications.

Applications are invited for noncompeting continuation projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions of higher education, and other nonprofit agencies.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered on or before February 1, 1985. If a noncompeting continuation application is late the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail

An application for noncompeting continuation projects must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds

Since fiscal year 1985 appropriation levels have not been determined yet, accurate estimates of funding under each priority are not available. It is expected that funding will be available

to award noncompeting continuation grants at originally projected funding levels.

These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Notices

84.029AH—Preparation of Special Educators

Program Information

This priority supports the continued second or third budget period funding for preparation of special educator grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029CH—Preparation of Leadership Personnel

Program Information

This priority supports the continued second or third budget funding for doctoral and post-doctoral personnel preparation grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029EH—Preparation of Related Services Personnel

Program Information

This priority supports the continued second or third budget funding for the preparation of related services personnel grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029GH—State Educational Agency Programs

Program Information

This priority supports the continued second or third budget funding for State educational agency grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029JH—Special Projects

Program Information

This priority supports the continued second or third budget funding for special projects grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029LH—Specialized Training of Regular Educators

Program Information

This priority supports the continued second or third budget funding, for preparation of regular educators grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029NH—Preparation of Trainers of Volunteers, Including Parents

Program Information

This priority supports the continued second or third budget funding for the preparation of trainers of volunteers' grants that were awarded initially in 1983, for three budget periods.

84.029NH—Parent Organization Projects

Program Information

This priority supports the continued second or third budget funding for parent organization projects grants that were awarded initially in 1984, for two budget periods.

84.029UH—Transition/Special Educators

Program Information

This priority supports the continued second or third budget funding for transition of handicapped youth to adult and working life grants that were awarded initially in 1984, for two or three budget periods.

Application Forms

Application forms and program information packages for noncompeting continuation applications will be mailed October 9, 1984 to grantees that are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable Regulations.

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370). Applicants should prepare their applications based on the final regulations.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT:
Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 723–1068.

(20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for Education of the Handicapped Program)

Dated: August 28, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–23352 Filed 8–31–84; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: CCS–1]

Policy To Implement Council-Recommended Conservation Surcharge

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to develop a policy and request for recommendations.

SUMMARY: In accordance with the Northwest Electric Power Planning and Conservation Act, the Northwest Power Planning Council (Council) has developed model conservation standards and recommended to the BPA Administrator that a surcharge be imposed on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not adopted, or on customers who have not adopted, the standards or other conservation measures to achieve savings comparable to the standards. BPA is requesting recommendations to assist in the development of a policy concerning the implementation of the Council-recommended surcharge. The policy will focus on certifying compliance with the model conservation standards, reviewing and evaluating alternative plans for achieving savings comparable to the model conservation standards, and determining whether and under what conditions BPA will impose or

excuse a Council-recommended surcharge.

Responsible Official: Sue F. Hickey, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for developing the policy.

DATES: A general information meeting will be held September 13, 1984, at 1:30 p.m. in Room 464 of BPA's Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon. Written comments will be accepted through October 1, 1984.

ADDRESS: Comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement office, at the above address or 503–230–3478. Oregon callers outside of Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. Roy B. Fox, Division of Planning and Evaluation, Office of Conservation, 1002 NE. Holladay Street, Portland, Oregon 97208, 503–230–4304.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettemund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Northwest Power Planning Council (Council) has developed model conservation standards and recommended to the Administrator the imposition of a surcharge on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not adopted, or on customers who have not adopted, the standards or other measures to achieve comparable energy savings by January 1, 1986. BPA, through this notice, is initiating its public process to develop a policy for: (1) Certifying compliance with the model conservation standards, (2) reviewing and evaluating alternative plans designed to achieve comparable savings, and (3) determining whether and under what conditions BPA will impose or excuse the Council-recommended surcharge. Customers, State and local governments, Indian tribes, and all other interested groups and individuals are requested to submit recommendations to assist in the development of the policy. BPA requests that the recommendations focus on the identification of issues, clarifying information, and possible ways of treating the issues in the policy. The resulting policy will fulfill BPA's obligations under the terms of BPA's power sales contracts, the Two-Year Action Plan developed as part of the Council's Northwest Conservation and Electric Power Plan (Plan), and the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act).

BPA is proposing the following schedule for developing and adopting this policy.

General Information Meeting—September 13, 1984
Close of Comments on Notice of Intent—October 1, 1984
Publication of Proposed Policy—October 1984
Opportunities for Public Comment—on Proposed Policy—November 1984
Notice of Final Policy—December 31, 1984

The general information meeting, scheduled for September 13, 1984, will be held at the BPA Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon at 1:30 p.m. in Room 464. This meeting will be an informal discussion of conservation surcharges, related issues, and the forthcoming policy.

At this time, the Council is considering amending the surcharge methodology contained in Appendix D of the Plan. While the Council will conduct a separate public involvement process, the Council's amendment process is central to the development of BPA's policy. The Council's surcharge methodology must be used by the Administrator to calculate the surcharge that may be imposed on a customer. Issues surrounding the actual calculation of the surcharge will be handled by the Council and are not a part of BPA's process. It is expected that the Council's methodology also will address issues such as: the possiblity of a single utility serving multiple local jurisdictions, not all of which adopt the model conservation standards or comparable alternatives; adoption of less than all four model conservation standards by a jurisdiction; and exemptions from the Council recommendation to impose the surcharge.

BPA will participate in the Council's public amendment process. BPA's principal concerns are that the Council's methodology be clear and administratively feasible and defensible, provide for fair and equitable treatment of customers, and address the issues surfaced during their amendment process. Interested parties are urged to contact the Northwest Power Planning Council for further information at 700 SW. Taylor, Portland, Oregon 97205.

II. Background

The Regional Act provides for the development of cost-effective conservation as the first priority resource to be used in meeting the electric power needs of the region. Several mechanisms are provided to ensure that such conservation is developed. In addition to the Administrator's authority to acquire conservation or to grant billing credits for conservation that reduces his obligation to acquire other resources, the Council was given authority to develop and include model conservation standards as part of its Plan. These standards adopted by the Council are minimum efficiency requirements for new electrically heated residential structures, new commercial buildings, existing residential structures which convert to electric heat, and existing commercial buildings which convert to electric space conditioning.

Neither BPA nor the Council have authority to implement the model conservation standards. Implementation is dependent on the actions of State or local governments or utilities. The Regional Act does provide an incentive for adoption, however, through the conservation surcharge. The Council may recommend, and BPA may subsequently impose, a surcharge on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on customers which have not, implemented the model standards or otherwise achieved comparable savings.

A. Statutory Direction

The Regional Act provides for the development of model conservation standards as part of the Council's Plan in section 4(e)(3). These standards, as described in section 4(f)(1), are to include, among other things, standards applicable to new and existing structures. Such standards should reflect geographic and climatic differences and produce all power savings that are cost-effective for the region and economically feasible for consumers.

Once the standards are included in the Plan, section 4(f)(2) provides that the Council may recommend to the Administrator the imposition of a surcharge on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the customers which have not, implemented the standards or other conservation measures that achieve energy savings comparable to the standards.

Section 4(e)(3)(G) provides for the Council to develop as part of its Plan a methodology for calculating such surcharges. As detailed in Section 4(f)(2):

> Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

B. Actions by the Northwest Power Planning Council

On April 27, 1983, the Council adopted the Northwest Conservation and Electric Power Plan. As required by the Regional Act, the Council's Plan contains model conservation standards for newly constructed residential and commercial buildings, and for conversion of existing residential and commercial buildings to electric space heating and conditioning.

For new residential buildings that receive building permits on or after January 1, 1986, the model conservation standard, written as a performance standard, is as follows:

Building type	kWh/sq. ft./yre.		
	Climate Zone* 1	Climate Zone* 2	Climate Zone* 3
Single-family	2.0	2.6	3.1
Multi-family	1.2	2.3	2.8

* Climate zones are based on the number of heating degree days experienced in a particular location (Zone 1: less than 6,000; Zone 2: 6,000 to 8,000; Zone 3: in excess of 8,000).

This standard also applies to electric space heating conversions in residential buildings that receive building permits on or after January 1, 1986. For electric space heating conversions in residential buildings that receive building permits on or before December 31, 1985, a special standard, contained in Appendix L of the Plan, is applicable.

For commercial buildings that receive building permits on or after January 1, 1986, the Council has developed a model conservation standard that addresses electric space conditioning, lighting, and domestic hot water. This standard is a modified version of the most recent model energy code of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), ASHRAE 90–80. The standard includes heating, ventilating, and air conditioning equipment performance specifications, lighting budgets, and minimum building envelope efficiency requirements. The lighting budgets are identical to those now required by the City of Seattle's Energy Code, with the exception of office and retail buildings. The standard for office and retail buildings is equivalent to the office standard currently proposed by the California Energy Commission (1.5 watts per square foot plus an additional 1.5 to 3.0 watts per square foot for task and spot lighting).

Chapter 10 of the Councils Plan is a Two-Year Action Plan in which the Council identifies and discusses the task to be performed by BPA, the Council, and others in the region. BPA is to develop a consistent procedure for certifying compliance with each model conservation standard (Action Items 2.3, 3.3, and 6.4 and 7.3). In cases where a jurisdiction or utility elects not to implement the standards but rather to implement other conservation measures to achieve comparable savings (alternative plan), BPA is to develop a procedure for reviewing and evaluating these alternative plans to ensure that savings comparable to those of the model standards will be achieved (Action Items 2.4, 3.6, 6.6, and 7.4). These procedures are to be available by January 1, 1985. A number of other actions designed to facilitate the implementation of the model conservation standards are also specified.

By January 1, 1986, State governments, local governments, or utilities are to adopt and enforce the model conservation standards. Where such standards are not adopted, a plan to achieve comparable savings should be in place by January 1, 1986. Where neither action has occurred, the Council has recommended in section 25 of the Two-Year Action Plan that the Administrator impose a surcharge.

As required by the Regional Act, the Council included a methodology to calculate surcharges as Appendix D of the Plan. This methodology starts by identifying the additional BPA costs and benefit of serving the load resulting from failure to achieve the energy savings of the model conservation standards. Where the cost includes acquiring resources, the Plan will serve as a guide for identifying resource costs. The net incremental costs, the additional cost minus the additional revenue, is divided by the noncomplying customer's load to determine the unit surcharge.

Ad previously noted, the Council is considering amending this methodology. Parties interested in the actual calculation of the surcharge are urged to contact the Council for further information. BPA will consider any amendments to Appendix D in the development of this policy.

C. Actions by the Bonneville Power Administration

As part of BPA's power sales contracts offered in August 1981, BPA is also required to take certain actions. BPA is obligated by Sec. 8(d)(3) of the General Contract Provisions upon adoption of the Plan, to give notice of its intent to adopt a policy setting the standards to be used for imposing the conservation surcharge. The policy shall include:

(a) standards to be met before Bonneville will excuse surcharges which would otherwise be appropriate, consistent with Bonneville's obligations to implement cost-effective conservation measures to the maximum extent practicable;

(b) that Bonneville will impose surcharges to the extent not excused or suspended under the terms of the rule;

(c) an opportunity for interested persons to present views, data, questions, and arguments to Bonneville relevant to the imposition of surcharges in specific instances, and the adequacy of financial assistance made available by Bonneville;

(d) that surcharges imposed will be continued to the extent and for the period projected energy savings attributed to cost-effective model conservation standards are not achieved.

(e) for recovery from the Purchaser of the additional costs (including increases in the Utility's average system cost) that Bonneville will incur because the projected energy savings attibutable to model conservation standards have not been achieved, subject to the limitations set forth in section 4(f)(1) and 4(f)(2) of Pub. L. 96–501; provided, however, that surcharges will not be levied as a result of an increase in a utility's average system cost except to the extent that the Utility failed to implement conservation measures that are designed to be cost-effective for its Consumers in terms of the electric rates its Consumers pay.

III. Issues

BPA has identified a number of issues associated with the development of this policy. Through this notice, BPA is seeking recommendations on these issues and the identification of and comment on other relevant issues. To facilitiate this process, some of the policy issues identified to date are discussed below. Additionally, a variety of options for treating the issue, to the extent these have been identified, are presented.

A. Compliance with the Model Conservation Standards

In order for the region to realize the savings from the model conservation standards, the standards must be adopted and implemented by the appropriate State or local governments or utilties. Jurisdictions which are certified by BPA as having adopted the standards are then exempt from the imposition of the Council-recommended surcharge.

Two general issues have been identified as having policy implications. A brief discussion of each follows.

1. East of Administration

Certification that a jurisdiction has actually adopted the model conservation standards is intended to help ensure that the expected energy savings will be realized. The more rigorous the analysis, the more difficult the administrative burden. A balance must be struck to ensure conformance with the standards without unduly increasing the administrative burden.

Options: A wide range of options exists on this issue. Those described here are not mutually exclusive.

a. Juridictions are presumed to be in compliance upon their certification of the adoption of a code that is the equivalent of the model conservation standards.

b. Jurisdictions are presumed to be in compliance upon adopting code language developed by BPA or the Council to conform with the model conservation standards.

c. Jurisdictions are presumed to be in compliance when projections of energy savings, based on the requirements of the adopted code, indicate energy performance equivalent to the model conservation standards when analyzed by a heat loss methodology.

Discussion: The final policy will need to recognize the trade-off between accuracy and the ease of administration. A self-certification policy might increase the possibility of allowing a code which appears to be the equivalent of the model conservation standards to be certified even if it contains provisions that result in significant loss of energy savings. A detailed analysis of all code language, while helping to eliminate such provisions, might be redundant and would clearly be time-consuming and expensive. A policy which concentrates on those elements of a code that differ from some base code (BPA or Council developed) may provide partial resolution.

2. Burden of Proof

The model conservation standards were developed to maintain as much flexibility as possible for the region. Additionally, specific code language designed to be in compliance with the standards is being developed and will be available shortly. At issue is who should bear the burden for proving that any modification to the base codes or any entirely new codes results in savings equivalent to the model conservation standards.

Options: The options cited below only touch on the possible ways to handle the burden of proof.

a. A jurisdiction would consult with BPA and develop the type of information needed to verify compliance with the model conservation standards.

b. Jurisdictions would provide BPA with copies of the code language. BPA would independently determine if the code results in energy performance equivalent to the model conservation standards.

c. Jurisdictions would provide BPA with certain parameters drawn from the requirements of their code. These parameters would then be used in a specified heat loss methodology to test for perfomance equivalent to the model conservation standards.

Discussion: The resolutions of this and the previous issue are related. The technical assistance that has been available to jurisdictions is also a factor to consider at this point. The burden of proof may need to be a function of the degree of alteration of some base code language.

B. Comparable Savings for Alternative Plans

The Council's Plan includes a portfolio of resources designed to meet a range of loads that the region could experience over the next 20 years. One way of meeting these loads is the conservation of energy through the adoption and enforcement of the various model conservation standards. There are provisions for actions other than the model conservation standards to be taken so long as those actions produce electric energy savings that are comparable to the model conservation standards. These alternative plans, as they are known, are intended to allow greater flexibility in meeting the region's loads.

Six issues have been identified to date that have policy implications. A brief discussion of each follows.

1. Source of Savings

The model conservation standards are designed to secure electric energy savings from the building shell and heating and ventilating systems in the residential and commercial sectors. Since alternative plans are to deliver savings comparable to the model conservation standards, there is an issue as to what sectors (i.e., commercial, residential, industrial) or end-uses (i.e., water heat, space heat) may be appropriately targeted by the alternative plans.

Options: Early discussions have identified a number of possible resolutions of this issue. Among these are:

a. Since the savings must be comparable to those of the model conservation standards, the alternative plans should at least target the same sector.

b. Since the model conservation standard savings are simply one of a number of ways of meeting load, any other source of savings is an acceptable alternative plan.

c. Since the model conservation standard savings are simply one of a number of ways of meeting load, any other source of savings is an acceptable alternative plan so long as no other resource in the resource portfolio is displaced.

Discussion: The Plan embodies a collection of resources designed to meet future loads at least cost. One of these resources is the model conservation standards. There is, however, nothing unique about the end-uses and sectors that the model conservation standards tap for savings. It may be reasonable not to limit alternative plans, therefore, to any specific end-use or sector. However, an alternative plan that simply develops a resource from a sector already targeted for energy conservation program savings will leave the region short the savings that the model conservation standards would have delivered. Therefore, there is some logic in not allowing alternative plans which simply substitute for other energy savings already included in the resource portfolio.

2. Cost of Savings

The model conservation standards are expected to deliver savings to the region

at up to 40 mills/kWh. The 40 mills/kWh includes consideration of the cost of adoption and enforcement of the code as well as the cost of the associated conservation measures. In developing alternative plans, questions have arisen as to whether alternative plans should be comparable to the model conservation standards in terms of cost.

Options: Two obvious options have been suggested to date. These are:

a. Since alternative plans will presumably be adopted by State or local jurisdictions or utilities acting on behalf of its citizens or ratepayers, such jurisdictions will only incur costs that are reasonable. No explicit comparability of cost should be required.

b. Alternative plans must deliver savings at a regional cost not to exceed that of the model conservation standards—40 mills/kWh.

Discussion: All of the resources included in the Council's Plan meet the test of regional cost-effectiveness. The substitution of an alternative resource with a higher cost implies that the region is missing an opportunity to develop its least-cost resources, thereby decreasing the overall cost-effectiveness of the resource mix. However, the range of resources eligible for development as an alternative plan would be increased if costs were not imposed as a constraint.

3. Timing of Savings

Since the model conservation standards are electric efficiency improvements in new construction and conversions, the savings coincide with the growth in load. The savings also tend to be very long-lived. In developing comparable savings through alternative plans, a determination must be made regarding comparability in timing.

Options: There are a number of possible ways to approach this issue. The options listed here are representative of the range.

a. Savings for the alternative plan must equal that of the model conservation standards over the 20-year planning period.

b. Savings for the alternative plan must equal that of the model conservation standards on an annual basis over the 20-year planning period.

c. Savings for the alternative plan must equal those of the model conservation standards on a seasonal basis over the 20-year planning period.

Discussion: In assembling its resource portfolio, the Council had to match growth in loads to availability of resources. The model conservation standards coincide with the load growth, assuring that new loads meet these minimum efficiency requirements. By their nature, the model conservation standards also possess an inherent seasonality: savings increase as electric loads increase in winter and summer. Other resources in the resource portfolio tend to complement these characteristics. Conservation developed in lieu of the model conservation standards should at least approximate the annual equivalent in savings produced by model conservation standards. Since the model conservation standards have identified seasonal characteristics, it may also be reasonable to require matching these in achieving comparable savings.

4. Reliability of Savings

The question of model conservation standard reliability has two elements. The first is the reliability of the installed measures. The second is the reliability of the code implementation. Both of these factors affect the level of savings to be derived from the model conservation standards. Some measure of reliability for the model conservation standards must be established and used as the standard for alternative plans.

Options: Only one approach has been identified to date.

Assume model conservation standards deliver 100 percent of their projected energy savings.

Discussion: The model conservation standards are expected to deliver the projected energy savings. Essentially, structures can be built or converted in such a way as to conform to the Council's standards.Prescriptive paths developed by BPA and the Council have been designed to perform in accordance with the model conservation standards. The main reason that savings are not realized is that compliance with the standards is less than 100 percent; that is, buildings are constructed or converted, for whatever reason, to less than the standard.

Since the region is looking for the maximum level of savings from the model conservation standards and since there is little doubt that once installed properly, conservation measures associated with the model conservation standards will perform reliably, alternative plans should conform to those expectations. However, the standards do present the possibility of less than 100 percent compliance, resulting in less energy savings than predicted. It may be possible to trade off the level of savings with certainty of those savings.

5. Fuel Switching

Adoption and enforcement of the model conservation standards ensure a more efficient load on BPA in the future. The standards apply only to residential and commercial structures depending on electric space conditioning. At issue, then, is whether an alternative plan which depends on simply displacing electric energy with some other energy source is acceptable.

Options: The options currently identified are:

a. Alternative plans must deal with electric energy efficiency improvements.

b. Alternative plans that reduce electric load by displacement are acceptable.

Discussion: The standards are clearly electric energy efficiency improvements and do not depend on the substitution of any other fuel type. The issue seems to focus on whether sources of energy such as geothermal and solar, when used to condition space directly without first being converted to electricity, should be considered as acceptable alternative plans. These fuels may displace electricity, but may or may not be accompanied by efficiency improvements.

6. Burden of Proof

Alternative plans are designed to allow the region flexibility in meeting its resource needs. The Council has adopted four model conservation standards and is developing code language and other technical assistance to implement those standards. For those jurisdictions not adopting the model conservation standards but proposing an alternative plan, the issue is who must bear the burden of proving comparability.

Options: Two extreme options that have been identified are:

a. BPA independently analyzes alternative plans to determine comparability.

b. The jurisdiction develops the necessary information and performs a detailed analysis of the alternative plan's projected savings in accordance with guidelines developed in consultation with BPA.

Discussion: The options are intended to point out extreme positions. Under option a., BPA conducts an independent analysis to determine if an alternative plan delivers comparable savings. Option b. requires the jurisdiction to argue its case for comparability to the model conservation standards, and BPA reviews the case for theoretical and quantitative accuracy.

C. Decision To Impose Council-Recommended Conservation Surcharge

Section 4(f)(2) of the Regional Act notes that the Administrator may impose a surcharge if the Council so

recommends. The Council has recommended in the Plan that BPA impose a surcharge on noncomplying customers or customers serving jurisdictions that have adopted neither the model conservation standards nor an acceptable alternative plan. If imposed, the amount of the surcharge will be calculated according to the methodology developed by the Council as part of the Plan. Since the Administrator has discretion in determining whether the surcharge will be imposed, BPA must define the criteria that will guide the decision.

Options: Three options have been identified.

a. The Administrator could decide not to impose the Council-recommended conservation surcharge.

b. The Administrator could decide to impose the Council-recommended conservation surcharge if the customer has not adopted, or serves jurisdictions that have not adopted, the model conservation standards or otherwise achieved savings comparable to the standards.

c. The Administrator could decide to impose the Council-recommended conservation surcharge if the customer has not adopted, or serves jurisdictions that have not adopted, the model conservation standards or otherwise achieved savings comparable to the standards, or has not been exempted from the surcharge using criteria developed by BPA as part of this policy.

Discussion: The Council must recommend the imposition of surcharges before the Administrator may impose them. The Council's plan and subsequent amendment process for the surcharge methodology have given all interested parties an opportunity to express their concerns related to the calculation of the surcharge. It is incumbent on the Council to ensure that the recommendation to impose such surcharge is fair and equitable. Since the recommendation to impose a surcharge was included in the Plan and was subject to examination by all interested parties, additional specific criteria for exemption may be unnecessary. However, conditions may exist or arise under which the imposition of the surcharge is inappropriate. These, if any, need to be identified.

Issued in Portland, Oregon, on August 23, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84-23339 Filed 8-31-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

ONEOK, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with ONEOK, Inc. (ONEOK) as a final order of DOE.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: James O. Neet, Jr., Chief Counsel, Dallas Field Office, Economic Regulatory Administration, Department of Energy, Suite 200-E, 1341 W. Mockingbird Lane, Dallas, Texas 75247, or call (214) 767-7401.

SUPPLEMENTARY INFORMATION: On July 20, 1984, the ERA published a notice in the Federal Register that it had executed a Consent Order with ONEOK on May 31, 1984, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

Comments were received from three entities representing a total of 10 states. None of the comments objected to the Consent Order. All of the comments focused on the proposed distribution of funds (if any) remaining after payment to identifiable injured parties. All the comments advocated that any remaining funds be distributed on a pro-rata basis to various states to finance energy related projects.

The proposed Consent Order stated that DOE will deposit the sum of $1,800,000.00 received from ONEOK into a suitable account for later distribution by DOE. The ultimate distribution of these funds will depend upon several factors, including the type of alleged violations underlying the Consent Order and the ability of the ERA to identify ONEOK customers which may be entitled to a refund of these funds. ERA has not yet determined an appropriate distribution for the refunded amount. Accordingly, as the Consent Order provides, the monies will be placed in a DOE interest bearing escrow account until an appropriate distribution is determined.

Having considered all comments submitted, DOE has determined that the proposed Consent Order with ONEOK should be made final without modification. The Consent Order was adopted as a final order on September 4, 1984.

Issued in Dallas, Texas on the 23rd day of August, 1984.

James O. Neet, Jr.,

Chief Counsel, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 84-23340 Filed 8-31-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST81-79-002, et al.]

Mississippi River Transmission Corp., et al.; Extension Reports

August 29, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commissison's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before September 27, 1984, file with the Federal

Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-79-002	Mississippi River Transmission Corp., 9900 Clayton Rd., St. Louis, MO 63124	El Paso Natural Gas Co	08-15-84	G	11-15-84
ST81-105-002[1]	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	El Paso Natural Gas Co	08-01-84	D	10-24-84
ST81-129-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Panhandle Eastern Pipe Line Co	08-01-84	G	10-31-84
ST83-69-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Northern Natural Gas Co	08-01-84	G	11-01-84
ST83-86-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Mississippi River Transmission Corp	08-10-84	G	11-10-84
ST83-91-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	08-01-84	G	11-01-84
ST83-96-001	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790	Dow Pipeline Co	08-06-84	B	11-19-84
ST83-97-001[1]	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Esperanza Transmission Co	08-07-84	B	11-04-84
ST83-98-001	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	08-13-84	C	11-19-84
ST83-100-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	South Carolina Electric and Gas Co	08-10-84	B	11-08-84
ST83-117-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Northern Natural Gas Co	08-02-84	G	11-05-84
ST83-122-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	United Gas Pipe Line Co	08-13-84	G	11-11-84
ST83-125-001[1]	United Gas Pipe Line Co., P.O. 1478, Houston, TX 77002	Texas Eastern Transmission Co	08-14-84	G	11-11-84
ST83-127-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Houston Pipe Line Co	08-06-84	B	11-04-84
ST83-151-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Acadian Gas Pipeline System	08-10-84	B	11-08-84
ST83-199-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Corp	08-15-84	B	12-21-84
ST83-260-001	Acadian Gas Pipeline System, 1200 Milam, Suite 2700, Houston, TX 77002	Columbia Gas Transmission Corp., *et al*	08-03-84	C	12-23-84
ST83-303-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	08-01-84	G	11-01-84
ST83-306-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Tennessee Gas Pipeline Co	08-01-84	G	11-01-84
ST84-1162-001[1]	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Tennessee Gas Pipeline Co	08-15-84	G	12-10-83

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-23358 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-33-005]

Mountain Fuel Resources, Inc.; Petition to Amend

August 28, 1984.

Take notice that on July 31, 1984, Mountain Fuel Resources, Inc. (Petitioner), 79 South State Street, Salt Lake City, Utah 84147, filed in Docket No. CP75-33-005 a petition to amend the order issued July 12, 1984, in Docket No. CP75-33-004 pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of time until August 31, 1984, to draw down its Chalk Creek underground storage reservoir (Chalk Creek), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued July 12, 1984, Petitioner was authorized to inject an additional 200,000 Mcf of natural gas into Chalk Creek and delay drawdown until July 31, 1984, in order to maintain natural gas service to the Salt Lake City, Utah, area in the event that spring floods and mudslides caused transmission line failure upstream of Chalk Creek. Petitioner states that because of the wide spread occurrence of mudslides it did not begin drawdown at Chalk Creek until May 30, 1984. Petitioner asserts that 35,000 Mcf of working gas remain in Chalk Creek and that because of declining pressure, it is able to withdraw only 2,000 Mcf of natural gas per day; and it therefore requires the additional time to complete the withdrawals.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23359 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA84-2-16-001, TA84-2-16-002 and RP84-95-001

National Fuel Gas Supply Corp.; Compliance Filing

August 28, 1984.

Take notice that on August 14, 1984, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 4, proposed to be effective August 1, 1984.

National states that the purpose of this revised tariff sheet is to comply with the Commission Order dated July 31, 1984, requiring National to reflect, *inter alia*, any downward modifications due to its pipeline suppliers' rates and the elimination of estimated balances for the months of June and July, 1984 from Account No. 191. National further states that Substitue First Revised Sheet No. 4 reflects a net increase in National's rate of 63.40¢ per Dth. This change consists of an increase in current purchase gas cost of 32.35¢ per Dth, and an increase in the purchase gas cost surcharge adjustment of 31.05¢ per Dth.

National has mailed copies of its filing to all of its jurisdictional customers and affected state regulatory commissions.

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 and 385.214). All such petitions or protests should be filed on or before September 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 84-23360 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST84-901-000]

Northwest Pipeline Corp.; Filing

August 29, 1984.

Take notice that on August 20, 1984, Southwest Gas Corporation (Southwest) filed a "Motion To Intervene, Protest To Certain Part 284 Transportation Activity, And Request For Hearing."

Southwest is questioning Northwest Pipeline Corporation's (Northwest) Initial Full Report (report) filed on June 8, 1984 in the above-captioned docket. The report concerns Northwest's transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle) pursuant to § 284.221 of the Federal Energy Regulatory Commission's (Commission) regulations and the blanket certificate issued to Northwest in Docket No. CP80-163. Southwest questions, *inter alia*, whether Northwest and its customers are providing Panhandle with volumes of gas to replace those volumes of Panhandle's gas consumed or lost as fuel and shrinkage gas during processing at Northwest's Opal plant. Southwest indicates that Northwest assumes that the gathering portion of its transportation service to Panhandle is non-jurisdictional, which Southwest would assert is erroneous. Southwest further states that the report is unclear as to how Northwest will treat the revenues derived from the transportation and gathering service. Because of Commission regulations and because Northwest has not offered any out-of-pocket cost information in connection with the Panhandle service, Southwest believes that the Commission should require Northwest to credit to its Account No. 191 all revenues derived from the Part 284 service in excess of one cent per MMBtu. For the above reasons, Southwest feels compelled to protest and request a hearing.

Southwest, being dependent upon Northwest for supplies of natural gas and being subject to the rates the Commission authorizes Northwest to collect, requests that it be permitted to intervene in the above-captioned proceeding with full rights of a party.

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 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23361 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-40-002]

Raton Natural Gas Co.; Petition for Waiver of the Filing Fee

August 28, 1984.

Take notice that on August 21, 1984, Raton Natural Gas Company (Raton) tendered a Petition For Waiver Of The Filing Fee in connection with its compliance filing of Second Substitute Thirty-Second Revised Sheet No. 3a to its FERC Gas Tariff Original Volume No. 1 on August 14, 1984.

Raton contends that the $2,300 fee for this compliance filing greatly exceeds the costs of the specific services performed for the benefit of Raton and is not consistent with the objective of Commission Order No. 361 which is to establish a reasonable balance between the amount of the filing fee and the estimated cost of processing the filing.

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 and 385.214). All such petitions or protests should be filed on or before September 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 84-23362 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST84-967-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Self-Implementing Transactions

August 29, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to Section 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST84-967	Transcontinental Gas Pipe Line Corp	Celanese Fibers Operations, *et al*	7-02-84	F(157)		
ST84-968	Mid Louisiana Gas Co	Louisiana Intrastate Gas Corp	7-02-84	B		
ST84-969	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	7-02-84	B		
ST84-970	Mountain Fuel Resources, Inc	Reichhold Chemicals, Inc	7-02-84	F(157)		
ST84-971	Mountain Fuel Resources, Inc	Nothwest Pipeline Corp	7-02-84	G		
ST84-972	Mountain Fuel Resources, Inc	United Gas Pipe Line Co	7-02-84			
ST84-973	Mountain Fuel Resources, Inc	Northern Natural Gas Co	7-02-84	G		
ST84-975	Mountain Fuel Resources, Inc	Utah Gas Service Co	7-02-84	B		
ST84-976	Natural Gas Pipeline Co of America	Mississippi River Transmission Corp	7-03-84	G		
ST84-977	Oklahoma Natural Gas Co	Northern Natural Gas Co	7-03-84	C	11-30-84	24.32
ST84-978	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	7-03-84	G		
ST84-979	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co	7-05-84	G		
ST84-980	Mountain Fuel Resources, Inc	Pacific Gas and Electric Co	7-02-84	B		
ST84-981	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	7-06-84	G		
ST84-982	Delhi Gas Pipeline Corp	Louisiana Indust. Gas Supply System	7-05-84	C		
ST84-983	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	7-05-84	C		
ST84-984	ANR Pipeline Co	Lukens Steel Co	7-05-84	F(157)		
ST84-985	Northern Natural Gas Co	Pantera Energy Corp	7-05-84	B		
ST84-986	Nothern Utilities, Inc	Montana-Dakota Utilities Co	7-05-84	C		
ST84-987	K N Energy, Inc	Nothern Utilities, Inc	7-05-84	B		
ST84-988	Northern Natural Gas Co	Panhandle Eastern Pipe Line Co	7-05-84	G		
ST84-989	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	7-02-84	G		
ST84-990	Mountain Fuel Resources, Inc	NGL Production Co	7-02-84	F(157)		
ST84-992	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	7-16-84	B		
ST84-994	Tennessee Gas Pipeline Co	Esperanza Transmission Co	7-02-84	B		
ST84-995	National Fuel Gas Supply Corp	UGI Corp. Gas Utility Division	7-02-84	B		
ST84-996	Louisiana Intrastate Gas Corp	Faustina Pipe Line Co	7-06-84	G	12-03-84	20.00
ST84-997	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	7-06-84	G		
ST84-998	Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	7-09-84	B		
ST84-999	Tennessee Gas Pipeline Co	THC Pipelne Co	7-09-84	B		
ST84-1000	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp., *et al*	7-09-84	B		
ST84-1001	Northern Natural Gas Co	Esperanza Transmission Co	7-09-84	B		
ST84-1002	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	7-09-84	B		
ST84-1003	Transcontinental Gas Pipe Line Corp	United States Steel Corp	7-16-84	F(157)		
ST84-1004	National Fuel Gas Supply Corp	Wheatland Tube Co	7-09-84	F(157)		
ST84-1005	Dow intrastate Gas Co	Louisiana Indust. Gas Supply System	7-09-84	C		
ST84-1006	Equitable Gas Co	Columbia Gas Transmission Corp	7-09-84	G		
ST84-1007	Consolidated Gas Transmission Corp	American Refining Group	7-09-84	F(157)		
ST84-1008	Texas Gas Transmission Corp	Georgia-Pacific Corp	7-09-84	F(157)		
ST84-1009	Texas Gas Transmission Corp	Cincinnati Gas and Electric Co	7-10-84	B		
ST84-1010	Valero Transmission Co	Valero Interstate Transmission Co	6-29-84	C		
ST84-1011	Northern Natural Gas Co	Public Service Electric and Gas Co	7-10-84	B		
ST84-1012	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	7-11-84	B		
ST84-1013	Acadian Gas Pipeline System	ANR Pipeline Co	7-11-84	C		
ST84-1014	Mississippi River Transmission Corp	Western Gas Corp	7-11-84	B		
ST84-1015	Oklahoma Natural Gas Co	Bridgeline Gas Distribution Co	7-11-84	C	12-08-84	10.00
ST84-1016	Channel Industries Gas Co	Tennessee Gas Pipeline Co	7-12-84	C		
ST84-1017	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	7-12-84	B		
ST84-1018	Natural Gas Pipeline Co. of America	Western Gas Corp	7-12-84	B		
ST84-1019	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	7-12-84	G		
ST84-1020	Consumers Power Co	Panhandle Eastern Pipe Line Co	7-13-84	G/F9157)		
ST84-1021	Michigan Gas Storage Co	Consumers Power Co	7-13-84	B		
ST84-1022	Northern Utilities, Inc	K N Enger, Inc	7-13-84	E		
ST84-1023	United Gas Pipe Line Co	IMC Pipeline Co	7-13-84	B		
ST84-1024	United Gas Pipe Line Co	Acadian Gas Pipeline System	7-13-84	B		
ST84-1025	Valero Transmission Co	El Paso Natural Gas Co	7-13-84	C		
ST84-1026	Arkansas Louisiana Gas Co	International Paper Co	7-13-84	F(157)		
ST84-1027	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	7-13-84	B		
ST84-1028	National Fuel Gas Supply Corp	Special Metals Corp	6-29-84	F(157)		
ST84-1029	United Gas Pipe Line Co	Shell Oil Co	7-16-84	F(157)		
ST84-1031	Northern Natural Gas Co	Center Plains Industries, Inc	7-16-84	F(157)		
ST84-1032	ANR Pipeline Co	Faustina Pipe Line Co	7-17-84	B		
ST84-1033	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	7-17-84	B		
ST84-1034	Transcontinental Gas Pipe Line Corp	James River-Norwalk, Inc	7-19-84	F(157)		
ST84-1035	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	7-19-84	G		
ST84-1036	ANR Pipeline Co	Trunkline Gas Co	7-19-84	G		
ST84-1037	ANR Pipeline Co	Spindletop Gas Distribution System	7-19-84	B		
ST84-1038	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	7-18-84	G		
ST84-1039	ANR Pipeline Co	Faustina Pine Line Co	7-19-84	B		
ST84-1040	Panhandle Eastern Pipe Line Co	Anchor Glass Container Corp	7-19-84	F(157)		
ST84-1041	Columbia Gas Transmission Corp	Wheeling-Pittsburgh Steel Corp	7-24-84	F(157)		
ST84-1042	Trunkline Gas Co	Panhandle Eastern Pipe Line Co	7-23-84	G		
ST84-1043	Northern Natural Gas Co	Termac Gathering Co	7-19-84	B		
ST84-1044	Panhandle Eastern Pipe Line Co	Western Gas Supply Co	7-19-84	B		
ST84-1045	Colorado Interstate Gas Co	St. Luke's Hospital, et al	7-23-84	F(157)		
ST84-1046	Columbia Gas Transmission Corp	Allied Corp., Fiber and Plastics Co	7-24-84	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBtu)
ST84-1047	Columbia Gas Transmission Corp	Glass Containers Corp	7-24-84	F(157)		
ST84-1048	Columbia Gas Transmission Corp	Newport Steel Corp	7-24-84	F(157)		
ST84-1049	Columbia Gas Transmission Corp	PPG Industries, Inc	7-24-84	F(157)		
ST84-1050	Columbia Gas Transmission Corp	Ohio Brass Co	7-24-84	F(157)		
ST84-1051	Columbia Gas Transmission Corp	Jim Walter Corp	7-24-84	F(157)		
ST84-1052	Columbia Gas Transmission Corp	Cincinnati Gas and Electric Co	7-24-84	B		
ST84-1054	Columbia Gas Transmission Corp	Baltimore Gas and Electric Co	7-24-84	B		
ST84-1055	Columbia Gas Transmission Corp	Columbia Gas of New York, Inc	7-24-84	B		
ST84-1056	Columbia Gas Transmission Corp	Columbia Gas of Ohio, Inc	7-24-84	B		
ST84-1057	Columbia Gas Transmission Corp	Columbia Gas of Pennsylvania, Inc	7-24-84	B		
ST84-1058	Natural Gas Pipeline Co. of America	Pioneer Transmission Corp	7-27-84	B		
ST84-1059	Columbia Gas Transmission Corp	Columbia Gas of Pennsylvania, Inc	7-24-84	B		
ST84-1060	Columbia Gas Transmission Corp	Roanoke Gas Co	7-24-84	B		
ST84-1061	Columbia Gas Transmission Corp	UGI Corp	7-24-84	B		
ST84-1062	Columbia Gas Transmission Corp	UGI Corp	7-24-84	B		
ST84-1063	Columbia Gas Transmission Corp	UGI Corp	7-24-84	B		
ST84-1064	Columbia Gas Transmission Corp	Washington Gas Light Co	7-24-84	B		
ST84-1065	Northwest Central Pipeline Corp	Cities Service Oil and Gas Corp	7-24-84	F(157)		
ST84-1066	Tennessee Gas Pipeline Corp	Laurel Fuel Co	7-24-84	B		
ST84-1067	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	7-24-84	B		
ST84-1068	Northwest Central Pipeline Corp	National By-Products, Inc	7-24-84	F(157)		
ST84-1069	Natural Gas Pipeline Co. of America	Louisiana Indust. Gas Supply System, et al	7-27-84	B		
ST84-1070	Delhi Gas Pipeline Corp	UGI Corp	7-27-84	D		
ST84-1071	ANR Pipeline Co	Pioneer Transmission Corp	7-27-84	B		
ST84-1072	Consumers Power Co	Panhandle Eastern Pipe Line Co	7-30-84	G/F(157)		
ST84-1073	Michigan Gas Storage Co	Consumers Power Co	7-30-84	B		
ST84-1074	Panhandle Eastern Pipe Line Co	Illinois Power, et al	7-30-84	F(157)		
ST84-1075	United Gas Pipe Line Co	First Chemical Corp	7-30-84	F(157)		
ST84-1076	Columbia Gulf Transmission Co	Mountain Fuel Resources, Inc	7-30-84	G		
ST84-1077	Columbia Gulf Transmission Co	United Gas Pipe Line Co	7-30-84	G		
ST84-1078	Northern Natural Gas Co	Endevco Pipeline Co	8-01-84	B		
ST84-1079	El Paso Hydrocarbons Co	El Paso Natural Gas Co	7-31-84	C		
ST84-1080	Natural Gas Pipeline Co. of America	Archer-Daniels-Midland Co	7-31-84	F(157)		
ST84-1081	Panhandle Eastern Pipe Line Co	UGI Corp	7-31-84	B		
ST84-1082	Panhandle Eastern Pipe Line Co	Simpson Paper Co	7-31-84	F(157)		
ST84-1083	Panhandle Eastern Pipe Line Co	B.F. Goodrich Co	7-31-84	F(157)		
ST84-1084	Panhandle Eastern Pipe Line Co	PPG Industries, Inc	7-31-84	F(157)		
ST84-1085	Northern Border Pipeline Co	Natural Gas Pipeline Co. of America et al	7-31-84	G		
ST84-1086	El Paso Natural Gas Co	El Paso Hydrocarbons Co	7-31-84	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 84-23363 Filed 8-31-84; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Salt Lake City Area; Revised Proposed General Power Marketing Criteria and Allocation Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Publication of the Revised Proposed General Power Marketing Criteria and Allocation Criteria.

SUMMARY: The Western Area Power Administration (Western) has been developing new marketing and allocation criteria for the Colorado River Storage Project (CRSP), Collbran, Provo River, and Ri Grande Projects since the initial public information forum was held on May 22, 1980, in Salt Lake City, Utah. The period for submitting written comments on the proposed criteria published in the **Federal Register** on August 23, 1983, officially ended November 15, 1983. The last information forum was held September 7, 1983, to discuss the published proposed criteria, and a 2-day public comment forum ended October 6, 1983. About 1500 written comments have ben considered in the development of the revised proposed criteria by the Salt Lake City Area (SLCA). The Revised Proposed General Power Marketing Criteria and Allocation Criteria for the SLCA Integrated Projects is published herein, together with a discussion of the issues and revisions. Hypothetical allocation tables are also published herein for the convenience of potential applicants. Major comments which are not addressed in this **Federal Register** notice will be analyzed prior to the issuance of final marketing and allocation criteria. A brief description of the projects included in the SLCA Integrated Projects follows.

Colorado River Storage Project and Participating Projects (Glen Canyon, Flaming Gorge, Blue Mesa, Crystal, Morrow Point, and Fontenelle Powerplants). Authorized in 1956, the CRSP initiated the cmprehensive development and use of water resources of the Upper Colorado River. CRSP storage units stabilize the erratic flows of the Colorado River and its tributaries so that annual water delivery commitments to the Lower Colorado River Basin, as well as to farmers, municipalities, and industries in the Upper Basin, can be met. Delivery of this water to consumers is accomplished through the participating projects. Several participating projects have been completed, one of which has a powerplant (Fontenelle), and others, such as the Central Utah Project, are under construction. Additional development is expected in future years.

Initial generation began in 1963. The maximum operating capacity of the six powerplants is currently about 1,550 MW. The adjusted average annual generation over the 11-year period from 1972 through 1982 was about 5,588,000 MWh. An adjustment was made to properly reflect generation at the Crystal Powerplant since 1978. These resources are being marketed to about 100 customers and many additional member systems. Existing contracts, with one exception, will terminate at the end of the September 1989 billing period. One contract terminates on November 25, 1991.

Collbran Project (Upper Molina and Lower Molina Powerplants). Authorized in 1952 and in service since 1962, the output of the Collbran Project is sold to

one customer. The maximum operating capacity of the powerplants is presently 14.0 MW. The average annual generation over the 18-year period from 1965 through 1982 was 53,300 MWh. The existing contract terminates at the end of the September 1989 billing period.

Rio Grande Project (Elephant Butte Powerplant). The Rio Grande Project was authorized in 1905, and the powerplant went into service in 1940. The maximum operating capacity of the Elephant Buttle Powerplant is 27.0 MW. The average annual generation was 60,700 MWh for the 41-year period from 1941 through 1981. Rio Grande resources are marketed to two customers. The existing sales contracts terminate on September 30, 1989.

Provo River Project (Deer Creek Powerplant). The Deer Creek Powerplant was authorized on August 20, 1951, completed in 1958, and began generation the same year. The maximum operating capacity of Deer Creek Powerplant is about 5.0 MW and the average annual energy production for the 24-year period for 1958 through 1981 was 25,600 MWh.

A contract dated December 20, 1983, among the United States, the Provo River Water Users' Association, Weber River Water Users' Association, and Utah Power & Light Company (UP&L) is terminable only by the mutual consent of the parties. Articles 15 and 16 of the contract provide for the concurrent replacement of capacity and energy losses experienced by UP&L as a result of the diversion of Weber River water to the Provo River, that would otherwise have been used by UP&L to generate power at their hydroplant on the Weber River. However, UP&L has accepted available generation from the Deer Creek Powerplant for a period, usually a month at a time, as satisfactory replacement of the losses experienced. The diversions are made from October 15–April 15. CRSP has purchased the remaining output, except for power sales to the two small project-related loads at the dam site which generally total less than 100 MWh a year.

ADDRESS: On or before October 26, 1984, written comments on the revisions to the proposed criteria and marketing plan may be sent to Mark N. Silverman, Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524–5493.

SUPPLEMENTARY INFORMATION:

Contents of Supplementary Information Section

A. Summary of Revisions
B. Major Issues.
C. Special Allocation Issues
D. Other Issues
E. Regulatory Procedure Requirements

A. Summary of Revisions

The major revisions to the proposed General Power Marketing Criteria and Allocation Criteria are listed below:

1. Allocation priorities and eligibility requirements have been clarified and modified to recognize priority of nonpreference entities acting as agents for public entities over other nonpreference entities. Special eligibility requirements for wholesale utilities have been eliminated in favor of contract provisions for all customers. Failure to comply may result in the loss of all or a part of the resources committed. In addition, certain entities taking significant and tangible steps to acquire the means to distribute power within designated periods of time are now recognized as qualified applicants for Federal power. Allocation criteria appear in Appendix B, and include the following additional changes:

(a) Allocations may be eliminated or reduced unless existing customers demonstrate compliance with the spirit of the resale of electric energy article by either directly or indirectly passing on the benefits of purchasing federally-generated power.

(b) If reallocations are required, they will be made at the discretion of the Administrator.

2. The areas in Arizona served by the Continental Divide Electric Cooperative, Navopache Electric Cooperative, and the Littlefield Electric Cooperative that were previously in the Southern Division have been included in the Northern Division for administrative convenience, and the restricted market area for new customers has been defined.

3. The option to purchase 400 GWh was selected. All purchases of firming power and energy would be on a pass-through-cost basis.

4. CRSP marketable resources were reduced slightly for additional priority uses, and amounts have been determined by the Bureau of Reclamation using a new hydrology model. The new model resulted in an increase in the projected annual energy of about 525 GWh. Additional resources may be included prior to finalization of the plan, including abaout 130 MW which may be constructed with non-Federal funds. The derivation of the SLCA Integrated Project's marketable resources is explained in Appendix A.

5. The option to withdraw all CRSP in 1999 from the Southern Division (S.D.) was not selected, but the proposed S.D. commitments from 1989–1999 have been adjusted. Proposed commitments in the S.D. are based on about 17 percent (summer) and about 10 percent (winter) of 1200 MW to reflect the intent of initial CRSP allocations, to reflect changes in Northern Division seasonal load diversity for new customers, and to recognize a potential change in the availability of Federal resources in the S.D. Required energy adjustments in the S.D. would be made in accordance with one of the alternatives described and demonstrated in an Appendix D. This temporary appendix will be eliminated when an alternative is selected and included in Appendix C.

6. The basis of monthly obligations was changed from the resource pattern to load patterns. Load patterns are the bases of existing obligations.

7. The minimum schedule requirement was changed from 65 percent of the average capacity to 35 percent of the firm contract rate of delivery (CROD), subject to adjustment by Western. Thirty five percent of the firm CROD is an existing minimum.

8. A 230–kV point of delivery was added at Four Corners, New Mexico, and a 345–kV point of delivery that is expected to be available at Shiprock, New Mexico was added. The 230–kV points of delivery at Lost Canyon and Four Corners may be uprated to 345–kV prior to 1989, and this potential change has been identified.

9. Statements were added to indicate that diversity among power allocations will be retained by Western and that long-term power commitments will be subject to minor reductions if diversity and losses are not equal, as assumed.

10. A statement was added indicating that a reasonable opportunity to discuss contract terms would be provided prior to Western's contract offer and that allottees would have at least 6 months to consider a contract offer. Allottees would have more than 6 months to consider the contract offer if the offer is made before March 30, 1987. This gives Western and the customer 2 more years than the August 1983 proposal to establish satisfactory contract language.

11. The criteria now state that contract rights would automatically expire if means to receive and distribute power are not acquired by September 30, 1988 unless Western agrees otherwise in writing.

For the potential applicants' convenience, hypothetical allocations are being published with this notice that assume that all qualified applicants formally submit an application, that all existing customers demonstrate compliance with the spirit of the resale of electric energy article, that all allottees desire power with energy at

load factors equal to the seasonal factor of the resource pools involved, and that no requests to exchange resources from season to season were received. These allocation tables (Appendix C of criteria) are examples only and should not be interpreted as Western's proposed or final allocations.

B. Major Issues

1. Eligibility Requirements—Application of the Preference Laws

In the **Federal Register** notice of August 23, 1983, Western proposed that resources would be allocated in accordance with preference provisions of Reclamation law in the following order of priority: (1) Preference entities in the market area; (2) preference entities outside the market area; and (3) nonpreference entities in the market area. In addition, to be eligible for an allocation the preference entity must be an electric utility or otherwise eligible for CRSP power pursuant to law, unless it is a Federal or State ultimate consumer load of a defined type.

(a) *Comments:*

Western should change its proposed criteria to treat the Utah Power & Light Company (UP&L) on the same basis as other applicants for power.

Preference laws are an anachronism and are unconstitutional as applied by Western.

Preference status should be granted to the 143 cities, counties and towns who have applied for power through UP&L.

Preference laws have continuing validity and are constitutional.

Preference status should be limited to nonprofit entities that assume utility responsibility.

Criteria should be adopted for deciding among conflicting applications made by preference entities.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Preference issues raised by UP&L; and

(2) Priorities among qualified preference entities.

(1) *Preference issues raised by UP&L.* One of the central issues that has arisen during the development of marketing criteria for the SLCA Integrated Projects, including the CRSP resource, is the preference clause, and its relationship to UP&L's request for power. UP&L indicates that it wants to be allocated a portion of the marketable Federal power directly. In addition, UP&L has stated its willingness to act as an agent for 143 cities, counties and towns located in Utah and Wyoming, if Western chooses to allocate power directly to those local governments.

Western will first consider the application of UP&L on its own behalf. UP&L is an investor-owned utility primarily subject to the jurisdiction of the Utah Public Service Commission. The CRSP Act of April 11, 1956, does not explicitly contain a provision addressing preference. However, section/4 of the CRSP legislation explicitly states that the Secretary, in the operation of the CRSP storage units and participating projects, shall be governed by the Federal reclamation laws. If any doubt exists that the preference provisions of reclamation law apply, that reservation is extinguished by reference to the storage project's legislative history. The House Committee on Interior and Insular Affairs made its intent clear in the following report language on H.R 4449, one of the bills which was introduced to authorize the CRSP:

> * * * the Committee considered writing into this legislation a power preference provision similar to those in existing reclamation law. Such a provision was not specifically written in because the provisions in general reclamation law, including the Reclamation Project Act of 1939 and the Flood Control Act of 1944, would be applicable to this project * * * The committee wishes to make it clearly understood that, although a power preference provision is not specifically written into this legislation, the committee supports the application of existing power preference provisions to this project. House Report No. 1774, 83d Cong., 2d Sess. 22 (1954). Accord, Arizona Power Authority v. Morton, 549 F.2d 1231, 1237 (9th Cir.), cert. denied 434 U.S. 835 (1977).

The general reclamation law referred to by the Committee gives preference to municipalities, public corporations, public agencies, cooperatives, nonprofit organizations and public bodies. UP&L is none of these. In fact, arguments supporting the application for power by UP&L are contrary to the expressed attitude of UP&L towards the preference clause at the time the CRSP legislation was being considered. The following excerpt is from the testimony of David D. Moffat, Jr., Vice President of the Utah Power & Light Co., before a Senate subcommittee in 1955. Mr. Moffat was explaining several principles for cooperation of private enterprise and the Federal Government, in connection with the marketing of CRSP power, when the following colloquy took place:

> Mr. MOFFAT * * * The private utilities are willing to enter into contracts whereby they will deliver project power to preference customers making such reasonable transmission charges therefor as may be approved by the local regulatory authorities.
>
> Senator O'MAHONEY. When you speak of preference customers; what do you mean?
>
> Mr. MOFFAT. I mean the preference customers as presently interpreted under reclamation law.
>
> Senator ANDERSON. In the Flood Contract Act it provides for utilities and various organizations of that nature owned publicly of a preference.
>
> Senator O'MAHONEY. I am trying to determine whether or not the witness recognizes the law.
>
> Mr. MOFFAT. We certainly do. That is part of the Federal law as we understand it.
>
> Senator O'MAHONEY. You have no contention of any interpretation different from that which has been given heretofore? That there is a real preference, the States and municipalities and the like?
>
> Mr. MOFFAT. That is part of the law at the present time.
>
> Senator O'MAHONEY. You have no desire to change it?
>
> Mr. MOFFAT. Personally I would like to change it sometime, but it is part of the law and until then—
>
> Senator O'MAHONEY. So far as this project is concerned, you are not here advocating any change in that preference?
>
> Mr. MOFFAT. No sir; not in connection with this matter.
>
> Colorado River Storage Project: Hearings on S. 500 Before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, 84th Cong., 1st Sess. 315 (1955).

A prominent theme in UP&L's submission is the impact of the passage of the Department of Energy Organization Act of 1977 on the preference provisions of pre-existing Reclamation law. In particular, UP&L quotes several portions of 42 U.S.C. 7112, which contains eighteen different congressional declarations of departmental purpose, as being of significance in the preference clause analysis.

Western agrees that Congress declared, as a general purpose of the Department of Energy (DOE), that "the productive capacity of private enterprise shall be utilized" in the development of DOE policies. However, both section 302 and section 641 of the DOE Organization Act specifically act to transfer the power marketing functions of the Bureau of Reclamation, including the legislative authorities upon which those functions were based, to the Western Area Power Administration. Included within those transferred authorities are the preference provisions of reclamation law. Western believes that 42 U.S.C. 7152 and 7251 are more specific in their focus than the congressional statements of departmental purpose cited by UP&L. The legislative history of the DOE Organization Act confirms this interpretation. See, e.g., Department of Energy Organization Act: Hearings on S.

826 and S. 591 Before the Senate Committee on Governmental Affairs, 95th Cong., 1st Sess. 179, 520 (1977).

Utah Power & Light also comments that virtually all of the preference clause precedent cited by the public power community existed prior to the creation of the Department of Energy. Western agrees that much preference clause precedent does antedate 1977. Older precedent often exists when laws have been in effect for decades, especially when that precedent is longstanding and consistent. However, this does not mean that preference clause precedent lost its value upon passage of the DOE Act.

To the contrary, courts have recognized the continuing applicability of the standards set forth in reclamation law, even after the passage of the DOE Act. Illustrative is the following excerpt relating specifically to CRSP power from the case of Colorado River Energy Distributors Association v. Lewis, 516 F. Supp. 926, 929 (D.D.C. 1981):

> In 1977 the Bureau of Reclamation's power marketing functions were transferred to the Secretary of Energy, acting through a new power marketing administration under section 302(a) (1) and (3) of the DOE Act. 42 U.S.C. section 7152(a) (1) and (3). The Act established WAPA as the new power marketing administration. The DOE Act did not change the standards set by the Reclamation Project Act of 1939 relating to the marketing of CRSP power under section 9(c).

Among the unchanged standards under section 9(c) of the Reclamation Project Act of 1939 is the preference clause. Thus, it is inaccurate to argue that all judicial and administrative authority on the preference clause question is dated and no longer of value in the post-oil embargo era. Several relatively recent additions to the body of authority recognizing the ongoing validity of the preference clause exist. E.g., Central Lincoln Peoples' Utility District v. Johnson, 686 F.2d 708, 711 (9th Cir. 1982), rev'd on other grounds sub nom. Aluminum Co. of America v. Central Lincoln Peoples' Utility District, 52 U.S.L.W. 4716 (June 5, 1984); City of Anaheim v. Duncan, 658 F.2d 1326, 1328–29 (9th Cir. 1981); Greenwood Utilities Commission v. Schlesinger, 515 F. Supp. 653, 656 n.5 (M.D. Ga. 1981).

The request by UP&L on behalf of 143 cities, counties, and towns within its service area, referred to by UP&L as "the applying municipalities," presents a different question. UP&L is suggesting that these applying municipalities within the States of Utah and Wyoming should all be treated as preference customers, regardless of whether a city is served by UP&L or by a municipal utility. UP&L argues that no Federal law directly applicable to the CRSP requires that a municipality be a utility before preference status exists. The Utah investor-owned utility believes that some "municipal purposes" preference language, used in an act passed by Congress in 1906, could be employed as a basis for selling Federal electricity to a city, regardless of the character of the utility that physically serves that town's citizens.

In making the argument that Western, under the applicable preference clauses, can legally sell electricity to cities that have no utility responsibility, UP&L has expressed its belief that past policies and legal opinions on the question are ill-founded. UP&L is presenting a proposal to Western that it believes will meet the letter of the relevant law and comport with the intent of Congress. This proposal essentially can be summarized in five points:

1. An allocation of CRSP power is requested by the applying municipalities;
2. The applying municipalities will contract with UP&L to deliver CRSP power to each of the city's domestic and rural consumers;
3. The contract will specifically provide that UP&L act as the cities' agent to transmit their respective allocations of CRSP power to each domestic and rural consumer within each city's boundaries, to perform administrative functions in connection with the delivery of CRSP power, and to provide other utility services reflecting the low cost of CRSP power;
4. The applying municipalities will assume the legal responsibility for the distribution of their allocation of CRSP power; and
5. UP&L will perform its obligations at cost.

Reduced to its essentials, UP&L attempts to comply with Western's proposal to sell electricity first to those cities which have "utility responsibility." Under UP&L's proposal, the municipalities would be responsible for the CRSP power load to be served, but would contract with UP&L to perform the utility services necessary to deliver CRSP power to their domestic and rural consumers, thereby achieving the most widespread benefit at the lowest possible rates.

Although the UP&L proposal comes closer to satisfying preference law and Western's marketing criteria than a direct allocation to an investor-owned utility, Western is not presently willing to revise the proposed criteria so as to put those cities currently served by UP&L on the same eligibility level as preference utilities. Several reasons underlie this decision.

The primary reason the UP&L proposal appears to be deficient is that it is inconsistent with congressional intent. The legislative history of the Reclamation Project Act of 1939 bears out the fact that Congress intended for the preference clause to extend to municipalities as distributors of power. Illustrative is the statement made by J. Kennard Cheadle, Assistant to the Commissioner and Chief Counsel for the Bureau of Reclamation, during hearings on the 1939 legislation:

> * * * if there should be both privately and publicly owned distribution systems in the market, generally preference must be given to the publicly owned one to the extent it is in the market. Reclamation Project Act of 1939: Hearings on H.R. 6773 and H.R. 6984 Before the House Committee on Irrigation and Reclamation, 76th Cong., 1st Sess. 132 (1939).

A further example of the intent of Congress can be found in the following exchange between Congressman Case of South Dakota and the Chairman of the House Irrigation and Reclamation Committee, Compton White:

> Mr. Case * * * I can see no objection if private industry is willing to pay the same amount as a city why the city should be encouraged to make a new investment and build duplicate lines, if the private company is willing to pay the same as the city.
>
> The Chairman. We are dealing here with a reclamation project, and power that may be developed in connection with a reclamation project itself does not go into the field of the private industry. That exists simply in connection with the reclamation project. And I think the members of the committee will agree that the municipalities and the organizations enumerated here should be given protection.
>
> Reclamation Project Act of 1939: Hearings on H.R. 6773 and H.R. 6984 Before the House Committee on Irrigation and Reclamation, 76th Cong., 1st Sess. 122 (1939).

More evidence of the congressional understanding of the effect of the 1939 legislation can be found in Congressman Case's statement on the floor of the House of Representatives:

> Mr. Case. There is all the difference in the world between a clause permitting "preference for the sale of power to municipal purposes" and a mandtory clause requiring "preference to municipalities and other public corporations and agencies and cooperatives" in the sale of that power. The net effect of the amendment is to change the bill from a water-conservation measure to a power-promotion measure.
>
> The point of view taken by many of the speakers has been that the amendment merely added R. E. A. cooperatives to a preferred list of public-power distributors already established by law; that is not the

case. Existing law only gives preference to sale for municipal purposes, not to municipalities as distributors of power. 84 Cong. Rec. 10223 (1939).

The legislative history of the Reclamation Project Act of 1939 shows the intention of Congress that Federal hydropower be sold to municipalities as utilities. The marketing of power by Western and Western's predecessors has consistently taken place in accordance with this congressional policy. Courts of law frequently show great deference to the interpretation of a law by the agency charged with its administration. Udall v. Tallman, 380 U.S. 1, 16 (1965). Such deference is due on the preference clause issue.

There can be no doubt that the policies attacked by UP&L are longstanding. Congress has recently outlined the history of preference policy and reaffirmed the validity not only of the preference clause, but also of sales to preference utilities and the principle of yardstick competition. In November of 1983, the Senate Committee on Environment and Public Works issued a report which endorses the continued vitality of preference in the context of non-Federal cost sharing in the construction of Federal water and power projects:

> This section reaffirms long-established policies governing the marketing of hydroelectric power developed at Federal projects. Preference in the marketing of such power is given to public power systems and rural electric cooperatives. The power shall be marketed at uniform, area-wide rates with delivery to purchasers at load centers. Rates are established on a cost basis.
>
> Preference to consumer-owned electric utilities in the use of output of Federal projects is a concept which dates back three-quarters of a century, and has been reiterated in more than 30 statutes. Excess electric power generated by Federal projects is sold to State and local governmental entities and to private, non-profit organizations, when those groups are able and willing to purchase the electricity. To the extent that these preferred customers are not willing to purchase the power, it may be sold to investor-owned utilities.
>
> By assuring the availability of power to municipally-owned utilities and non-profit cooperatives, the preference clause bolsters competition.
>
> Senate Report No. 98-340, 98th Cong., 1st Sess. 53 (1983).

Congress has most recently considered the questions of alteration of existing preference policy in debate over the Hoover Powerplant Act of 1984. During floor debate in the House of Representatives, Representative Boxer of California introduced an amendment to the Hoover legislation whereby power generated by the Boulder Canyon Project would be auctioned off at market rates. 130 Cong. Rec. H3319 (May 3, 1984). The amendment was attacked on the ground that a subversion of preference would occur. Illustrative was the statement of Congressman Lehman of California:

> * * * this amendment would establish a precedent that could drastically affect the way the Federal Government markets and sells the power it produces not only in the West, but throughout the Nation. It could alter a structure which already insures that low-cost wholesale power is provided to those public utilities which express the need.
>
> 130 Cong. Rec. H3314 (May 3, 1984).

Congressman Swift of Washington joined in the criticism, pointing out how the Boxer amendment would work to the detriment of the existing policy of selling Federal power to utilities owned by consumers:

> What this Amendment will do, without benefit of any hearings, is change a 60-year-old policy of this country that said that public utilities, in effect cooperatives, utilities owned by consumers shall have preference to publicly generated power.
>
> Now, maybe that is policy that in some people's judgment is a policy whose time is gone. Some people might argue that it is no longer relevant.
>
> If that is the case, then introduce legislation and let us hold hearings and understand it. But we would hear today, I think, an amendment that is thought out to be something that is going to bring equity, but which simply does not understand what it is tinkering with. We would carelessly eliminate a policy without any serious consideration to what we are doing and the implications of it to publicly owned facilities that serve customers who are their owners. That simply cannot be done on the floor with an amendment such as this that is not thoroughly examined.
>
> If we want to change fundamental policy, there is a process to do that in this country. But let us not change radically a fundamental policy of this century in this Congress, on the floor, with an amendment that has never held any hearings.
>
> 130 Cong. Rec. H3321 (May 3, 1984).

Arguments such as those advanced by Congressmen Lehman and Swift were echoed by Representative Udall of Arizona, who warned that the Boxer amendment would affect not just the lower basin of the Colorado River. The principle would, in the view of Mr. Udall, be extended to upstate New York, the Pacific Northwest, the Missouri River Basin, and other areas of the country. 130 Cong. Rec. H3327 (May 3, 1984). The House was persuaded by the opponents to the Boxer amendment, as it was defeated in a recorded roll call vote. 130 Cong. Rec. H3333 (May 3, 1984).

Two other proposed amendments to the Hoover Powerplant Act of 1984 have relevance to the issue of contemporary congressional policy on the preference questions presented by the UP&L application for power. Congressman Bates of California offered an amendment giving preference in the sale of power from the Hoover uprates to entities serving large residential loads "without regard to whether these entities own their own transmission and distribution facilities." 130 Cong. Rec. H3335 (May 3, 1984). The Bates amendments also required that the purchasing entity certify, as a condition for receiving the uprated power, that such power be resold at cost. Mr. Bates stated that the purpose of his amendment was to avoid the inequity facing the City of San Diego "because of a Catch-22 in the preference clause that says if you do not have the ability to directly distribute the energy, you cannot even wait at the end of the line and have perference."

130 Cong. Rec. H3336 (May 3, 1984). The amendment was rejected. Id. Representative Hunter of California then introduced an amendment which would allow 10 megawatts from the Hoover uprates to be offered to entities in California, with a preference to entities in areas of the State where retail rates for power were high. As with the bill introduced by Representative Bates, Mr. Hunter's amendment allowed for the allocation of power "without regard to whether these entities own their own transmission and distribution facilities." 130 Cong. Rec. H3338 (May 3, 1984). The power would have been put under contract only if the purchasing entity certified that the power would be resold at cost plus distribution costs. Rising in opposition to the Hunter amendment, Representative Udall stated that "this amendment has all the vices of the Bates amendment," and that the Hunter proposal "would destroy the preference clause." 130 Cong. Rec. H3338 (May 3, 1984). The Hunter amendment, as with the Bates proposal, was defeated on the House floor.

As the foregoing discussion indicates, congressional policy regarding the sale of Federal power to municipal utilities is longstanding. The policy has been re-enforced by recent actions of Congress. The congressional will has been consistently carried out by the Department of the Interior and the Department of Energy. Western believes that any change in preference policy, such as that suggested by UP&L, should be initiated in Congress rather than by an administrative agency. As Congressman Swift observed in the debate over the Hoover Powerplant Act, there is a process for those who disagree with the preference clause. That process

involves the introduction of new legislation, not an administrative change in contravention of congressional desires.

In addition to the precedent found in the legislative history of reclamation law, Western finds support for its proposed marketing criteria in judicial and administrative precedent. In previous sections of this discussion, the continuing validity of preference clause precedent, in the face of events such as the creation of the Department of Energy and the rising price of oil, has been demonstrated. Western believes that a municipality under the relevant precedent, must be "ready, willing and able" to receive a direct allocation of Federal power. Central Lincoln Peoples' Utility District v. Johnson, 686 F.2d at 714–15; Santa Clara v. Andrus, 572 F.2d 660, 671 (9th Cir.), cert. denied 439 U.S. 859 (1978); "Request of City of Needles for Reinstatement of Sales of Federal Power for Benefit of its Citizens," Department of Energy General Counsel Opinion at 4 (November, 1978). Within the concept of "ready, willing and able" is the requirement of municipal utility responsibility. Western believes that precedent under reclamation law on this issue is consistent with the proposed marketing criteria.

Western cannot agree with UP&L that preference decisions rendered by the Ninth Circuit Court of Appeals should not be followed in the marketing of power from the Colorado River Storage Project. In the case of Arizona Power Authority v. Morton, 549 F.2d at 1237, the Ninth Circuit has explicitly held that CRSP power is to be sold first to preference utilities, and not to investor-owned utilities:

> Power generated by CRSP facilities is sold by the Bureau of Reclamation to power utilities who in turn wheel and sell the power to the ultimate consumers.
>
> * * * * *
>
> This section of the Reclamation Project Act (section 485h(c)) imposes a number of restrictions on the marketing of power. It defines a class of "preference" customers who shall have the first opportunity to purchase hydroelectric power generated by Federal reclamation projects.
>
> This class of preference customers comprises: municipalities and other public corporations or agencies and * * * cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936.
>
> *Id.* The priority accorded to public utilities (preference customers) is by now an important aspect of Federal reclamation projects.

Given the express language employed by the court with regard to CRSP power, coupled with the fact that a portion of the CRSP resources is marketed within the Ninth Circuit, Western feels compelled to adhere to the historic policy of selling Federal power first to preference utilities.

A prominent point advocated by UP&L deals with the concept of widespread use. UP&L maintains that Western's current marketing policy has the effect of creating discrete enclaves of favored utilities, who receive low-cost Federal hydropower to the exclusion of many other citites whose citizens helped pay for the CRSP with tax dollars. On the basis of "widespread use" language found in Federal statutes, as well as fundamental motions of equity, UP&L urges that the benefits of Federal power should be made available to all taxpayers alike.

Western is not presently persuaded by this analysis. Many Federal dollars are spent on purposes that give direct benefits only to a particular group. The use of Federal tax dollars to build and operate public works in the eastern portion of the United States, for example, offers no direct benefit to those who live in the western part of the country. Eligibility requirements of numerous Federal benefits preclude uniform enjoyment of those benefits by all taxpayers. The congressional policy of selling Federal hydropower first to municipal utilities similarly offers direct benefits only to certain eligible entities. Relevant Federal laws give preference to public bodies and cooperatives, not to all taxpayers. While the notion of widespread use is certainly important in the marketing of Federal power, it does not vitiate the preference clause.

Nor can UP&L argue that the 143 cities, towns and counties desiring an allocation of the CRSP resource have no opportunity to obtain the benefits of low-cost Federal power. The opportunity to receive an allocation exists for all taxpayers in the marketing area. To actually obtain those benefits, taxpayers must act together to create a public utility.

Utah Power & Light criticizes Western's proposed marketing criteria on the ground that the "widespread use" policy in reclamation law has been misapplied in an arbitrary and capricious manner. Precedent involving the Power Authority of the State of New York and the Southeastern Power Administration is set forth as being supportive of UP&L's criticism of Western's failure to assure widespread usage of the Federal resource.

Two points must be made in response to this allegation of failure to achieve widespread use. First, the Ninth Circuit Court of Appeals has held that the "widespread use" standards is so vague that a court of law cannot review the Secretary's exercise of administrative discretion under that standard. Santa Clara v. Andrus, 572 F.2d at 667–68. Second, Western does achieve "widespread use" by marketing CRSP power in six states to about 100 utilities serving over one million ultimate consumers. Western's proposal to market 75 MW of SLCA Integrated Projects power mainly to new customers further demonstrates a commitment to the policy of widespread use.

Western believes that there is a rational basis for selling power to municipal utilities rather than to make low-cost power available to residential and rural consumers served by an investor-owned utility. This rational basis which has been consistently set forth by Congress, includes the promotion of competition of utilities through the establishment of a "yardstick" through sales of Federal power to preference utilities.

In its submittal to Western, UP&L notes that its opponents make much of the argument that the preference law is intended to serve the purpose of providing an environment for competition in the utility industry. The preference power community claims that the sale of Federal power to preference customers provides a "yardstick" against which the performance of an investor-owned utility can be gauged.

Rather than categorically stating that the "yardstick" concept is irrelevant under reclamation law, UP&L submits that its proposal for the marketing of CRSP power will promote competition to a greater degree than will the renewal of existing contracts. UP&L's alternative would include, as part of its contractual billing obligations, specific identification of that portion of each customer's bill attributable to CRSP power, and that portion of the bill attributable to supplemental power sources. According to UP&L, this bill would constitute an immediate basis for comparison which would stimulate more competiton than an allocation of power only to municipal utilities.

Western is not persuaded. This proposal would assume that the internal competition within UP&L generated by the proposed billing methodology would be at least as advantageous as the competition that exists under current "yardstick" principles. The competition for new industry that arises between an investor-owned utility and a public utility would be diluted under UP&L's plan. Competition for existing customers would also be lessened. Cf. North Carolina v. VEPCO, 311 S.E.2d 586 (N.C.

1984). Also, the advantages of public power that might cause a municipality to terminate its status as a UP&L customer in favor of preference utility status would be diminished. This would dilute the competition for municipal loads between UP&L and preference utilities.

The legislative history underlying various Federal preference clauses also refutes UP&L's arguments on the relative merits of its yardstick proposal. In addition to the citations of legislative history provided by the American Public Power Association and the National Rural Electric Cooperative Association, Western believes that the following language, taken from a 1956 report of the Committee on Government Operations, further supports the Federal power policy of fostering yardstick competition through sales of preference utilities:

> This Federal power policy, established by Congress in legislation passed in almost every instance after protracted committee hearings and sharp debate on the floor of both Houses, was based throughout on two fundamental principles: (a) maximum development of the Nation's waterpower resources, consistent with use of the streams for other purposes; and (b) preference to public and cooperative electric systems, operated to serve their citizens or members rather than for profit, to prevent monopolization of the power produced through public investment in development of the people's water resources.
>
> House Report No. 2279, 84th Cong., 2d Sess. 13 (1956).

Also persuasive is the following yardstick competition endorsement by the Senate Committee on Environment and Public Works:

> By assuring the availability of power to municipally-owned utilities and non-profit cooperatives, the preference clause bolsters competition.
>
> Senate Report No. 98–340, 98th Cong., 1st Sess. 53 (1983).

Most recently, the principle of yardstick competition entered into the debate over the Boxer Amendment to the Hoover Powerplant Act of 1984. That amendment, described in detail in another section of this discussion, would have required that power generated from Hoover Dam be auctioned off to the highest bidder. 130 Cong. Rec. H3319 (May 3, 1984). Representative Udall opposed the amendment, arguing that the "whole idea of these western projects . . . was to have a yardstick" and that the amendment "would destroy the whole idea of public power as a yardstick and would destroy the preference clause that has served us so well." 130 Cong. Rec. H3327, H3333 (May 3, 1984).

While the Hoover legislation will not, if it becomes law, directly apply to the sale of Colorado River Storage Project power, the defeat of the Boxer Amendment has significance due to the re-affirmation of preference and yardstick competition as a national policy. Western believes that the position of UP&L on this issue is at odds with this policy. Given the consistently evident congressional intent to foster competition through Federal power sales to preference utilities, and the relative lack of competitive advantages in UP&L's proposal, Western believes that a continuation of the past Federal practice of allocating power first to municipal utilities is warranted in this reproposed criteria.

Utah Power and Light also advances the argument that preference laws only establish a priority as to price, and not as to right. If UP&L were to bid a higher price for CRSP power, it is argued, the CRSP would be best served by a sale which would result in additional assistance in the repayment of water projects. In effect, UP&L is suggesting that preference should only be significant if the bids for Federal hydropower are equal.

From the standpoint of the fiscal vitality of water project development in the upper basin of the Colorado River, UP&L's suggestion has some appeal. The Reclamation Project Act of 1939 contains a floor, but no explicit upper limit, on what power rates should be charged for hydropower. 43 U.S.C., section 485h(c). However, the consistent policy of the United States has been to charge the lowest possible rates consistent with sound business principles for CRSP power. A May 15, 1965, letter from the Secretary of the Interior to Wayne Aspinall, the Chairman of the House Committee on Interior and Insular Affairs, explains the foundation for that policy:

> The Colorado River Storage Project is a Reclamation project, and Section 4 of the Colorado River Storage Project makes it subject to all of the Federal reclamation laws. A careful reading of those laws long ago compelled us to the conclusion that the Congress intended that power generated at Reclamation projects be sold at the lowest possible rate consistent with sound business principles. Although this requirement is not found in the Reclamation laws in those particular words, we believe it to be a sound construction of congressional intent—a construction that has, incidentally, been confirmed by long-standing administrative practice.
>
> The basic provision in the Reclamation laws pertaining to power rates is section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C., section 485h(c)). It provides that power from Reclamation projects shall be sold by the Secretary "at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper." In effect, Section 9(c) spells out the "sound business principles" that are applicable. Although those principles are stated in terms of the minimum charge for power, they are also clearly intended to set the maximum charge. The Government of the United States markets power to serve the public interest, not to make a profit. We believe that the public interest is best served by marketing power at the lowest rate consistent with the orderly repayment of all proper costs, and we believe that is what the Congress intended.
>
> Our construction of Section 9(c) of the Reclamation Project Act of 1939 is corroborated by specific provisions in parallel power marketing legislation. Thus, Section 5 of the Flood Control Act of 1944 (16 U.S.C., section 825s) states that the Secretary of the Interior, when disposing of power generated at the Corps of Engineers' projects, shall do so "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles."
>
> Similarly, Section 6 of the Bonneville Project Act (16 U.S.C., section 832d) states that the rates "shall be fixed and established with a view of encouraging the widest possible diversified use of electrical energy." Since the relationship of demand to price is an inverse one, the lowest price will naturally encourage the most widespread use. In effect, therefore, the Bonneville Project Act similarly requires that the rates for Bonneville power be fixed as low as possible, consistent with statutory repayment requirements.
>
> Since all of these acts deal with the same subject matter, namely the Secretary's statutory responsibilities in the marketing of federally-generated power, they are in pari materia, and each may be examined to shed light on the congressional intent with respect to the others.

The 1965 policy expressed by Secretary Udall has been recently endorsed by both the Department of Energy and the Congress. On December 14, 1983, the Secretary of Energy put into effect a delegation order for the review of power marketing administration rates. 48 FR 55664 (December 14, 1983). Paragraph one of that delegation order requires the administrator to certify that the rate is the lowest possible consistent with sound business principles. The Federal Energy Regulatory Commission, under paragraph three of that same delegation order, is charged with the task of reviewing power rates to assure that they are the lowest possible. Western is also influenced by recent congressional rejections of proposals to auction off Federal power in the context of the Hoover Powerplant Act of 1984. See also Senate Report No. 98–340, 98th Cong., 1st Sess. 53 (1983). Even more to the point, Western has no present

authority to use appropriated dollars to even study the possibility of selling Federal power at a market price. Energy and Water Development Appropriation Act of 1984, Pub. L. No. 98–50, section 506, 97 Stat. 247, 261–62 (1983). Under these circumstances, Western cannot adopt UP&L's suggestion that CRSP power should be sold to the highest bidder.

Utah Power and Light suggests that Western need not rely on the Reclamation Project Act of 1939 for authority to sell CRSP power to Utah and Wyoming municipalities not served by preference utilities. Specifically, UP&L relies upon some "municipal purposes" language in the Town Sites and Power Development Act of 1906 as being supportive of such an allocation. 43 U.S.C. section 522. Western believes that more recent preference laws, being more comprehensive than the 1906 legislation, offer a better insight into current congressional intent and policy. Furthermore, the proposed marketing criteria are consistent with the 1906 law, as the sale of power for "municipal purposes" is accomplished through sales to municipal utilities.

Utah Power and Light also points to a contractual arrangement it recently executed with the Bonneville Power Administration (BPA) as embodying the same considerations of fairness and equity that should apply to the sale of CRSP power. According to UP&L, the contract requires BPA to purchase, at UP&L's average cost of service, a volume of electric power equal to that consumed by UP&L's residential consumers in the State of Idaho. BPA apparently is then required to resell an equivalent amount of power, at a rate equal to BPA's average system cost, to UP&L. The savings would then be passed on to residential consumers in Idaho.

Any considerations of fairness and equity inherent in the contractual arrangement described above are a result of the passage of the Pacific Northwest Electric Power Planning and Conservation Act of 1980. 16 U.S.C. 839 et. seq. That piece of legislation empowers BPA to engage in many activities which Western currently lacks statutory authority to emulate, inluding the execution of such a purchase and sale contract. More relevant to the preference issue at hand is the fact that section 5(a) of the 1980 Northwest legislation explicitly provides that all BPA sales shall be subject to the preference and priority provisions of the Bonneville Project Act of 1937, including sections 4 and 5 thereof. 16 U.S.C. 839(c). Section 4(c) of the 1937 Bonneville Project Act specifically provides that an allocation of power to a public body shall not be denied without the allowance of a reasonable time period for the prospective purchaser to become a utility. 16 U.S.C. 823c(c). Western is not persuaded that the passage of the Northwest legislation diluted the validity of preference in the sale of CRSP power to bublic utilities.

Utah Power and Light and the cities, counties and towns it represents find further fault with Westen's proposed marketing criteria on constitutional grounds. More specifically, the criteria allegedly violate constitutional guarantees of due process, equal protection, the right to travel, and the rights of the States of Utah and Wyoming and their citizens under the Tenth Amendment. UP&L also argues that the preference clause is void for vagueness. Each of these allegations are discussed in turn below.

For a claim of deprivation of due process to prevail, the entity suffering the constitutional violation must first fall within the definition of a "person." Assuming that the aggrieved utility, political subdivision or citizen has standing to assert a violation of due process, the next question is whether a liberty or property interest protected by the Fifth Amendment is at stake. The applicable test for determining whether any property right is at issue has been established by the Supreme Court in Board of Regents v. Roth, 408 U.S. 564, 577 (1972):

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.
>
> * * * * *
>
> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source * * * that secure certain benefits and that support claims of entitlement to those benefits.

See also Perry v. Sinderman, 408 U.S. 593, 601 (1972).

Under the Roth test, an investor-owned utility has no legitimate claim of entitlement to Federal hydropower, especially when preference utilities are in competition for that power. Nor are municipalities served by UP&L, or the citizens within those towns, in a position to stake a legitimate claim to CRSP power in the face of an overriding congressional intent to make such power available first to preference utilities. Even assuming that the cities represented by UP&L are within the class of preference entities eligible for CRSP power, they possess no "property" interest in CRSP power as against other preferred entities such as municipal utilities. No procedural due process safeguards are constitutionally required in the allocation decision among preference entities. Santa Clara v. Andrus, 572 F.2d at 676. Furthermore, even if UP&L or the cities it represents are entitled to due process protection, this simply means they must be afforded an opportunity to be heard at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 552 (1965). Western believes that they have been afforded ample opportunity in this regard.

Equal protection under the law is the second major constitutional objection raised by UP&L. In summary, UP&L maintains that the cities it serves, and the citizens within those cities, are being treated irrationally by Western. The lack of rationality, according to the investor-owned utility, flows from Western's decision to serve one class of power users, served by the distribution system of UP&L, differently from the class of power users served by municipal utilities. Western is not persuaded by this argument. Assuming for the purpose of discussion that UP&L or the cities on whose behalf UP&L acts have standing to assert a violation of equal protection, there is a rational basis for the classification set forth in the criteria. Among other reasons, preference in the sale of Federal power to municipal utilities serves the intent of Congress promotes local control, prevents investor-owned utilities from making a profit on a public resource, and serves as a yardstick to encourage competition within the utility industry. As a rational basis exists, no equal protection violation occurs. Matthews v. DeCastro, 429 U.S. 181, 185 (1976).

A violation of the constitutionally protected right to travel is also a defect of the proposed marketing criteria, according to UP&L. Western does not agree. Modern case law on the right to travel issue is fundamentally concerned with state residency requirements and their adverse impact on the fundamental needs and rights of the traveler. Memorial Hospital v. Maricopa County, 415 U.S. 250, 261–62 (1974). UP&L does not argue that a new arrival in Utah or Wyoming, in either a town served by a municipal utility or a town served by an investor-owned utility, is charged a higher rate for power than long-time residents. As such, there is no discrimination against an interstate migrant in favor of existing Utah or Wyoming residents. See Dunn v. Blumstein, 405 U.S. 330, 342 n.12 (1972). No fundamental right is at stake simply because one citizen pays more for electricity than another citizen. The question of whether the federally-

protected right to travel is violated therefore does not appear to be relevant to Western's marketing criteria.

Still another constitutional violation alleged by UP&L revolves around the Tenth Amendment, which provides that powers not delegated to the United States by the Constitution are reserved to the States or to the people. This assertion is answered by the Supreme Court's decision in Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936). In that case, the disposition of Federal power, under the property clause in Article IV of the Constitution, was expressly held to be an activity to which the Tenth Amendment was inapplicable. Id. at 330. As the allocation and sale of Federal power is not a traditional State function, no Tenth Amendment violation will take place under Western's proposed marketing criteria. Finally, UP&L argues that the preference clause is constitutionally defective as being so vague that reasonable men cannot agree upon the statutes's meaning. Western cannot agree. Successful arguments based upon a "void for vagueness" theory almost universally deal with a fundamental constitutional right, such as freedom of speech, or a liberty interest. No such fundamental right is at stake here. More to the point, courts of law will refer to legislative history and other methods of statutory interpretation and construction prior to finding a statute unconstitutionally vague. Such a reference under the present circumstances yields a consistent pattern of legislative intent that clarifies the standards set forth in preference law. The relevant congressional policy shows a clear desire for Federal power to be marketed first to consumer-owned utility systems. In summary, Western is not, in this reproposal of the CRSP marketing criteria, adopting UP&L's position. However, Western sees relative merit in sales to municipalities, as described in UP&L's proposal, as opposed to direct sales to investor-owned utilities. Therefore, Western is proposing that non-utility municipalities, served by investor-owned utilities at cost, will be entitled to a higher priority than direct sales to investor-owned utilities. This change is not without significance. While it is highly unlikely the long-term firm power would be made available to those towns without utility responsibility, benefits could well be received through short-term sales.

(2) *Priorities among qualified preference entities.*

As to the administrative establishment of priority among qualified preference entities, Western is mindful of the need to balance the needs of existing purchasers of Federal power against the needs of potential new purchasers. Existing customers will, in most cases under the criteria as now proposed, experience a limited reduction in benefits received as the result of offering some benefits to potential new customers who meet the eligibility requirements.

The amounts of power available for potential new customers are probably not sufficient to encourage entities without distribution systems to acquire a system in order to qualify for a share of the available Federal power. This intentional limitation is appropriate because relatively small amounts of new federally developed resources are expected to be available, and it would be unduly disruptive economically to withdraw large amounts of low cost Federal power from existing customers without cause. In addition, since the commitment of Federal power is for a limited contract period only, and the basis for determining the price for Federal power is potentially subject to modification by the Congress, the prospect of acquiring a Federal power allocation today may not be a prudent basis for making a decision to create a consumer-owned utility. Amounts available to potential new customers are intended to provide some benefit to those preference entitites who, for some other reason, have already initiated actions to acquire utility systems, or who already have utility systems. On the other hand, it would be equally unjust to completely exclude qualified preference organizations from participating in the benefits of Federal power simply because the economic or political circumstances of past years precluded purchasing Federal power earlier. The appropriate distribution of power between existing customers and potential new customers cannot be determined in a precise manner. Western's proposed distribution between these two groups reflects our judgment of what is appropriate and fair under the circumstances.

(c) *Summary and Conclusion:*

The application of the preference laws raises issues that are complex. Comments on the preference issue were either in support of or in opposition to the policy of granting preference status to certain classes of organizations. The supporting comments generally rely on the law and urge the status quo be maintained. Comments opposing the granting of preference generally argue the inequity of denying a large segment of the populace in the market area an opportunity to benefit from Federal power on the basis of the preference clause. Western's proposed application of the preference clause is based on long-standing congressional intent and administrative policy, including the fostering of yardstick competition with investor-owned utilities by giving preference in the sale of federally-produced power to consumer-owned utiities. Western concludes that the preference clause still has validity as an important principle in the marketing of Federal power. The attainment of preference status by entities taking the necessary steps to do so will be recognized by Western. Western is convinced, after carefully reviewing the arguments on all sides, that this is the appropriate application of the preference laws. While the UP&L application on behalf of 143 cities, counties, and towns does not constitute a unique situation meriting equal consideration with consumer-owned utilities, the arguments in its favor do persuade Western that such an arrangement is superior to direct sales to investor-owned utilities and should have priority within the nonpreference category. Western proposes to modify the priorities as follows:

(1) Preferences entities within the SLCA Integrated Projects market area;

(2) Preference entities outside the market area; and

(3) Nonpreference entities, provided that those nonpreference entities acting as agents for public entities without distribution systems shall receive priority over nonpreference entities acting on their own behalf.

The law is silent as to any priorities that should be given among qualified preference entities. Generally speaking, when a resource first becomes available, all qualified applicants are treated under identical criteria. However, when a resource has been sold over a long period of time to a group of customers and those contracts expire, Western believes there is justification for treating the existing customers differently than potential new customers. In this sense, they have been given a priority, but this priority is of a different character than that given to preference utilities over investor-owned utiities. Existing preference customers have no vested right in Federal power. However, in balancing the interests of existing and potential new customers that are qualified under the law to preference consideration over investor-owned utilities, Western gives more weight to those currently receiving benefits to avoid inflicting undue economic hardship, while recognizing the need to provide other qualified

preference purchasers some reasonable benefits from Federal power.

2. Other Eligibility Requirements

In addition to the eligibility requirements discussed above, Western required in its **Federal Register** notice of August 23, 1983, as amended, that all potential applicants submit applicant profile data on or before December 30, 1983, and proposed special requirements for potential new customers and wholesale utilities. Potential new customers must have had a 1982 load greater than 100 kilowatts, and except for Federal or State ultimate consumer-type loads, must have taken substantive steps to obtain utility status by January 1, 1984. Wholesale utilities were required to satisfy the Administrator (i) that the benefits of federally financied power are distributed at the lowest possible rates to consumers consistent with sound business principles, (ii) that consumers can identify their true power supply costs from all sources so that the costs of growth and the benefits of conservation are identifiable, and (iii) that retailing utilities can identify cost and other significant characteristics of each of its power supplies.

(a) *Comments:*

—Criteria are not clear about whether filing applicant profile data by December 30, 1983 is an eligibility requirement.
—The deadline for filing applicant profile data should be extended beyond December 30, 1983.
—The specific actions required by 1/1/84 to obtain utility status are unclear; the deadline for obtaining such status should be extended.
—Concept of widest possible use of Federal power should be utilized, with benefits distributed through lowest possible rates to consumers.
—Conservation and renewable energy criteria should be established for determining eligibility for an allocation.
—Criteria for eligibility of wholesale utilities are not clear, are unfair, unnecessary, and unduly burdensome; the methods that will be used to apply the criteria are uncertain; and these criteria could create legal and financial problems for some existing customers.
—Requirements for wholesale and retail utilities should be the same.
—Wholesale utilities should be required to show cost of CRSP resources directly to retailing utilities and ultimate consumers should receive information that permits them to understand the benefits of Federal power.
—Special requirements for wholesale utilities should be withdrawn.
—Objectives that the Administrator would use to evaluate wholesale utility applications have been accomplished by contract terms.

(b) *Discussion*:

The above comments have been grouped for discussion into the following numbered categories:

(1) Applicant profile data;

(2) Deadline for attaining utility status;

(3) Special eligibility requirements for wholesale utilities; and

(4) Other special eligibility requirements.

(1) *Applicant profile data.* Certain load, resource and organizational data, referred to as applicant profile data, were requested in a February 4, 1983 **Federal Register** notice. It was stated therein that "Those parties that may be interested in applying for an allocation of these resources must provide the applicant profile data requested herein." The original deadline of March 15, 1983, was extended by a March 14, 1983, notice in the **Federal Register** to April 15, 1983.

In the **Federal Register** notice published August 23, 1983, Western advised that "to be eligible to be considered for an allocation of capacity and energy from the SLCA Integrated Projects under the final marketing plan, those interested utilities not having already done so *must* furnish applicant profile data to the Salt Lake City Area Manager on or before November 15, 1983. On December 7, 1983, a notice in the **Federal Register** extended that deadline to December 30, 1983, and reiterated that "entities that do not submit applicant profile data to Western will not be eligible to apply for an allocation of power under the proposed criteria."

Potential applicants have had nearly 11 months in which to furnish the information requested, and Western has repeatedly emphasized that furnishing the data is a requirement. The revised criteria so states in Appendix B.

A further extension of the deadline for furnishing this information is unwarranted. Sufficient time and notice have been provided. The submitted applicant profile data have been used in determining what allocation alternatives would best serve the needs of entities interested in receiving Federal hydropower. Further, the criteria must be completed and allocations made with sufficient lead time to execute contracts prior to the termination of existing arrangements. An extension of the deadline for furnishing data would delay this process unduly.

An additional consideration is that potential applicants' loads (including existing customers) exceed the amount of available Federal power by about 8 times. A further consideration is that Western has received informal requests to extend this deadline from very few people, and the only formal request came from a municipality for whom UP&L has already submitted data. Therefore, no additional extension will be granted.

(2) *Deadline for attaining utility status.* The proposed general power marketing criteria published August 23, 1983, stated that on or before January 1, 1984, each potential applicant must be either a retail or wholesale utility, a Federal or State ultimate consumer-type load, or an existing CSRP contractor. during the September 7, 1983 information forum, a Western representative indicated that a potential applicant would be considered if it were taking *significant and tangible steps* by that date in order to acquire the means to distribute power by September 30, 1988. Examples of significant and tangible steps were stated to be actions such as:

(i) Evidence of negotiations with an investor-owned utility regarding distribution system acquisition;

(ii) Action before a Public Service or Public Utility Commission to acquire a system;

(iii) Initiation of condemnation proceedings; or

(iv) Evidence of a financial commitment to purchase a transmission system.

Public comment, specifically from West Bountiful City, opposed the imposition of the January 1, 1984 deadline date for demonstration of significant and tangible actions to acquire a means to distribute power. The City argued that the criteria did not allow sufficient time for a new potential applicant to meet the proposed eligibility requirements. Due to the uncertainty regarding eligibility requirements and the short time permitted to qualify with the eligibility requirements known at the time, the City requested that potential applicants be allowed an additional fifteen (15) months to meet eligibility requirements. By extending the January 1, 1984, deadline to March 30, 1985, West Bountiful believed sufficient time would be allowed to demonstrate significant actions and to acquire the ability to distribute power by September 30, 1988.

Western has received requests for an extension of the January 1, 1984, deadline by only three potential applicants who have already submitted

applicant profile data, none of whom seem willing to proceed with the formation of a municipal utility unless assured that it could obtain low cost Federal power. As stated in the earlier discussion of Eligibility Requirements, Western only intended to provide an opportunity to potential new customers who already had a utility system or who were already in the process of acquiring one to achieve benefits other than solely becoming eligible for an allocation of Federal power. Federal power in this market area was made available on a widespread basis under 1962 marketing criteria, and both long-term and short-term allocations of power have been made periodically ever since. If, since 1962, a municipal has not taken sigificant and tangible steps to acquire a utility system, it is not unreasonable to assume that establishing a municipal utility has not been a priority for the citizens of that city. Since the contract period for which power will be committed is 10 years and since relatively small amounts of additional power and energy are expected to become available in the future, those municipals that establish municipal systems within that period might anticipate a future opportunity to obtain a small amount of Federal power under then current terms and conditions.

One obvious disadvantage to Western of modifying the eligibility requirements to include entities that are in the process of acquiring utility status is that after obtaining an allocation, they may not complete the process by September 30, 1988. Western would then have only 1 year to place that power under contract with somebody else. Since there are at least 143 cities, counties, and towns representing a load of about 3,100,000 kilowatts that could potentially take action to establish consumer-owned utilities if Western extended the deadline of January 1, 1984, for all potential applicants who have already filed applicant profile data, this course of action is not warranted. However, Western does not want to deny an opportunity to those municipals who have initiated an investigation into the feasibility of establishing a municipal system but have not advanced to the stage of having taken significant and tangible steps by January 1, 1984. Consequently, Western is revising the eligibility requirements to allow any potential applicant who has already (1) filed applicant profile data, and (2) specifically requested an extension of the January 1, 1984, deadline, to demonstrate to Western within 1 year of the publication of this notice that it has taken significant and tangible steps to acquire the means to distribute power by September 30, 1988. Three municipalities presently meet these criteria—Mapleton, Richfield, and West Bountiful, Utah.

(3) *Special eligibility requirements for wholesale utilities.* This proposed requirement was vociferously opposed by some joint action agencies, while the objectives outlined were supported by at least one retail level utility.

Western recognizes the many benefits of joint action agencies and definitely is not opposed to them. Western is committed to promoting the objectives of assuring that the benefits of federally-financed power are distributed to consumers and that power supply cost information is available to retailing utilities and the retail level customers. In pursuing those objectives, Western singled out wholesaling utilities because they add another organizational level through which the objectives must be filtered. The suggestion that requirements should be the same for retail and wholesale utilities is well taken in one respect. Certainly the basic objectives apply to both types of utilities.

The observation that the objectives proposed for use by the Administrator to evaluate wholesale utility applications are related to existing contract terms is accurate. The resale of electric energy article promotes these objectives, but does not provide for any penalties in the event of noncompliance. Since the exact requirements of this article have been questioned in the past, and since this same article was singled out during the public process by UP&L in support of its application, a detailed discussion of it is warranted.

UP&L suggested that several CRSP customers are not passing on the benefits of low cost federal power to the ultimate consumer, as required by the resale article in each city's contract. UP&L pointed out that the municipal customers are transferring power revenues to their general funds, and are financing public works, avoiding debt service, and actually creating surpluses in municipal budgets, all as a result of purchasing the CRSP resource at a relatively low cost and setting municipal rates at a level sufficient to assure the general fiscal health of the town.

The resale of electric energy article requires the CRSP purchaser, such as a city with a municipal utility, to take five steps to encourage the widespread use of low cost Federal power. First, the city contractually agrees to make benefits of federally-generated power available at fair and reasonable terms to all of its customers at the lowest possible rates consistent with sound business principles. Second, the city agrees to maintain books of account in accordance with the system of accounts prescribed for public utilities and licensees by the Federal Energy Regulatory Commission. Third, the city agrees to provide the United States with copies of schedules of municipal retail rates. Fourth, the city agrees to submit to the United States an annual statement indicating, among other things, that the charges to customers are consistent with the principles set forth in the first subsection of the resale article. Fifth, the city agrees either to publish operating and financial data annually in a newspaper of general circulation in the city's electrical service area, or to furnish such information by mailing copies of the data to each of its electrical customers.

The philosophy underlying the resale article is explicitly set forth in such statutory law as section 5 of the Flood Contract Act of 1944 (16 U.S.C. section 825s) and section 5 of the Bonneville Project Act of 1937 (16 U.S.C. section 832d). That philosophy, simply stated, involves passing the benefits of low-cost Federal power on to consumers, under fair and reasonable terms, at the lowest possible rates consistent with sound business principles. This concept is related to the preference clause, but goes beyond the establishment of preference to public bodies and cooperatives. The philosophy allows a power marketing administration to verify that the ultimate consumer is receiving the benefits of low-cost Federal power.

The nature of the resale article, and an explanation of the history underlying its development, is sufficiently summarized in a 1967 letter from the Department of the Interior's Assistant Solicitor, Power to the City Attorney of Redwood Falls, Minnesota. The letter harmonizes the resale principle with the practical difficulties of administration:

> Although the principle is clear in concept, experience has proven that the administration of this principle in Federal power marketing operations presents many practical difficulties of interpretation and application. The phrases "fair and reasonable terms" and "sound business principles" are general at best and give rise to many different interpretations among reasonable men as to their precise application. It is for this reason that the article itself does not set forth any specific mechanisms for enforcement. The only specific implementing provisions in the remaining paragraphs are reporting requirements. These are designed to give not only this Department, but more importantly the customers of the contracting utility and the members of the public at large,

a full opportunity to have the facts relating to resale rate schedules in order to provide a basis for informed public discussion . . . [T]he article is based on a recognition of comity and mutual respect between the Federal marketing agency and the contractor. The principal reliance of the article, therefore, is on information, discussion and accommodation.

Beyond this, the degree of compliance of a contractor with the spirit of the article would be a matter for consideration in deciding on additional power allotments and in reviewing the terms and conditions for further service when a contract by its terms is open for renewal.

Thus, compliance with the resale article, at least historically, has been a factor in the allocation of power and negotiation of contractual terms and conditions. Western believes that the statement of Interior's Assistant Solicitor still has relevance today. Therefore, compliance with the resale article will be considered in the allocation of CRSP power. Applicants presently buying Federal power will be required to demonstrate how their power rates comport with Western policy. This could be accomplished in at least two different ways. First, Western's present customers could show how the benefits of low-cost Federal hydropower have been directly passed on to the ultimate consumer through lower power rates. Or, second, the customer could demonstrate how power rates to the consumer provide revenues to be used to accomplish legitimate public purposes, and that those power rates were established in an open and public manner. The existence of public records which explain the derivation of existing power rates, that are available to the ratepaying consumer, would be significant in meeting this second option. If an applicant cannot meet either of these two tests, or otherwise demonstrate compliance to the Administrator's satisfaction, that applicant may have its allocation rescinded or receive a substantial reduction in its allocation. Resources made available from such reductions will be administratively reallocated. The possibility of noncompliance with the resale article on the part of some customers does not, however, mean that any of the CRSP resource would necessarily be sold to UP&L, since neither UP&L nor the cities, counties, and towns that have applied for power through UP&L are eligible for a first priority to CRSP electricity under the criteria.

Western believes that there is some merit in comments by wholesale utilities on the use of objectives relating to identification of power costs by consumers as allocation criteria. Since the objectives in question can be served through appropriate contractual language, Western is proposing to eliminate the special requirements for wholesale utilities as allocation criteria effective prior to the signing of a contract. Rather, Western will develop contractual language, to be used with both wholesale utilities and retail utilities, to achieve the goal of informing the consumer of the source and cost of various components of power supply. While the existing principles contained in the resale contractual article will very likely be part of this new language, emphasis will be placed on providing information to the power consumer in accordance with flexible but objectively defined standards.

Noncompliance with the contractual provision may result in a penalty of the loss of all or a part of that entity's contract rate of delivery and associated energy.

(4) *Other special eligibility requirements.* One of the comments Western has received on the issue of eligibility requirements is centered on the encouragement of conservation and the development of renewable energy resources. The Environmental Defense Fund and the National Wildlife Federation have suggested that Federal hydropower be sold to those preference entities that develop the best conservation and renewable energy programs. Under their approach, conservation would become an eligibility criterion rather than a goal to be encouraged after an allocation is made and a contract signed.

Western shares with these commentors a desire to encourage meaningful conservation efforts and the development of alternative methods for the generation of power. However, Western is convinced at the present time that its existing conservation and renewable energy program is effective in attaining national and agency conservation goals. In the absence of an acceptable program, the contractual penalty provision of a ten percent reduction in the amount of power sold to a particular preference entity offers a substantial incentive to develop a commitment to conservation.

Western also believes that Congress has endorsed its approach in encouraging conservation efforts through contractual provisions, as opposed to making conservation an allocation criterion. In the course of debate on the floor of the House of Representatives on the Hoover Powerplant Act of 1984, a conservation amendment was offered by Representative Udall of Arizona. 130 Cong. Rec. H3336–37 (May 3, 1984). That conservation amendment, which would apply to all power sold by Western, adopts the approach of striving for conservation goals through contractual provisions with a power allottee, with percentage reductions if pre-defined goals are not realized. Western notes that this amendment was adopted in reaction to objections voiced by the Environmental Defense Fund that the Hoover bill did not have adequate measures for conservation. 130 Cong. Rec. H3337 (May 3, 1984). Given the congressional passage of affirmative legislation which recognizes the appropriateness of encouraging conservation through contractual provisions, Western presently believes that it is inappropriate to modify long-standing allocation practices by making conservation the overriding factor in allocating Federal power resources. However, Western is interested in receiving further comment from the public on this issue prior to making a final decision, and has requested that this idea be analyzed by an independent contractor who will be preparing an environmental report on the proposed marketing criteria for the SLCA Integrated Projects resources. No final decision will be made on this issue until the environmental evaluation of the marketing plan is complete.

(c) *Summary and Conclusion:*

Commentors pointed out the lack of clarity in defining eligibility requirements, and Western recognizes the need for further clarification. In response to the potential hardships of requiring wholesale utilities, for the purpose of qualifying for an allocation, to verify their compliance with identified objectives (selling Federal power at the lowest possible rates to consumers consistent with sound business principles, assuring that consumers can identify true power costs from all sources so that the costs of growth and the benefits of conservation are identified, and assuring that retailing utilities have detailed power supply information), Western will depend upon contract provisions to accomplish the same objectives. However, existing customers must demonstrate compliance with the spirit of the resale of electric energy article in their contract to avoid a substantial reduction or loss of in their post-1989 allocation. The applicant qualifications, now in Appendix B of the criteria, will be revised as follows:

The following requirements must be met in order to be eligible for an allocation of long-term resources from the SLCA Integrated Projects:

(1) Each potential applicant must have submitted substantially complete applicant profile data to the SLCAO on or before December 30, 1983.

(2) Each potential new customer must have had a 1982 load greater than 100 kilowatts.

(3) On or before January 1, 1984, each potential customer must:

(i) Be a utility, primarily engaged in retail or wholesale sales of electricity, with power supply responsibility for the load to be served; or

(ii) Be a Federal or State ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(iii) Be an existing Western contractor for long-term firm power who does not otherwise qualify above; or

(iv) Have taken significant and tangible steps to acquire the means to distribute power or have taken initial steps to acquire the means to distribute power and have requested an extension of time for taking significant and tangible steps.

The proposed criteria will be modified to indicate that proposed allocations of capacity and energy to any existing customer who fails to demonstrate compliance with the spirit of the resale of electric energy article in its current contract will be reduced or eliminated. See paragraphs 2 and 3 of Appendix B to the revised criteria.

The proposed criteria will be revised to indicate that the contracts will contain a resale of electric energy article requiring purchasers of Federal power to demonstrate that:

(1) The benefits of federally-generated power are distributed to its customers at the lowest possible rates consistent with sound business principles.

(2) Consumers can identify the costs of federally-generated power and non-federally-generated power such that the true costs of growth and the benefits of conservation and/or development of renewable resources are readily identifiable.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors will be directly accountable to Western for complying with the above requirements. One of the ways these requirements may be satisfied by the contractor and its members or principals is to display, on the monthly bills rendered to customers, a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the customer. Failure to comply with the article may result in the loss of all or a part of the resources committed to the customer.

3. Market Area

The proposed market area in the August 1983 **Federal Register** notice for the SLCA Integrated Projects was the same as the existing market area for CRSP, except that a portion of California east of the 115th degree longitude, formerly included in the Southern Division, was deleted. However, Western proposed an option to withdraw all CRSP resources from the Southern Division in 1999, thereby eliminating a portion of the market area. Western proposed to restrict the market area for new customers to the SLCA, and restrict the market area for power from projects other than CRSP to the Northern Division.

(a) *Comments:*

—All resources should be marketed throughout the whole market area.
—There should be no overlapping of market area boundaries for CRSP resources and other Colorado River resources marketed by the Boulder City Area.
—The market area should be defined as stated in the Colorado River Compact, including the total drainage basin, not just the Northern Division.
—The market area should be expanded to include all of the SLCA, including west Texas, and all of the Boulder City Area, including southern California.
—The market area should be limited to the Upper Basin States of Colorado, New Mexico, Utah, and Wyoming when existing contracts terminate.
—The Southern Division should be eliminated from the market area in 1999.
—The Southern Division should not be eliminated from the market area.
—The portion of California presently in the market area should not be deleted.
—The portion of California presently in the market area should be deleted.
—The market area for new customers should include all of the Northern Division.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Withdrawal from Southern Division;

(2) New customer market area; and

(3) Other market area issues.

(1) *Withdrawal from Southern Division.* One of the major issues which has arisen out of the Salt Lake City Area's post-1989 marketing plan is centered on the allocation of CRSP power to the Southern Division. Many of these comments deal with the nature of the present allocation of 20 percent of the net CRSP capacity available for load in the summer and 7 percent in the winter. Customers in the Southern Division have made comments to the effect that these percentage allocations are permanent, and cannot be altered to their detriment. Some Northern Division customers disagree, arguing that the Southern Division allocation was for the term of the original power sales contracts only, and should not be deemed perpetual when Northern Division preference loads are now large enough to absorb all of the CRSP generation.

A review of the original CRSP criteria of March 9, 1962, reveals no reference to any "permanent" allocation to the Southern Division. However, a number of documents submitted to Western by Southern Division customers suggest that a permanent allocation was intended by the Secretary of the Interior under the circumstances as they existed over 20 years ago. The question which arises out of this historical background is one of definition. What is meant when the word "permanent" is used? Courts of law often interpret words in such a manner as to give them their common meaning. However, several opinions suggest that the word "permanent" does not necessarily mean forever. For example, the Supreme Court of the State of Washington has held that a decree for alimony is "permanent" in that it continues in force until a change in circumstances occurs. Bartow v. Bartow, 121 P.2d 962 (Wash. 1942). In a similar vein, the Supreme Court of the State of Colorado expressed its opinion on the meaning of the concept:

> The word "permanent" relates to time. It means abiding and remaining fixed for such period as is necessary for the accomplishment of the objective in connection with which it is expressed. While it is an antonym of temporary, it does not necessarily imply perpetuity or mean forever.
>
> Parish v. Hainlen, 236 P.2d 115, 118 (Colo. 1951).

In the State of Missouri, the State Supreme Court has held that a "permanent residence" does not mean that residence may never be changed, but that there exists no present intention to change it. Barrett v. Parks, 325 Mo. 974, 180 S.W. 2d 665 (1944). Similarly, a California court has observed that the concept of "permanent employment" means only that employment is to continue indefinitely and until either party wishes to sever the relationship for some good reason. Speegle v. Board

of Fire Underwriters, 158 P.2d 426, 429 (Cal. App. 1945).

Aside from court cases such as those listed above, which focus on the common meaning of a term, the intention of a party is often critical in a determination of the meaning of a word. Different customers have varying opinions in this regard. The Colorado-Ute Electric Association, Inc., states that the allocation in question was permanent for the period of the contracts issued under the 1962 criteria (20 years) and the extension thereof under the 1978 criteria (7 years). The Salt River Project, on the other hand, equates "permanent" with the amount of time necessary for achievement of repayment. Both are less than forever. In fact, the original 1962 CRSP marketing criteria allowed for an adjustment of the allocation to the Southern Division based upon changes in the diversity between the winter and summer seasons in the Northern Division. The desire of the United States to retain flexibility in the face of changing conditions was clearly intended in 1962. Aside from the question of the intent that existed in 1962, changes in the allocation criteria over time are significant. The original CRSP marketing criteria remained in existence almost 16 years. On February 9, 1978, revised CRSP marketing criteria were published in the **Federal Register.** As with the original criteria, no reference appears in the 1978 text as to the permanency of the Southern Division allocation. In fact, the 1978 revised criteria specifically state that "these criteria shall supersede and replace the 'General Power Marketing Criteria' for sale of power from CRSP approved March 1962, and continue to be subject to change upon reasonable notice . . . and opportunity for comment by interested parties." As in 1962, the United States reserved the right to adapt to changing circumstances in the sale of Federal hydropower. This administrative reservation of the right to modify marketing criteria to deal with changing circumstances is still appropriate today. Since no provisions in CRSP sales contracts with Southern Division customers require the perpetual renewal of allocations notwithstanding the expiration of the contracts' terms, Western believes that it has the flexibility to respond to differing market conditions. As the United States Supreme Court has observed, an administrative agency must be given ample latitude to adapt its rules and policies to the demands of changing circumstances. Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., U.S.L.W. 4953, 4956 (1983).

Western has the authority to adjust the amount of the CRSP resource allocated to the Southern Division and proposes to adjust the allocations of CRSP, based on existing circumstances.

The proposal, discussed in more detail below, would require reducing Southern Division allocations by 55 megawatts in the summer season, starting in the summer season of 1990. Under this proposal, the winter season allocation for the Southern Division would actually increase by 26 megawatts.

Western's development of this proposal is based on recognition of the intent that went into development of the 1962 CRSP General Power Marketing Criteria. The Southern Division at that time was desirous of 240 MW of the CRSP resource on a long-term basis that was equivalent to 20 percent of the then planned installed capacity of 1168 MW rounded to 1200 MW. The Southern Division was also willing to take all CRSP power surplus to the Northern Division needs on a withdrawable basis. The Northern Division viewed a commitment of 240 MW to the Southern Division on a long-term basis as unacceptable because their load growth by 1979 would exceed the CRSP resource during the winter peak load period. The key to accommodating these desires in 1962 was the then existent load diversity of about 165 MW in the Northern Division between the summer season peak and the winter season peak. The Northern Divison could agree to committing CRSP resources to the Southern Division to serve their summer peak as long as the bulk of that resource (165 MW) was available to the Northern Division for their winter peak. This approach struck a middle ground based upon then-existing circumstances. Before the 1962 marketing criteria was finalized the concept of allocating specific amounts of power was changed to percentages of CRSP power. The previously mentioned load diversity of 165 MW, taken from the 240 MW, left 75 MW or 6.25 percent of the marketable power that was "rounded" to 7 percent for the winter season. The Southern Division's share of 20 percent/7 percent of CRSP marketable resources was used as a basis for establishing the allotments in the 1962 General Power Marketing Criteria.

It is Western's intent to preserve the spirit of the allocation that was made in 1962 while recognizing changing conditions as they are projected to exist in 1989 and beyond. Western's customer profile information for 1989 shows little if any diversity between summer and winter peak loads in the Northern Division. This is consistent with the lessening of diversity shown over the last few years. Since the Northern Division seasonal load diversity in the 1960's was a key factor in finalizing the 1962 criteria, Western believes that some adjustment is warranted. On the other hand, Western believes that the Southern Division was originally seeking a fixed long-term resource to justify their support and interest in CRSP power. Therefore Western proposes to settle this issue by seeking a middle ground approach. Rather than withdraw the Southern Division allocation entirely, Western proposes to preserve the principles upon which the original marketing criteria was developed.

Applying the 20 and 7 percent criteria to 1200 MW results in 240 MW for the summer season and 84 MW for the winter season. This would be a reduction in the existing Southern Division allocations of 25 MW (265–240) for the summer season and 9 MW (93–84) for the winter season.

However, as mentioned above, the load diversity in the Northern Division that was a key factor in the 1962 criteria no longer exists. Therefore Western proposes a compromise approach that reduces the diversity in an amount that will provide equal amounts of power in the summer and winter seasons for the resource pools available to potential new SLCA customers to reflect the lack of seasonal diversity expected in the Northern Division by 1989. Western's August 1983 proposal anticipated offering available power in excess of existing commitments to potential new customers and specified customer groups, together called participating customers in the criteria. Based on the new hydrology model studies supporting these revised proposed criteria, participating customers would receive about 20 MW in the summer and 101 MW in the winter on this basis. Increasing these amounts by 25 MW in the summer and 9 MW in the winter (equal to the reductions in Southern Division allocations) would result in 110 MW of winter power and 45 MW of summer power available to participating customers. By selecting an approximate midpoint of 75 MW as a reasonable amount to make available to participating customers in both seasons, the effects upon Southern Division allocations are shown below:

	8/83 Allocation Proposal (1)	Adjust. for Revised Marketable Resources (2)	Adjust. on Basis of Initial Allocation (3)	Adjust. for Diversity (4)	Exist. Commit. (5)	Diff. of Col. 4 - 5 (6)
Winter Season - MW						
Southern Division	95	93	84	119	93	+26
Northern Division						
Existing Customers	1200	1200	1200	1200	1200	0
Participating Customers*	114	101	110	75	0	+75
	1314	1301	1310	1275	1200	+75
Total Marketable Power	1409	1394	1394	1394	1293	+101
Summer Season - MW						
Southern Division	254	265	240	210	265	-55
Northern Division						
Existing Customers	1011	1011	1011	1011	1011	0
Participating Customers*	50	20	45	75	0	+75
	1061	1031	1056	1086	1011	75
Total Marketable Power	1315	1296	1296	1296	1276	+20

* Includes a few existing customers with less than 25 percent of their 1980-82 loads supplied from Federal resources or who received allocations based on unique circumstances.

The Southern Division would receive about 17 percent of 1200 MW, or 210 MW, in the summer and about 10 percent of 1200 MW, or 119, MW, in the winter season, a reduction of 55 MW in the summer and an increase of 26 MW in the winter.

The two adjustments proposed would reduce the diversity between the summer and winter allocations in the Southern Division from 185 percent to 76 percent. The Northern Division allocations would have a seasonal diversity of 17 percent instead of the existing seasonal allocation diversity of 18.7 percent. In 1989, the Northern Division loads are expected to have little or no seasonal diversity, while the Southern Division seasonal load diversity is estimated to be 27 percent. Therefore, while the Southern Division would lose a net amount of 29 MW, the relationship between the summer and winter allocations in the Southern Division are still considerably more favorable than in the Northern Division, when compared to seasonal load diversity.

To assist individual existing customers to adjust the diversity between their summer and winter allocations to their best advantage, based on the seasonal characteristics of their loads and other resources, Western is willing to facilitate the trading of capacity from one season for the other season by matching up those individual customers who indicate a desire to trade with other customers within the same Division during the allocation process.

Western believes that allocating the Southern Division the specific amounts of 210 MW (summer) and 119 MW (winter) preserves the intent of the original criteria while at the same time appropriately reflecting changed conditions. Available energy for the Southern Division would be determined by utilizing one of the alternative methods for adjusting the Southern Division energy allocations contained in a temporary Appendix D to the criteria.

In advancing this proposal, Western is mindful of changes in the availability of power resources in the Southern Division. Under the Hoover Powerplant Act of 1984, preference customers in the State of Arizona have first priority to the Federal portion of Navajo Powerplant that is surplus to the needs of the Central Arizona Project. It is also worthwhile noting that the contingent capacity resulting from the Hoover uprating program of 503 MW is proposed to be allocated to Arizona, California and Nevada in the amounts of 188, 127, and 188 MW, respectively, commencing June 1, 1987. Western believes that these resources available to the Southern Division that are not available to the Northern Division and the increased allocation of 26 MW to the Southern Division in the winter season will offset any hardships caused by a reduction of 55 MW from the Southern Division during the summer season.

(2) *New customer market area.* To promote more widespread distribution of the benefits of available Federal power and energy, some commentors suggested that Western should offer power and energy to new customers throughout the market area, or at least throughout the Northern Division. In proposing that the market area for new customers be limited to the SLCA, Western is recognizing that the BCA and LFCA marketing plans have offered or will offer resources to new customers in those areas. A further consideration is the limited amount of resources available to new customers. Potential new preference customers in the SLCA that are entitled to first priority consideration had 1982 loads that are more than 4 times greater than the amount of power available for new customers.

New customers in each area will benefit more by receiving a relatively larger allocation from one area rather than receiving several separate allocations of a smaller magnitude and then being required to integrate these resources, which have different characteristics, with resources from other suppliers. The proposed restriction on the market area for new customers simplifies the customers' resource mix as well as Western's allocation procedures. Western therefore has not modified its original proposal.

(3) *Other market area issues.* The proposed elimination of California from the market area evoked a few comments, some favoring and others opposing the proposed change. No compelling reasons were advanced for either position. Since there are no existing firm power commitments from the SLCA Integrated Projects in that portion of the market area, and the available resources are much smaller than the demand for them, Western did not include any portion of California in the revised proposed criteria. For the same reasons, Western does not propose expanding the market area into west Texas.

A commentor suggested that the entire upper and lower Colorado River Basin be considered a single resource. While the approach has some merit, it is not compatible with the historical development of the resources and therefore not subject to implementation by the SLCA since the Boulder City Area Office has already published a marketing plan for the post-1987 period. However, some of the variations in the Appendix D for deriving Southern Division energy allocations do consider other lower basin commitments, and thereby recognize the concept that lies behind the suggestion.

(c) *Summary and Conclusion:*

The major market area issue was whether or not the Southern Division should continue to receive CRSP power. Western adjusted Southern Division's share of CRSP, as shown in Appendix A, in an effort to preserve the intent of the original allocation, to recognize the change in the Northern Division

seasonal load diversity, and to recognize a change in the availability of Federal resources in the Southern Division.

Changes in the descriptions of the Northern and Southern Division market area were made for administrative convenience. The Dixie-Escalante Electric Cooperative, a Northern Division customer, has one small member in the Southern Division, the Littlefield Electric Cooperative. Likewise, two members of another Northen Division customer, Plains Electric G&T Cooperative, are partially in the Southern Division, the Continental Divide Electric Cooperative and Navopache Electric Cooperative. The areas served by these three cooperatives that are members of Northern Division customers have been transferred from the Southern to the Northern Division in the proposed criteria. This change would have little impact upon any prospective contractor under the proposed criteria.

Western also included a description of the area common to the SLCA and the SLCA Integrated Projects market area in the proposed criteria to clarify the market area for potential new customers. Based on a comparison of the amounts of available resources and demand for the resource, Western concluded that an expansion of the proposed market area for new customers was not warranted, particularly since other Federal resources are available to new customers in the BCA and LFCA. Whenever practical, other available Federal resources in the market area were considered, in an effort to develop equitable allocation procedures.

4. SLCA Project Integration

Western proposed the consolidation of the Colorado River Storage, Collbran, Provo River, and Rio Grande Projects to increase the marketable resources, simplify contract development and administration, and create a common rate. Repayment requirements would continue to be determined separately for each project. A preliminary study based on FY 1982 data indicated that a composit rate would increase the CRSP rate by about 0.1 mill, reduce the Collbran rate by about 10 mills, and reduce the Rio Grande rate by about 20 mills.

(a) *Comments:*

—Each project should retain its own rate integrity and financial autonomy.
—Support integration if (1) the concept is legal and (2) Western continues to make power repayment studies for each project.
—Project integration generally provides little benefit to the majority of CRSP customers; financial impact on customers should be evaluated.
—Integration of Rio Grande with CRSP would adversely affect the CRSP repayment schedule; would result in a subsidy to Collbran and Rio Grande Projects.
—Blended rate is contrary to statutory restrictions, and encourages consumption rather than conservation with subsequent adverse impact on the environment.
—A greater amount of long-term firm capacity should be transferred from Collbran and Rio Grande to other CRSP customers.
—Western should integrate these projects in 1985 to obtain the projected benefits as quickly as possible.

(b) *Discussion:*

The comments on project integration provided broad support for the objectives of increasing marketable capacity and administrative efficiencies. A few commentors opposed increasing CRSP costs and objected to the proposal that Collbran and Rio Grande contractors retain existing power commitments.

From Western's perspective, the benefits of project integration rest on three main points. The first advantage is the ability to market additional amounts of capacity by combining the generation of the smaller projects with generation of the Colorado River Storage Project. Secondly, the United States is assured that the Rio Grande and Collbran Projects will be repaid in the prescribed time. Finally, there are advantages to Western and to Western's customers in a single rate adjustment process for the SLCA integrated Projects rather than separate processes for each project.

Integration leads to the availability of a greater amount of marketable power for a number of reasons. Since most of the projects that would be integrated are located in separate river basins and all are geographically widespread, there exists a certain diversity among the projects which can be utilized in integrated operations which could not be recognized in a sale on a long-term basis by the individual projects standing alone. Also, CRSP can readily provide reserves for the integrated projects. If the individual projects must provide their own reserves, the amount of firm power available is reduced, and in some cases, firm power cannot be offered at all for some periods of time. This reduces the desirability and value of the resource and revenues available for repayment.

The Collbran and Rio Grande Projects have experienced difficulty in generating revenues sufficient to meet their repayment requirements. Collbran Project has experienced high maintenance costs, and the Rio Grande Project has experienced substantial periods of drought. Although the past two water years have been above average for Rio Grande, the project still can only produce firm power in marketable quantities in the summer season. These conditions have required frequent and substantial rate adjustments. Integrating the projects will assure repayment of project costs. The slight additional cost under an integrated marketing approach is, Western believes, reasonable considering the efficiencies and additional power to be gained.

The advantage of a single rate process is significant to Western. The current requirement to complete rate adjustment procedures for each project has burdened Western's staff, resulting in the delay of vital marketing and contracting activities. The advantage of a single rate process would permit Western's staff to provide better customer service. Customers currently purchasing power from more than one project will also be spared the burden of participating in more than one rate adjustment process. Each project would retain its separate financial identity and separate power repayment studies. However, the needs of all projects would be handled in a single rate adjustment process. A minimal increase in the CRSP rate, such as .1 mill, could reasonably be absorbed considering the benefits available.

In an arrangement where the resources and revenue requirements from the small projects are added to the CRSP, there is no net impact on the revenues available for CRSP repayment. The rates for Rio Grande and Collbran project power will decrease, and CRSP repayment requirements will continue to be met on time.

Western does not agree that a blended rate among projects will encourage consumption. The principal purchasers of Collbran and Rio Grande Project power draw on a variety of other larger resources to meet their power needs. The impact of the proposed rate change will be much reduced by the time the end-user receives the blended product. Moreover, the marginal prices paid by Western's customers for new power to meet load growth certainly promotes conservation over consumption. The conservation article continued in Western's power sales contracts further discourages unwise consumption. Western is not presently persuaded that the proposed blended rate will adversely impact conservation

or the environment, but will not make a final decision until its environmental review is completed.

Western also believes that operational integration, reflected in the marketing plan now being proposed, comports with the congressional mandate to operate CRSP powerplants in conjunction with other Federal powerplants so as to produce the greatest amount of marketable power. 43 U.S.C. section 620f.

In addition to the points made above regarding additional capacity, repayment and a single rate adjustment process, intergration reduces the impact of a variety of other conditions the small projects would experience standing alone. All of the small projects lack upstream regulation for their reservoirs so that power production is related in a more immediate way to current weather conditions. Beyond that, the water releases from these projects are controlled by irrigation needs so that the projects standing alone is not capable of shaping its power production pattern to the needs of a customer to the extent necessary to optimize the marketability of the power produced.

Western recognizes, as one comment indicates, that Southern Division entities do not share in the resources of the smaller projects. These integrated projects have never been marketed in the Southern Division and are not located in the southern Division marketing area. For some of the reasons set forth in the discussion of the proposed adjustment to the Southern Division CRSP allocation, Western does not believe it appropriate to market integrated resource power in the Southern Division. Southern Division entities will bear a small increase in the cost of power as a result of integration, along with all Northern Division customers. However, they will continue to share the CRSP resource at a very reasonable cost.

Western continues to propose that the existing customers maintain their existing rights to power from the smaller projects, while the additional marketable power available as the result of integration and a small amount of energy be made available to Northern Division customers. The financial impact on individual customers has not been fully evaluated, but when final FY 1983 power repayment studies for each project are completed, this will be done. If a modification in the proposal is warranted as the result of further analysis, it will be incorporated in the final allocation criteria.

Western sees no legal obstacles to the integration of the resources as proposed, with the power marketed at a uniform, blended rate. No provision in reclamation law proscribes such an integration. In fact, rates for two Western projects have been administratively integrated with smaller Federal power resources in the past. The integration of the Colorado-Big Thompson, Kendrick, North Platte and Shoshone projects into the power repayment study for the Pick-Sloan Missouri Basin Program is one example. The integration of the Pacific Northwest-Pacific Southwest Intertie into the Central Valley Project repayment study is a second instance where administrative integration took place. Under Reclamation law, the Secretary has the authority to perform "any and all acts" for the purpose of putting his statutory responsibilities into full force and effect. 43 U.S.C. section 485i; 43 U.S.C. section 373. In Western's judgment, this flexibility includes the ability to integrate projects and to charge a uniform rate for the resulting power.

Implementing the rate integration as early as 1985, as suggested by at least one commentor, is under consideration. A blended rate for the SLCA Integrated Projects could be established during the next rate adjustment process, which could result in implementation as early as October 1985.

(c) *Summary and Conclusion:*

Western concludes that the benefits outweigh the cost of integrating the resource as proposed. The actual disposition of power from the Collbran and Rio Grande Projects will be further evaluated. Western invites specific suggestions for equitably distributing these resources.

5. Ten Year Contract Term

Western proposed to offer resources from the SLCA Integrated Projects for sale for a 10-year period, beginning in September 1989 and ending in September 1999.

(a) *Comments:*

—A 20-year term of contract, or longer, with the provision to adjust amounts under contract based on changed hydrology after 10 years, would be more satisfactory than a 10-year term.
—The 10-year contract period is acceptable. It assures no constraints upon the development of Upper Basin participating projects, even though these projects would diminish water available for generation.
—Ten-year term creates a tight resource planning posture which is too short to allow for proper planning for alternate firm wholesale power resources. Contract term should be closer to the 35-year life of a coal-fired plant.
—A 10-year term creates uncertainty as to the future availability of Federal power, considered a significant power resource by some customers. The resource is unpredictable and undependable when offered for 10 years.
—A 10-year contract term makes it difficult for customers to negotiate with supplemental power suppliers.
—Ten-year contract terms require excessive administrative and financial expense on the part of the Federal Government and power contractors in almost continual allocation proceedings.
—Other Western marketing plans have provided for longer contract terms, and SLCA resources have been offered for longer contract periods in the past.
—Reclamation law allows a 40-year contract term.

(b) *Discussion:*

The proposed term of contract was the subject of many comments, most of which urged a term of 20 years or longer. Many commentors proposed the adjustment of amounts under contract during the contract period based on changed hydrological conditions. This suggestion seems to offer a middle ground, removing the concern Western has about being locked into contractual commitments not supportable by current hydrology. However, other concerns exist. The concept of adjusting the amounts of power under contract based upon "changed hydrology" does not give the marketing criteria the flexibility to meet changed circumstances other than hydrology.

Western recognizes the strong desire of customers to have as much certainty as possible about future resources. However, there is no absolute certainty about the availability of any resource. Even if a customer has its own thermal unit, that unit may be unexpectedly destroyed by fire, for example. Federal power offers some obvious benefits over construction, principally a very reasonable cost. In addition, Western is willing to obtain firming power and energy in the event the hydroelectric resources are not available when required. One of the drawbacks of Federal power is the limited time for which it is committed. Since commitments will likely be made during 1985 for the period ending in 1999, the known commitment will actually be for about 14 years.

Western is also interested in minimizing administrative procedures which are costly, and will not unnecessarily initiate the development of new marketing or allocation criteria.

However, it is equally important that Western reserve options so that Federal resources in the future can be applied where they are required to meet changing legal and policy requirements. While Western does not foresee the need to adopt policies other than those expressed in these criteria and in the discussion of criteria issues, it is prudent to assure that Western can be responsive to changed circumstances. Western therefore continues to see the need for a 10-year contract term.

An issue related to the certainty of a customer's future Federal power allocation is the 5-year notice provision in the 1978 CRSP power marketing criteria. On February 9, 1978, the Salt Lake City Area Office of Western published in the **Federal Register** general power marketing criteria relating to the sale of power from the CRSP. 43 FR 5559 (1978). In section 8D of those criteria, the following language appears:

> In recognition of the leadtime required to place major generation projects in operation, WAPA will provide a minimum of 5 years' notice should it propose to reduce, upon expiration of a firm power contract between WAPA and a customer, the amount of firm power or long-term peaking power allocated to the customer or substantially change the amount of energy available to the customer under the customer's firm power allocation.

Western believes that through the publication of **Federal Register** notices and the holding of public information and comment forums, notice of proposed capacity and/or energy reductions has been given. However, no firm decision has been made on exactly how much of a reduction would be made as to each customer.

Due to substantial comment on various issues and the requirements of a detailed evaluation of the environmental impacts, if any, of the proposed criteria, it appears likely that final and specific notice will not be provided prior to 1985. Although notice of proposed capacity and/or energy reductions has already been given, Western will give as much notice as possible of any specific and final reductions of CRSP power. A brief paragraph summarizing the five year notice by Western appears at the end of this **Federal Register** notice.

(c) *Summary and Conclusion:*

After consideration of the many comments provided, Western concludes that the most prudent course of action to take is to prepare a 10 year term of contract.

C. Special Allocation Issues

The revised proposed allocation procedures permit the Administrator to appropriately consider special circumstances and to allocate power and energy outside of the formula approach proposed if a situation warrants it. A number of organizations made an appeal for special consideration and the issues each of them raised are discussed below.

1. Bountiful, Utah

(a) *Comments:*

The City of Bountiful's comment letter dated November 15, 1983, states that it requested 37,000 kilowatts from the CRSP in 1969, in both the winter and summer seasons, but was offered only 24,000 kW in the summer season and accepted that amount based on the erroneous understanding that the CRSP was oversold in the summer season and prorata reductions amount the customers were required. Bountiful feels this past unfairness should be remedied in the next allocation.

(b) *Discussion:*

The distribution of power in 1969 was to be the final offering of firm capacity with energy from CRSP for the current contract period. Customers were asked to base their requests for this power on their estimated 1975 power needs. The policy of the marketing agency in 1969 (Bureau of Reclamation, hereafter called Bureau) permitted customers with generating resources to omit the resources in estimating their needs for CRSP power if there was a likelihood the resources may be retired. As a means of administering this procedure Bureau personnel prepared independent estimates of customer's 1975 loads to be used in reviewing the requests for power. These estimates were based on the customer's historical loads and information on each system gained through visits to the customers, discussions, and letters. The Bureau recognized that responsible estimates by people working from different points of view would differ, and therefore, did not take exception to requests for power that exceeded its own estimate by up to 10 percent. In the matter at hand however, the Bountiful summer season load estimate as shown in its letter to Intermountain Consumer Power Association dated July 15, 1969, increased from 11,705 kW in 1974 to 37,000 kW in 1975. While the letter is silent on the handling of the City's generation in the summer season, it indicates it was not included in the winter season estimate of load. The sole support provided for this increase was the possible adoption of a domestic air conditioning rate which, it was thought, would increase loads substantially. The City indicated that it recognized normal summer season growth in the 1970–1974 period (5200 kW to 11,705 kW) and included the hoped-for results of the possible air conditioning rate for the full 1970–1975 period only in the 1975 load estimate. Bureau representatives did not accept this view as being sufficiently supported to warrant the commitment of 37,000 kW and reduced the Bountiful summer season amount accordingly.

(c) *Summary and Conclusion:*

The actual peak loads experienced by the City in the summer of 1975 and winter of 1975–76 were less than 24,000 kW in each season, while the city's firm CROD is 24,910 kW in the summer season and 34,150 kW in the winter season. Western concludes the City was fairly treated in the summer season and received a significantly greater amount than needed in the winter season. Therefore, no special allocation to Bountiful is warranted.

2. Bureau of Reclamation Priority Uses

The Bureau of Reclamation has reserved a portion of the firm power and energy resource for project use, and has requested Western to allocate an additional amount of firm power and energy to the Bureau for priority uses that do not fall within the traditionally defined project use category.

(a) *Comments:*

One commentor opposed the use of project power for municipal and industrial or irrigation loads since it competes with the commentor's own resources in its service area.

The Bureau of Reclamation has provided Western with revised amounts for project use and other priority use loads as follows:

	Winter season		Summer season	
	MW	MWH	MW	MWH
Project Use	27.26	32,760	126.72	250,730
Other Priority Use	11.60	14,340	48.90	88,830
Total	38.86	47,100	175.62	339,560

(b) *Discussion:*

While all of the Bureau's project and other priority use loads exist in some utility's service area, they are typically non-growth loads so that we do not believe they will be adverse to a utility's long-term resource planning. Both project and priority use loads are vital to the economic viability of participating projects, contribute to the efficient use of water, and, in same cases, provide power for salinity control facilities. Western recognizes the importance of all of these activities to the Bureau and to the development of the West and is interested in cooperating with these entities to enhance the successful

development and operation of the Participating Projects so that the full purpose of the Colorado River Storage Project Act might be accomplished, within the provision of applicable laws and policies.

(c) *Summary and Conclusions*:

Western has determined it is appropriate to allocate an additional amount of firm power and energy to the Bureau. These amounts will be available for the designated priority uses during the term of the repayment contract or water service contract, whichever is applicable.

3. Albuquerque Operations Office

(a) *Comments*:

The Department of Energy's Albuquerque Operations Office (DOE) requested special consideration because of their unique historical circumstances. The predecessor to the DOE received an allocation of CRSP power in 1962 amounting to 25.4 MW in the winter season and 25.6 MW in the summer season. In the ensuing years, the Federal Government, through the Atomic Energy Commission, negotiated with both the Public Service Company of New Mexico (PNM) and the Bureau of Reclamation, Amarillo Office, for a power supply.

An arrangement was discussed whereby the Bureau would deliver 30 MW of CRSP power to PNM on DOE's behalf and PNM would, in turn, sell DOE 60 MW at a favorable blended rate. DOE's need for a high-load factor resource required the involvement of PNM in the power supply arrangements as well as in the delivery arrangements from Albuquerque to Los Alamos. DOE claims that it relied on PNM to act in its behalf in discussions with the Bureau for the 30 MW, and the record indicates that the Bureau did prepare a draft of contract with PNM for 30 MW of power.

The discussions between the Bureau and PNM continued for an extended period of time until the Bureau no longer had the full 30 MW available for DOE. In 1969, the Bureau notified entities interested in a power supply from CRSP that allocations of power which had not been placed under contract would be rescinded. However, DOE was not notified by the Amarillo Office of this action since, according to a letter to DOE from the Bureau dated August 22, 1973, active negotiations were underway and early execution of agreements was expected.

The Bureau notified DOE on June 5, 1973, that it could provide only 14.6 MW of firm power and in March, 1974, DOE contracted for this amount of firm power in each season. However, DOE complained to the Bureau about the unavailability of the 30 MW it formerly had been discussing. As an eventual result, the Bureau granted DOE 15 MW of peaking capacity as a part of the 1978 allocation of peaking capacity. DOE obtained additional peaking capacity of 2,862 KW in the winter season and 47 KW in the summer season as a result of the reallocation process. DOE now wishes to have its allocation of firm and peaking power all considered as firm power for post 1989 allocation purposes.

(b) *Discussion:*

A review of the historical circumstances indicates that PNM and the Bureau did negotiate over an extended period of time regarding a power supply for DOE and that, by the time the parties were all in agreement, the Bureau no longer had the desired 30 MW available for DOE and, in lieu thereof, notified DOE that it had only 14.6–MW available for sale. As one element in the 1978 allocation of peaking power, the Bureau acknowledged a "mutual misunderstanding" and indicated that DOE should be offered 15 MW of peaking capacity to compensate for this state of affairs. DOE accepted the 15 MW, and added to it 2,862 kW in the winter season and 47 kW in the summer season through the reallocation process. By letter dated November 18, 1983, DOE requested that the 15 MW of peaking capacity granted by the Bureau, as discussed above, be considered firm power for purposes of allocating power in the post-1989 period in addition to the 14.60 MW shown as its firm contract rate of delivery in the distribution tables for Resource Pools 3 and 4.

Western accepts the Bureau's finding of a mutual misunderstanding which deprived DOE of a 30 MW firm power resource to which it would otherwise have been entitled. It is noted, however, that amounts other than 30 MW were discussed, and that the reference to 30 MW existed in the framework of a 14 to 30 MW range. It should be noted also that the 30 MW offer was made by the Bureau but that acceptance was not forthcoming due to circumstances between PNM and DOE and beyond the control of the Bureau. While Western accepts the Bureau's finding, it also believes that DOE bears some responsibility in the matter.

(c) *Summary and Conclusion:*

Given the shared responsibilities for the lack of consummation of the 30 MW contract, Western concludes that the granting of 15 MW of power without energy in each season to DOE is an appropriate action which Western proposes to continue in the post-1989 contract period. It is less than DOE requests; however, it is, in Western's view, an equitable compromise and a major concession in a period of widening cost differences between Federal and private power costs.

4. Enterprise, Utah

(a) *Comments:*

The City of Enterprise has also requested special consideration because of its unique circumstances. It was an initial allottee of Colorado River Storage Project power in 1963. The City proceeded at that time with negotiations with the California-Pacific Utilities Company (Cal-Pac) to acquire a distribution system. Negotiations finally reached an impasse, at which point the City terminated its offer to purchase the system and, instead, built a new distribution system in the City, requiring Cal-Pac to remove its facilities. A discussion of significant events and matters relative to the City's efforts to purchase CRSP power follow:

—A power sales contract was drafted and sent to the City by the Bureau on February 19, 1965, in anticipation of city ownership of a distribution system.

—Negotiations between Cal-Pac and the City continued for an extended period of time without reaching an agreement. On December 29, 1969, representatives of the Bureau, Intermountain Consumer Power Association (ICPA), and the City met to discuss the Bureau's intention of establishing a deadline for new customers to purchase CRSP power. The parties developed a proposed arrangement whereby Enterprise would join ICPA, and ICPA would then contract with the Bureau for CRSP power for the City. The City notified ICPA on December 30, 1969, that the City Council and Power Board had passed a resolution to contract with ICPA for power.

—On February 12, 1970, such a deadline to contract for CRSP power was established by the Bureau. The City's representatives have repeatedly stated that the Bureau's letter of February 12, 1970, announcing the deadline to the City, was not received. Enterprise claims that it did not learn of such a letter until May 17, 1974. The City implies that, had it been aware of such a letter in 1970, the distribution system would not have been acquired. The City did join ICPA, acquired ownership of its distribution system in early 1972, and purchased CRSP power at CRSP rates starting on March 28, 1972, all as arranged by ICPA with the alleged knowledge and cooperation of the Bureau. The City stated, in a letter dated December 27, 1976, that it was under the impression that it was in possession of a long-

term firm entitlement to CRSP power through ICPA, and learned otherwise only when the Bureau would not add the City's name to an Exhibit in the ICPA contract.

—The City has claimed a right to its initial CRSP allocation of 2.7 MW (winter) and 3.4 MW (summer) by letters dated December 27, 1976, and February 16, 1977. More recently, the mayor of Enterprise has claimed that Western has a moral responsibility to assist the City with a power supply. In a series of visits during the past few years, at ICPA Board meetings, public forums, and in our offices, City representatives have petitioned for an allocation of Federal power.

(b) *Discussion:*

It seems to Western that all three of the parties bear some responsibility for this misunderstanding. The City, exercising reasonable diligence, could have informed itself as to the status of its CRSP allocation. However, Enterprise was receiving CRSP power at CRSP rates and at a CRSP delivery point through a CRSP meter, and it had been told by Bureau and ICPA representatives that the power supply from CRSP would be placed under contract with ICPA in the City's behalf.

The Bureau knew of the above arrangement, including the installation of the meter. The Bureau could have contacted ICPA or Enterprise about completing the contract arrangements prior to the deadline.

ICPA's actions appear to be central to the misunderstanding. Personnel at ICPA have long since changed. However, it appears that the principal responsibility rested with ICPA management. ICPA had aggressively sought the City's membership, had frequent opportunities to meet with the City and was the City's agent for the purchase of power. ICPA seems to have accepted some responsibility in the matter, indicated by its present policy of sharing the CRSP resource it administers with the City.

(c) *Summary and Conclusion:*

As indicated above, there are certain incongruities in the matter. Western considers it likely that ICPA and Bureau representatives were responsible for assuring the City it would obtain a CRSP power supply and then, for reasons that are unclear, did not follow up on the commitment.

Western believes that the City probably should have had a CRSP power supply properly committed to it in 1970. It was later denied a Federal power supply in the 1978 allocation of peaking capacity since that allocation was based on then existing entitlements to CRSP firm power under contract.

Since the post-1989 allocations for existing customers will be based again on firm power under contract, which would again exclude the City from the existing customer category, Western will consider Enterprise's special circumstances and tentatively intends to allocate power to the City from Resource Pools 5 and 6.

The tentative special allocations were derived by taking one-half of the City's 1975 summer and 1975–76 winter season peak demands. The distribution of CRSP power in which the City failed to gain an entitlement took place in 1970 but was based on each customer's estimated 1975–76 loads. Western selected the factor of 50 percent to reflect generally the portion of the responsiblity it feels rests with the United States in the City's failure to obtain an entitlement of CRSP power in 1970.

The tentative special allocations are as follows: Winter season: 646 kW, 4,425,674 kWh. Summer season: 496 kW, 1,959,243 kWh.

5. Hurricane, Utah

(a) *Comments:*

The City of Hurricane also requested special consideration. It received an allocation of CRSP power in 1965 and was negotiating with the Bureau for a power sales contract while at the same time, negotiating with California Pacific Utilities Company to purchase the City's distribution system. The Bureau was also representing the City in negotiations for a wheeling agreement with Cal-Pac to accomplish the delivery of CRSP power to Hurricane. However, all of these negotiations were ended by the Bureau's letter to the City that it was terminating negotiations for a power sales contract. A more detailed description of significant events follows:

—Hurricane was notified on April 16, 1965 that it had received an alloction of CRSP power of 3,750 kW in the winter and 3,150 kW in the summer.

—The City was told in a letter dated January 22, 1966, that it must have a means of distributing power before the Bureau would enter into a power sales agreement.

—The City indicated by letter dated September 7, 1966, that it was investigating the acquisition of the distribution system and asked for Bureau help in obtaining a wheeling contract with Cal-Pac.

—The Bureau agreed to assist in negotiating a wheeling contract as requested in a letter dated September 23, 1966.

—From this period of time on, negotiations continued between the City and Cal-Pac for purchase of the system, between Cal-Pac and the Bureau for wheeling arrangements, and between the City and the Bureau for a power sales contract.

—The Bureau notified the City by letter dated February 12, 1970, that it would not continue negotiations for a power sales agreement until such time as the City acquired a system and then only if power was then available.

—The City signed an electric service agreement with ICPA dated August 1, 1970, and acquired a distribution system during 1975.

(b) *Discussion:* It seems clear from the record that the City diligently pursued the acquisition of its distribution system while at the same time negotiations for a power sales contract with the Bureau and for a wheeling contract (through the Bureau) with Cal-Pac.

However, Hurricane had not acquired its system by the time the Bureau sent the February 12, 1970, letter terminating negotiations. In fact, it was not until the city had erected some replacement distribution power poles that negotiations with Cal-Pac culminated in an agreement to purchase the system.

In August of 1970 the City executed a service agreement with ICPA and from this point forward until a discussion with a Bureau representative on May 4, 1973, the City indicated it thought it had a firm supply of CRSP power through ICPA. Hurricane, like Enterprise, was receiving CRSP power at CRSP rates through a CRSP revenue meter with the full knowledge of the Bureau.

(c) *Summary and Conclusion:*

It seems clear in retrospect that denial of a power supply to the City was a result of the protracted negotiations with Cal-Pac for purchase of the system. As with enterprise, Hurricane was confused by others and apparently believed it had obtained a firm power supply. In recognition of the United States' share of responsibility in the misunderstanding, Western will consider Hurricane's special circumstances and proposes to allocate power to the City from Resource Pools 5 and 6.

The tentative special allocations were derived by taking one-half of the City's 1975 summer season and 1975–76 winter season peak loads. The 1970 distribution of CRSP power in which the City failed to obtain a power supply was based on each customer's estimated 1975–76 summer and winter season peak loads. Western has selected the 50 percent factor to reflect generally the portion of the responsibility it feels rests with the United States in the City's failure to obtain an entitlement of CRSP power.

The tentative special allocations are as follows: Winter season: 1941 kW,

1,472,945 kWh. Summer season: 858 kW, 1,132,616 kWh.

6. Parowan and Paragonah, Utah

(a) *Comments:*

The City of Paragonah also requests special consideration. The Cities of Parowan and Paragonah each received an allocation of CRSP power in the initial allotment (1962). The Federal power allocations of both were handled through one electric service contract between Parowan and the Bureau.

Paragonah now desires to receive a separate allocation, and the question arises as to how much of the existing contract commitment should be assigned to Paragonah.

(b) *Discussion:*

In such instances, Western will allocate to the qualified preference utility with the load responsibility, in preference to an agent for the utility, if that is the utility's desire.

Western requests in this instance that the cities of Parowan and Paragonah mutually agree upon the amount of the power presently under contract with Intermountain Consumers Power Inc., to which each is entitled. Western will then use the firm power component of such amounts as the basis for arriving at an allocation to each City in Resource Pools 3 and 4.

For purposes of developing the hypothetical allocation shown in Appendix C of the proposed revised criteria, Western has developed the following division of firm power between them:

	Winter season* kW	Summer season* kW
Parowan	1,337	930
Paragonah	193	120
Total	1,530	1,050

*Western utilized amounts it believed were the City's 1980–82 average peak seasonal loads to arrive at these quantities. However, this method of proration between the Cities is not necessarily recommended.

D. Other Issues

1. Derivation of Marketable Resources

Western proposed in August of 1983 that power available from the SLCA Integrated Projects would be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grande and Provo River Projects and on the capacity of the CRSP powerplants based on 90 percent hydrological probability from 1989 to 1999. Energy would be based on average hydrological conditions projected for 1989–1999 and an option to purchase up to 400 GWh of additional energy was also included. Western proposed to purchase firming capacity and energy on a pass-through cost basis. Only reserves and requirements for the Bureau's priority loads were deducted from power available at plant to arrive at marketable power, since losses were assumed to equal diversity. Average generation at plant was reduced by losses and requirements for the Bureau's priority loads and a small amount of energy was shifted from the summer to the winter season.

(a) *Comments:*

—The subtraction of the Bureau's priority loads before the resource is split between the Northern and Southern Division is inequitable since these Federal loads provide benefit only in the Northern Division.

—SLCAO should market long-term power and energy based on median water supply conditions with seasonably adjustable contract rates of delivery and load factors.

—Western should use a hydrological probability, lower than 90 percent, such as a 75 percent hydrological probability that would provide approximately 75 MW of additional available power.

—Western should select the option to obligate long-term firm energy at a level that exceeds average hydrological conditions.

—Opposes marketing maximum amounts of power and energy because that may adversely affect the environment.

—The proposed energy shift does not appear to have a significant impact on the release pattern from Glen Canyon Dam.

—Western has not addressed the environmental impact of the proposed energy shift which could affect air pollution in a wide area.

—Purchasing energy is acceptable if the costs passed through to the customers includes appropriate operation and maintenance charges and interest charges on any costs not paid in the year incurred.

—Western should purchase more than 400 GWh of energy.

—Western should not purchase additional energy because such purchases are not within the intent of the CRSP Act nor the legal authority of Western.

—Energy purchases should be adjusted to individual customer needs.

—The criteria should pass through the costs of purchased power energy to the customers.

—Additional information about the customer's obligation to take purchased energy and the mechanics of passing on purchased energy costs is needed.

—Western should purchase sufficient energy to at least maintain a 58.2 percent seasonal load factor and develop an aggressive program to combine resources.

—All costs of capacity purchases should be on a pass-through-cost basis.

—The combined total reserve of 200 MW for the Loveland-Fort Collins Area and Salt Lake City Area should be reduced by 50 MW.

—Ten percent of marketable power should be retained as reserves.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Hydrology studies.

(2) Energy shift between seasons.

(3) Purchases.

(4) Reserves.

(5) Deduction for Priority Uses.

(1) *Hydrology studies.* The hydrological studies supporting the proposed August 1983 criteria were based on a model for simulating river operations referred to as the CRSP model, which has subsequently been replaced with a more sophisticated model. This new model, the Colorado River Simulation System (CRSS), was used by the Bureau to arrive at the power at plant (MW) at various probability levels and the average generation at plant (GWh) for the CRSP and Participating Project powerplants. However, while the results differ with the new model, the issues raised are still appropriate to discuss.

The following explanation of how the CRSS model develops the probability levels considered for the revised proposed criteria has been undertaken to clarify the issues raised. The CRSS model computes energy and power from the manufacturer's rating curves for each powerplant in the CRSP system. The model simulates operation of the system of reservoirs by arranging the optimum distribution of water in storage to satisfy downstream water release requirements. As a result, the model can be used to project generation, both power and energy, for each month of each year within a selected study period.

The traditional data base that supports the CRSS model includes water supply (projected hydrology), depletion schedules, release schedules, reservoir starting conditions, sedimentation levels, unit maintenance and uprate schedules, and powerplant limitations.

For the proposed marketing criteria, the projected hydrology for the 10-year period from 1990 to 1999 was simulated by the Bureau's indexed sequential method. Based on the 78 years of

historical record (1906–1983) the model produced monthly power and energy estimates which were then analyzed to determine the probability characteristics assuming a normal statistical distribution.

Table A–1 contains a summary of selected probabilities (exceedence levels) and associated power values by months for the 10-year study period 1990–1999. Lowest power values for each season occur in the months of March and April. Critical load periods occur in December or January for the winter season and July and August for the summer season. Therefore, critical seasonal power values and their associated probabilities were selected from the lesser of December and January for the winter season, and the lesser of July and August for the summer season. Firm power values were selected from the 90 percent probability level, and included in Appendix A as "power at plant-CRSP."

Table A–2 contains a summary of selected probabilities (exceedence levels) and associated energy values by months for the same 10-year study period. In addition, winter and summer season totals are tabulated. It should be noted that the season totals are not the same as the sum of the months in each season for each probability level. This is because the seasonal sums were determined before the ranking process rather than summing the individual months after ranking. Additionally, the arithmetic mean is tabulated since it can and often does differ significantly from the median or 50 percent probability level. The mean seasonal values were selected for application in the Post-1989 Power Marketing Criteria, and are included in Appendix B as "average generation at plant-CRSP."

BILLING CODE 6450-01-M

TABLE A - 1

SUMMARY OF SELECTED PROBABILITIES 1/
10-Year Study Period
(1990-1999)

WINTER CAPABILITY - MW

Exceedance Level	OCT	NOV	DEC 2/	JAN 2/	FEB	MAR
Adverse	1486	1478	1467	1452	1442	1437
99%	1530	1524	1516	1499	1495	1491
95%	1565	1560	1549	1535	1527	1524
90%	1589	1584	1575	1561 3/	1552	1546
75%	1649	1647	1636	1623	1612	1612
60%	1691	1688	1682	1670	1662	1658
50%	1691	1691	1691	1690	1686	1683
40%	1691	1691	1691	1690	1689	1689
25%	1691	1691	1691	1690	1689	1689
10%	1691	1691	1691	1690	1689	1689
Minimum	1691	1691	1691	1690	1689	1689

SUMMER CAPABILITY - MW

Exceedance Level	APR	MAY	JUNE	JULY 4/	AUG 4/	SEPT
Adverse	1438	1466	1512	1518	1505	1491
99%	1485	1499	1527	1553	1536	1521
95%	1526	1541	1576	1588	1577	1565
90%	1548	1567	1597	1612	1600 5/	1588
75%	1615	1632	1651	1657	1650	1639
60%	1659	1673	1690	1691	1691	1691
50%	1683	1687	1691	1691	1691	1691
40%	1687	1689	1691	1691	1691	1691
25%	1688	1689	1691	1691	1691	1691
10%	1688	1689	1691	1691	1691	1691
Minimum	1688	1689	1691	1691	1691	1691

1/ Data Source: Bureau CRSS Model, July 1984.
2/ Critical load months, winter season.
3/ Critical seasonal capacity, winter season. Selected for use in criteria.
4/ Critical load months, summer season.
5/ Critical seasonal capacity, summer season. Selected for use in criteria.

BILLING CODE 6450-01-C

TABLE A - 2

SUMMARY OF SELECTED PROBABILITIES
10-Year Study Period
(1990-1999)

WINTER ENERGY - GWh

Exceedance Level	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Adverse	273	269	403	461	302	266	1998
99%	279	274	405	468	314	287	2027
95%	288	285	421	487	341	318	2140
90%	295	291	447	505	357	335	2230
75%	362	360	488	529	397	385	2521
60%	388	377	505	550	427	425	2672
50%	402	385	510	563	445	445	2750
40%	418	492	516	578	463	473	2940
25%	630	886	521	605	492	518	3652
10%	1039	964	525	641	533	579	4281
Minimum	1200	1102	548	723	621	713	4907
Mean	526	566	499	568	445	454	3058 1/

SUMMER ENERGY - GWh

Exceedance Level	APR	MAY	JUNE	JULY	AUG	SEPT	TOTAL
Adverse	223	249	301	417	366	195	1751
99%	248	270	320	440	381	233	1892
95%	295	291	350	472	436	291	2135
90%	312	322	365	507	488	334	2328
75%	383	385	417	580	532	385	2682
60%	443	438	444	608	565	438	2936
50%	482	491	482	639	589	481	3164
40%	510	532	542	682	621	521	3408
25%	568	600	611	761	679	619	3838
10%	698	746	1035	1208	812	747	5246
Minimum	907	974	1165	1258	1119	1169	6592
Mean	488	507	572	722	619	516	3424 1/

1/ Probability level and value selected for use in the Post-1989 Marketing Criteria.

In adopting the use of a 90 percent hydrologic probability (i.e. 10 percent risk of having insufficient available power) as a basis for determination of marketable firm power, Western was influenced by a number of factors. Recognition of the need to provide existing customers a resource similar to their present supply and the need to offer new customers an opportunity to participate in the post-1989 allocation induced Western to depart from the historic policy of using "most adverse" as marketable power. The 90 percent probability level represents a statistical application for CRSP only. The remaining integrated projects are included at maximum operating capacity, a condition that has occurred infrequently in the past.

When the 10 percent risk condition occurs, and/or hydroelectric energy is in short supply, thermal resources are often called on to meet the loads normally served from hydro-generation. This reduces the availability of thermal generation, and often increases its cost. If poor hydrological conditions are experienced in adjoining basins to the northwest or southwest, the situation is worsened as far as the costs related to the risk are concerned. Any shortage of capacity on a hydroelectric system would occur over peak periods. When other utilities in the area are also experiencing heavy demand and competing for any remaining resources, the possibility of power not being available at any price must also be considered in determining the marketable firm resource. For this reason, Western concluded that it would not be prudent to offer marketable power with a higher risk of unavailability than 10 percent.

A proposal that Western utilize median water conditions, and vary contract rates of delivery and related energy seasonally, would complicate the administration of the contracts and we suspect it would not provide the level of reliability most customers desire. Such a marketing procedure would make an unreliable resource and a less attractive commodity for some customers, although it could increase the available resources some of the time. Western has provided for some flexibility by permitting each customer to decide whether or not they want Western to purchase a limited amount of capacity or energy on their behalf on a pass-through-cost basis.

(2) *Energy Shift Between Seasons.* Western proposed to adjust the marketable energy from the Colorado River Storage Project powerplants by increasing energy production 110 GWh in the winter season and with an offsetting decrease in the summer season.

The shift of energy was proposed to distribute equitably the energy reduction among existing customers on a seasonal basis and by so doing offer a product for sale which is more nearly balanced between the winter and summer seasons. However, after re-evaluation, Western concludes that the same objectives can be accomplished by modifying its energy purchase program by purchasing most of the 400 GWh during the winter season and decreasing summer season purchases.

(3) *Purchases.* Western has tentatively decided to adopt the option of obligating long-term firm energy at a level that exceeds that based on average hydrological conditions. Purchase costs incurred in meeting energy commitments normally would be on a pass-through-cost basis to those customers desiring such service.

This option was widely supported by the commentors, although some commentors requested that more energy be purchased. All comments received on the proposal to pass through the costs were favorable, indicative of the wide support among customers for the adoption of businesslike procedures that will assure the repayment of investments financed with appropriations. As stated above, individual customers will have the option to decline the purchased power if they choose to do so.

Western is willing to purchase up to 400 GWh to maintain a resource that has a load factor that is closer to the resource marketed historically. The parameters that must be considered are the system capabilities under varying operating conditions. The SLCA has purchased as much as 2000 GWh annually, but has needed around 1,200 GWh in dry years to meet contract commitments based on average water conditions, as determined with the old CRSP hydrology model. It should be noted that the new CRSS model produces about 525 GWh more annually than the CRSP model did for the 1990–1999 period, which may increase the amounts we may have to purchase under adverse hydrological conditions. It is true, however, that with full reservoirs, on the average, the SLCA should not have to purchase as much firming energy as in the past. Considering the ramifications of the proposed commitments, Western tentatively concludes that the 400 GWh is the appropriate level of purchases. If sufficient customer interest is indicated, Western would be willing to consider purchasing additional amounts for long-term commitments.

Western proposes to pass through the costs of firming power and energy purchases to assure that unanticipated purchase expenses do not delay the repayment of investments, unless the customers and other interested members of the public advise Western that a blended rate is preferable.

One commenter requested that the detailed mechanics of the power and energy pass-through-cost approach be stated in the criteria. Western prefers to develop these details in conjunction with its customers during the contract development process. There will likely be a need for an exchange of information prior to each season on an estimated cost basis with a post season adjustment. Passing through purchase costs as they occur will require customers to have the ability to increase their financial obligations upon relatively short notice. Customers that want Western to purchase firming power and energy for them may need to establish their own fund to ensure that the required funds will be available. We do not find any legal constraints to the purchase of this energy and have in fact purchased larger amounts of energy under the CRSP Act for both firming and fuel replacement needs in most of the past several years. The Colorado River Storage Project Act clearly sets forth the goal of maximizing power sales at firm rates. Purchasing energy allows a firm resource to be marketed that is more compatible with customer load characteristics.

Power marketing administrations have inherent authority to purchase power and energy reasonably incidental to the integration of a hydroelectric project. Kansas City Power & Light Co. v. McKay, 115 F. Supp. 402 (D.D.C. 1953), judgment vacated for lack of standing to sue, 225 F.2d 924 (D.C. Cir.), cert. denied, 350 U.S. 884 (1955). The past practice has been to sell Federal hydropower based upon average water conditions. For many years, the United States has purchased energy to firm up commitments under power contracts. The present proposal is an extension of these same historical purchase principles to reflect the desires of preference customers to accept a slightly higher level of risk than in the past. Western believes that full legal authority exists to market power which is available nine out of ten years and energy which is available half the time. Even the maximum amount of purchases which Western might make under the proposed criteria will normally be made during off-peak periods, with water

shaped and stored for use in the production of energy during peak periods. This, in the judgment of Western, is a legally defensible integration of hydroelectric resources. While no final decision will be made on what power and energy will be marketed until the environmental evaluation is complete, Western sees no deficiencies in the legal authority to purchase capacity or energy as proposed.

Western continues to be interested in promoting and is willing to develop coordinated resource proposals with interested customers. However, tieing the development of a resource coordination plan to the completion of these criteria could lead to unacceptable delays. Western therefore does not plan to pursue a coordinated resource plan as part of these marketing criteria.

(4) *Reserves.* Western proposed to maintain 145 MW as reserve capacity to assure continued service to its customers in the event of the unexpected loss of generating resources. This level of reserves would have been adequate to cover an outage of a unit at Glen Canyon Powerplant prior to the uprating that is now in progress.

Discussion

Western is a participant in the Inland Power Pool (IPP), a member of the Western System Coordinating Council (WSCC), and the operator of the Western Area-Upper Colorado (WAUC) Control Area. The requirements of the IPP are identified in the revised Inland Power Pool Agreement dated November 23, 1983, and the WSCC criteria contain prescribed reserve requirements.

Western subscribes to the requirements of both IPP and WSCC. The IPP requirements are now about 70 MW, but they vary month to month and will likely increase as both loads and the largest unit size in IPP increase through 1999. In addition, the IPP is currently restudying its reserve requirements due to concern from some members as to the adequacy of the IPP reserves.

The use of 10 percent of marketable power as a reserve level, as recommended by one commentor, has historical precedent as an appropriate reserve margin. However, it is not used by either the IPP or WSCC.

Another commentor suggests the reserve requirements of LFCAO and SLCAO be combined and thereby reduced. Western has evaluated this possibility as well as including the Boulder City Area Office reserve needs, but found that under IPP guidelines, the reserve requirement would change very slightly as a result of consolidation. In addition, since these are separate projects with different characteristics, statutory requirements and criteria, and they are operated separately, Western has decided not to consolidate pool reserve accounting and requirements among Areas.

WSCC reserve requirements can be met by an operating utility by reserving an amount of capacity equal to the most severe single contingency plus sufficient spinning reserves to provide the necessary regulating margin. If the SLCA were operating independently, its reserve obligation under a very strict interpretation would be 348 MW for a stepup transformer for two Glen Canyon units plus the SLCA regulating margin of 35 MW for a total reserve requirement of 383 MW.

While the benefits of pool membership would be lost if the SLCA were to maintain 383 MW of reserve, holding more reserves than the current or projected IPP reserve requirement is appropriate since the IPP can be dissolved upon 3 years notice by its members. Western has determined that maintaining reserves to cover the largest single contingency is an appropriate middle course under the circumstances, which now amounts to 174 MW rather than 145 MW. These reserves are used for delivering interruptible services such as fuel replacement energy and energy interchanges and permit Western to povide assistance to interconnected utilities in the event of emergencies.

It is in the best interest of the agency and its customers to maintain a reserve position which provides some flexibility in the event irreconcilable differences should arise within IPP and/or reserve requirements are reformulated prior to 1999.

(5) *Deduction for Priority Uses.* One Southern Division commentor suggested that it was inequitable for Western to remove Bureau of Reclamation priority use loads from the available resource before dividing the resources between the Northern and Southern Divisions. This procedure recognizes that the Bureau's priority use loads are a responsibility of the whole project and therefore, all of its customers. Under this proposal, the increase in priority use loads in the new contract period will affect customers in both divisions. Western recognizes this is a change from past precedent. Previously, since the priority uses are physically located in the Northern Division, they were considered Northern Division loads. There is some merit to both points of view. Western has concluded that the recognition that priority use loads are a project responsibility to be shared by both divisions is most consistent with the proposed adjustment in the distribution of the CRSP resource between the two divisions.

(c) *Summary and Conclusion:*

Western is interested in marketing the maximum amount of power it can without assuming a level of risk which could be harmful to either Western or its customers and without causing adverse environmental consequences. After weighing the various probability levels and the proposed purchase of an additional 400 GWh for those customers desiring it on a pass-through-cost basis, Western concludes that the use of the 90 percent probability for determining marketable power is appropriate. The use of average hydrology plus the 400 GWh purchase is tentatively considered a responsible basis for determining marketable energy. These amounts offered may be affected by the evaluation of environmental impacts. Western has concluded that the resource can be balanced between seasons by purchasing most of the 400 GWh during the winter season and decreasing summer season purchases.

After carefully considering the various needs and requirements relative to reserves, Western has provided for a reserve level of 174 MW. This will meet the WSCC and IPP requirements and should give Western sufficient flexibility throughout the 1989–1999 period to always be in a position of maintaining adequate reserves.

The deduction of the Bureau's priority uses before dividing the marketable resources between the Northern and Southern Divisions is reasonable in Western's view, in that it recognizes that priority use loads are a project responsibility to be shared by both divisions.

2. Classes of Service

Western proposes to offer long-term firm power with energy, short-tern firm power with or without energy and other services, such as interchange, emergency or maintenance service, transmission service, and nonfirm energy service.

(a) *Comments:*

—Short-term power should be used in the resource coordination program only after it is offered for sale to existing customers.

—Western should offer long-term peaking power for sale and should assign a priority to those entities presently purchasing such power to recognize their commitment to this service since 1978.

—Firm rates should be used in the sale of short-term power.

—Those with existing peaking commitments should receive priority in contracting for short-term power.

(b) *Discussion:*

In the past, when Western determined that short-term firm power or energy was available for sale, such resources were offered to the long-term firm customers first. Under these criteria, such resources will be offered for sale to preference entities first, including long-term firm customers. Since most qualified preference organizations will most likely be long-term firm customers, this difference is not expected to be substantive. In the event a resource coordination program is developed that includes short-term resources from the SLCA Integrated Projects, preference provisions would continue to apply to those offerings. The rates for short-term firm power are not addressed in the criteria, but will be established separately.

Western has proposed to offer long-term firm power with energy as the single class of long-term firm power to be allocated. This proposal has received broad support, apparently because this resource fits into most customers' needs. Some entities could not use peaking power when it was offered prior to the 1978 allocation.

Peaking power was offered at that time since there was no energy available to market with the power. It is not being offered now because it would unnecessarily exclude some potential customers whose system conditions could not accommodate it. Western is including a proposal in the criteria to permit applicants to choose the amount of power they prefer with their share of energy, subject to the limitations imposed by the needs of other applicants and the available resources.

Western recognizes that the proposed criteria may result in shifting power among existing customers to some extent, but this departure from the status quo seems appropriate to simplify the long-term marketing arrangements and preserve the relative distribution of energy among existing customers. Perhaps some small advantages could be granted to existing peaking power customers in the distribution of available power in the event the requested and available power are incompatible. Another possibility is that those with existing peaking power commitments could be given some kind of priority in contracting for short-term firm power.

(c) *Summary and Conclusion:*

Western concludes that the classes of power proposed in the criteria meet the needs of most customers and should therefore be retained. Additional comments on what kind of recognition, if any, should be given to existing peaking power contractors are invited.

3. General Allocation Issues

Western proposed that no applicant should receive an allocation of SLCA Integrated Projects power so that its total post–1989 firm power entitlements from all Federal sources exceeds its avarage peak demand for the 3-year period ending with 1982.

(a) *Comments:*

—Since the average 1980–1982 peak demands were reduced through energy conservation efforts by some customers, the proposal is not a fair basis for limiting an allocation.

(b) *Discussion:*

The intent of the proposed limit on allocations was to correct any previous excessive commitments of Federal power in relation to the customer's load. However, upon reviewing applicant profile data, it became clear that this was not a significant problem. The proposed limitation would have affected a very few organizations, and at least one of them had creatively and aggressively promoted conservation for a number of years. Based on the documentation provided, it was clear that if the load growth pattern had not been altered with substantial load management and conservation efforts, that customers would not have been affected by by proposed limit on allocations. Since Western is obviously interested in promoting conservation, punishing a customer for a successful conservation program is clearly inappropriate.

(c) *Summary and Conclusion:*

The allocation limitation provision will be eliminated. Since an excessive commitment of Federal resources is not a problem, a need for the provision does not exist.

4. Contract Issues

(a) *Comments:*

—A fixed monthly scheduled based on the resource pattern would make it difficult to schedule other resources, and would likely increase costs and require overlapping of resource commitments.

—The proposed monthly resource pattern would force Southern Division customers to take a disproportionate share of their energy during the winter season.

—Additional flexibility in scheduling resources is needed by customers with their own generation.

—Oppose the application of the proposed minimum monthly schedule, and support maintaining the existing minimum scheduled requirements.

—Oppose the minimum monthly schedule, but support a seasonal minimum schedule.

—Oppose a fixed minimum schedule, and suggest that a minimum schedule be implemented only when actual physical operating constraints on the system require it.

—Implementing the proposed minimum schedule would severely limit the power that could be taken during peak hours, which would force contractors to generate or purchase more expensive energy during peak periods. In some cases, oil- or gas-fired peaking units would be used.

—Support the application of the proposed minimum monthly schedule because it will enable Western to purchase thermal energy at night, thus decreasing the cost of energy purchases required to support its commitments to its customers.

—The need for establishing Elephant Butte as a point of delivery is questionable.

—Thermopolis, Casper, Glenrock and Yellowtail should be retained as points of delivery.

—Western should look at the feasibility of building a Federal transmission system in Utah.

—Customer requests assistance in obtaining a transmission path beyond the Federal point of delivery.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Monthly pattern of resource.

(2) Minimum scheduled rate of delivery.

(3) Delivery conditions.

(1) *Monthly pattern of resource.* The proposed marketing criteria included a monthly pattern for establishing each customer's monthly capacity and energy entitlements, that was based on the resource plant factor after considering reserves, priority uses, energy losses, and generator unit maintenance schedules.

The commentors were unanimous in opposing the proposed monthly pattern of delivery in Exhibit C of the criteria, preferring instead to use the present load pattern method presently in place. This method bases the monthly delivery of SLCA Integrated Projects resources on each customer's monthly peak load and energy use rather than a pattern related to the water operations of the Colorado River Storage Project. As pointed out by the customer, load patterning will result in more efficient use of the available resources, resulting

in lower costs to consumers. As long as the SLCA has the resource capability of providing load patterned deliveries, Western is willing to continue to do so. Western therefore replaced the delivery pattern approach used in the August 1983 proposal with the currently used load pattern method in the revised proposed criteria.

(2) *Minimum scheduled rate of delivery.* Western proposed that the minimum scheduled rate of delivery for long-term firm capacity in each billing period would be 65 percent of the average capacity determined by dividing the monthly energy obligation by the number of hours in the month, subject to change under certain operating conditions or objectives as indicated in the proposed criteria.

Almost all commentors opposed this minimum, although some comments indicated that the proposal was not well understood. The proposed method would result in a similar minimum requirement to what is now required, regardless of the load factor associated with the delivery obligations. However, if the load factors of the deliver obligations do not vary significantly from customer to customer, the existing minimum schedule requirements will continue to be adequate for Western's needs, and should not result in inequities among customers. A seasonal minimum schedule does not provide Western sufficient assurance that loads will be sufficiently great to absorb required Integrated Projects generation or to allow Western to purchase energy with sufficient flexibility to take advantage of the lowest market prices.

Western recognizes that the proposed minimum schedule may impose certain constraints upon customers who find it advantageous to take less power, at times, than Western's proposed minimums. One reason that Western is willing to purchase 400 GWh each year is to increase the marketable resource to more nearly approximate the customer's system load factors so that we can provide adequate resources over peak periods.

Western must have load to accommodate required minimum water releases, and to support purchases during offpeak periods to the maximum extent possible. The need for flexibility has been recognized in Section III.C. of the revised proposed criteria which permits Western to modify the requirement as necessary and to waive the requirement for a minimum schedule during peak periods if operating conditions permit and a customer so requests.

(3) *Delivery Conditions.* Normal delivery will be made at SLCA Integrated Projects' transmission system voltages, or at subtransmission voltages if customers have systems operating at lower voltage levels. Designated Federal Points of Delivery or Equivalent Federal Points of Delivery will be at:

(i) Points on the SLCA Integrated Projects transmission system;

(ii) Points on systems of others which have been previously established as delivery points.

The comments raise specific issues which have been addressed in the order shown above.

The Elephant Butte delivery point was established to afford Western a means of integrating the Rio Grande and Colorado River Storage Projects on an operational level. Wheeling arrangements beyond that point of delivery will be the responsibility of the customer.

The Casper, Glenrock, Thermopolis, and Yellowtail delivery points were deleted in the August 1983 proposal since contracts are in place that require customers to pay for transmission service beyond the CRSP transmission system for deliveries at those points. It was deemed appropriate to consistently limit delivery points to those points at which Western's cost responsibility end. On that basis, the Casper, Glenrock, Thermopolis, and Yellowtail points were deleted. Upon further review of our contract rights with the Pacific Power and Light Company and accounting procedures that have been developed during the past few years, Western confirmed that it is appropriate to eliminate those points. Customers desiring service at those points may enter into arrangements with Western's LFCA to obtain transmission service over the Western Division of the Pick-Sloan Missouri Basin system.

The equivalent Federal points of delivery available in Utah are provided under a long-term contract with the Utah Power and Light Company. As long as UP&L provides satisfactory transmission service more economically than can be provided by construction of a Federal system or a joint customer-Federal system, Western will continue to exercise its opition to extend the term of the contract. If circumstances should arise so that this is not the case, Western would evaluate other options, including construction of Federal facilities. This is true at other points of delivery on the systems of non-Federal entities that are presently considered to be equivalent to Federal deliveries as the result of existing transmission arrangements.

In the proposed criteria, Western has indicated its willingness to assist customers in arranging for deliveries beyond the designated delivery points. However, any customer desiring such assistance should make a specific request for it after allocations have been made and contract arrangements are being developed.

(c) *Summary and Conclusion:*

Western recognizes the significant customer concern regarding monthly resource pattern, minimum schedules and delivery conditions and has attempted to accommodate customer concerns where possible. Western has concluded that a delivery arrangement based on the customers's monthly load pattern would be more acceptable and it has been included in the criteria. Likewise, in response to comments received, Western has proposed a continuation of existing minimum schedule requirements, with provision for modification as appropriate.

E. Regulatory Procedure Requirements

1. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the marketing plan relates to electric services provided by Western.

Under 5 U.S.C. 601(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

2. Intent to Prepare Environmental Assessment

In compliance with the National Environmental Policy Act of 1969 (NEPA) and the Department of Energy (DOE) regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), Western conducts environmental evaluations of certain rate and allocation actions. Under the DOE regulations, Western is making an environmental assessment of the possible impacts of the revised proposed marketing plan, and expects to a draft environmental assessment available for review by November 1984. Upon completion of that assessment an administrative determination will be made as to whether or not an environmental impact statement is required.

3. Notice of Reduction in Commitments

These proposed criteria constitute notice under section 8D of the February 9, 1978, General Power Marketing Criteria for the CRSP, as revised

effective February 6, 1984, that reductions in power and energy are proposed after September 30, 1989. Western understands that each customer is desirous of knowing its final allocation as soon as possible so that adequate resources can be obtained to meet estimated loads, and will expedite the completion of the criteria and allocations.

4. Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1871). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

The Revised Proposed General Marketing Criteria and Allocation Criteria for the SLCA Integrated Projects are published herewith, together with hypothetical allocations for use in understanding how the criteria would be implemented under the stated assumed conditions.

Issued at Golden, Colorado, August 24, 1984.

William H. Clagett,
Deputy Administrator.

SALT LAKE CITY AREA—REVISED PROPOSED GENERAL POWER MARKETING CRITERIA AND ALLOCATION CRITERIA

Part I—General

A. Applicability

These criteria are based upon the provisions of the Acts of Congress approved June 17, 1902 (32 Stat. 388), August 4, 1939 (53 Stat. 1187), and August 4, 1977 (91 Stat. 565). Also, the SLCA criteria are specifically based upon the provisions of the Acts of Congress approved February 25, 1905 (33 Stat. 814), July 3, 1952 (66 Stat. 325), June 18, 1954 (68 Stat. 255), April 11, 1956 (70 Stat. 105, July 7, 1960 (74 Stat. 360), December 23, 1963 (77 Stat. 475), and acts amending or supplementing all of the foregoing legislation. These criteria shall become effective upon approval and promulgation by the Administrator of the Western Area Power Administration (Western) and will apply to all SLCA Integrated Projects power marketed by Western's Salt Lake City Area (SLCA) and to the resources from the SLCA Integrated Projects marketed by Western's Boulder City Area (BCA) and Loveland-Fort Collins Area (LFCA). Existing contract arrangements will only be affected upon amendment by the parties. These criteria shall supersede and replace the "General Power Marketing Criteria" for sale of power from the Colorado River Storage Porject (CRSP) effective February 9, 1978, as revised effective February 6, 1984. These criteria are subject to change upon reasonable notice by the Administrator and the opportunity for comment by interested parties.

B. Marketable Resources

1. *SLCA Integrated Projects:* The SLCA Integrated Projects are those hydroelectric resources operated within the Salt Lake City Area by the Bureau of Reclamation, including the CRSP and Particpating Projects, the Collbran, Provo River, and Rio Grande Projects. Marketable firm resources as of October 1989 are listed below:

Marketable Firm Power	Winter MW	Summer MW
CRSP	1348	1250
Collbran	14	14
Provo River	5	5
Rio Grande	27	27
SLCA Integrated Projects	1394	1296

Marketable Firm Energy	Winter GWh	Summer GWh
CRSP	2786.9	2858.2
CRSP Purchases	366.0	34.0
Collbran	17.5	32.3
Provo River	0	17.7
Rio Grande	18.2	38.5
SLCA Integrated Projects	3188.6	2980.7

2. *Falcon-Amistad Projects:* The Falcon-Amistad Projects are those hydroelectric resources operated within the SLCA by the International Boundary and Water Commission. These marketable resources have been committed under the terms and conditions of Contract No. 7-07-50-P0890 dated August 9, 1977, with South Texas and Medina Electric Cooperatives until June 8, 2033. Said contract, or any revision thereto, embodies the marketing criteria for these projects.

3. *Future Resources:* New or revised marketing criteria will be developed as necessary when future power resources are available and offered for sale.

Part II—Marketing Criteria for SLCA Integrated Projects

A. Market Area.

The market area within which the power from the SLCA Integrated Projects will be marketed is divided into Northern and Southern Divisions.

1. The Northern Division consists of the States of Colorado; New Mexico; Utah; Wyoming; the City of Page, Arizona; a portion of the area in Arizona served by the Navajo Tribal Utility Authority; the areas in Arizona served by the Littlefield Electric Cooperative, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative; and White Pine County and portions of Elko and Eureka Counties in Nevada.

The Southern Division consists of the remaining portion of the State of Arizona, and that part of the State of Nevada in Clark, Lincoln, and Nye Counties which comprise the southern portion of the State.

New customers must have loads located within the portion of the market area that is also within the SLCA, which includes the States of New Mexico and Utah; western Colorado (west of the Continental Divide); the southwest area of Wyoming within the Colorado River Basin; White Pine County and portions of Elko and Eureka Counties in Nevada; and the portion of Arizona that lies in the drainage area of the Upper Colorado River Basin.

B. Service Seasons

1. *Summer Season:* The 6 month period from the first day of the April billing period of any calendar year through the last day of the September billing period of the same calendar year.

2. *Winter Season:* The 6 month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the next succeeding calendar year.

C. Classes of Service.

Classes of service available for marketing shall be as follows:

1. *Long-term Firm Power With Energy:* Long-term firm power and associated energy available therewith through September 1999, shall be as stated in Appendix A.

2. *Long-term Firm Power With or Without Energy:* To the extent that priority uses, as estimated in Appendix A, have not developed and/or annual streamflow conditions and reservoir operations result in the production of greater amounts of power than what is committed on a long-term basis, short-term firm power with or without energy may be offered for sale on a monthly or seasonal basis. Such offers will be for firm power with energy, without energy, or with the return of energy. This power with or without energy may be used in a resource coordination program.

3. *Other Services:* In addition to marketing the above classes of service, Western will engage in other transactions such as delivering or receiving interchange, emergency assistance, maintenance service and/or regulation services to the extent that water and power resources permit and the contracts contain enabling provisions. In order to conserve fossil fuels, enhance the environment, and/or ensure the availability to preference customers of contracted amounts of power and energy, Western will purchase or exchange power and/or energy as necessary or desirable to supplement its resources. Nonfirm energy service may be available as a result of these purchases or exchanges. To the extent that transmission capacity is determined to be available, Western will provide firm and nonfirm transmission service.

D. Derivation of Marketable Resources

Power available from SLCA resources will be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grando, and Provo River Projects along with the capacity from the CRSP powerplants based on 90 percent hydrological probability during the period from 1989 to 1999. Energy available for load will exceed the based on average hydrological conditions projected for the 10-year period ending September 1999 by about 400 GWh annually. Power and energy will be reserved for certain Bureau of Reclamation priority uses. All resources will be marketed in accordance with applicable Federal laws and policies. The derivation of the marketable resources of the SLCA Integrated Projects and the availability of these resource by seasons is contained in Appendix A.

E. Allocation Priorities

Available resources will be allocated in accordance with the allocation criteria stated in this document (Appendix B) and the preference provisions of Reclamation law in the following order of priority.

1. Preference entities within the SLCA Integrated Project's market area.

2. Preference entities outside the SLCA Integrated Projects' market area.

3. Nonpreference entities, provided that those nonpreference entities acting as agents for public entities without distribution systems shall receive priority over nonpreference entities acting on their own behalf.

These priorities may be recongized within pricing blocks for nonfirm energy.

Part III—Contract Arrangements

Those entities receiving an allocation and taking any other required steps will be offered a contract for the allocated resources based on the criteria stated in this document after reasonable opportunity to discuss proposed contract language has been provided to allottees. Allottees will have six (6) months to accept the offered contract or until September 30, 1987, whichever is later.

A. General Contract Terms

1. *Effective Date and Contract Term.* Existing contracts will be allowed to expire by their own terms. Contracts offered for the sale of newly allocated long-term firm power with energy will become effective on the first day of the October 1989 billing period (or upon expiration of an existing contract if later) as to the delivery of power and energy and they will terminate on the last day of the September 1999 billing period.

2. *Power Receipt and Distribution.* Contractors must have the means to receive and distribute power by September 30, 1988, in order to aviod automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing.

3. *Conservation and Renewable Energy Program.* Contractors will implement the terms of the Conservation and Renewable Energy (C&RE) Article within 1 year of the date of contract execution. The development of a C&RE program is a responsibility of each Western long-term firm power contractor and its member systems, if any, benefiting from the purchase of federally-generated long-term firm power.

An "Announcement of Final Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs" was published in the **Federal Register** (46 FR 56140) on November 13, 1981. In order to achieve the purposes listed therein, Western will guide and assist its firm power contractors in their C&RE program development, as requested and to the extent possible. Failure to develop a C&RE program that meets the Western Acceptance Criteria may subject a contractor to the potential loss of 10 percent of its firm power allocation.

4. *Allottee Purchasing Agents.* Western may contract with a single purchasing agent for two or more allottees, but only under conditions that permit Western to retain all the benefits of load diversity it would have if separate contracts were executed with each allottee.

5. *Load Diversity Adjustment.* Contract provisions will permit Western to adjust contract rates of delivery downward on a proportional basis in the event load diversity does not cover transmission system losses.

6. *Resale Provisions.* Existing contractors will implement the terms of the Resale of Electric Energy Article upon contract execution. New contractors will implement them upon receipt of Federal power. Failure to comply with these provisions may result in the loss of all or a part of the resources committed to the contractor. The Resale of Electric Energy Article will contain, among other things, a requirement that the contractor demonstrate that:

(a) The benefits of federally-generated power are distributed to the contractor's customers at the lowest possible rates consistent with sound business principles.

(b) Consumers can identify the costs of federally-generated power and non-federally-generated power such that the true costs of growth and the benefits of conservation and/or development of renewable resources are readily identifiable.

When the contractor consists of members or principals who are retail

distributors of Federal power, these retail distributors will be directly accountable to Western for complying with the above requirements. One of the ways these requirements may be satisfied by the contractor and its members or principals is to display, on the monthly bills rendered to their customers, a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the Customer.

B. Long-Term Firm Power and Energy Obligations

1. Monthly long-term firm power and energy delivery obligations for each season will be set forth in each contractor's power sales contract. These amounts will be determined in accordance with the estimated monthly pattern of the contractor's load requirements. Western's firm power obligation for any given hour will be limited to the actual power scheduled during that hour; i.e., contractors will not be entitled to claim unscheduled firm capacity as their operating reserve capacity.

2. The monthly energy obligations may be increased from time-to-time at Western's discretion, should short-term conditions allow. If the established limit is increased for any month, it may be subsequently decreased to the normal monthly energy delivery obligations set forth in the power sales contract.

C. Scheduling, Accounting and Billing

Western and its contractors will establish mutually agreeable scheduling and accounting procedures, based upon standard utility industry practices, which will provide efficient, practicable utilization of power and energy. These procedures will be set forth in Western contracts or in separate written agreements made a part thereof. To the extent that firm power or energy is not available from the resources of the SLCA Integrated Projects for any season, up to the amount of Western's contractual obligation to provide power or energy, Western will purchase firming power or energy at the contractor's expense, normally on a pass-through-cost basis, unless a contractor advises Western not to purchase such power or energy on its behalf.

1. *Scheduling:*

(a) The maximum scheduled rate of delivery for long-term firm power in each billing period will be the monthly power obligations based on the contractor's seasonal load pattern of the contractor's loads being served with resources from the SLCA Intergrated Projects.

(b) The minimum scheduled rate of delivey for long-term firm power in each billing period will be 35 percent of the customer's maximum seasonal firm power rate of delivery during all hours of the month. This minimum schedule will normally be required to meet downstream water release requirements, to purchase firming energy, and to make purchases for a fuel replacement or other resource coordination program at a level that will allow utilization of operating reserves. The required minimum scheduled rates may be changed by Western as necessary for the above purposes.

(c) If operating conditions warrant and Western so requests, each customer will schedule its resources from the SLCA Integrated Projects to approximate normal hourly and daily load patterns to avoid abrupt changes in water releases and generation levels or other undesirable results. Upon request by the customer, the requirement for a minimum schedule during onpeak periods may be waived by Western if operating conditions permit.

2. *Accounting and Billing:*

(a) The amounts of power and/or energy to be paid for by the contractor will be determined in accordance with accounting precedures set forth in the contracts, or in separate written agreement made a part thereof and needed not be the monthly power and energy obligations. Said accounting procedures will include determining the amounts of power and energy delivered to the contractor at each point of delivery or point of use and shall establish the amounts of Federal power delivered over Western's transmission system to each contractor at each point of delivery.

(b) These procedures will also provide for billing at multiple points of delivery. If the contractor's system is operated so as to permit power to flow between points of delivery, accounting and billing will be on a coincidental basis. Otherwise, accounting and billing at multiple points of delivery will be on a noncoincidental basis, either by utilizing noncoincidental scheduling or metering information or by reducing coincidental deliveries for the estimated diversity among the delivery points.

(c) The cost of firming power and energy purchased in order to meet the contractual obligation to deliver the SLCA Intergrated Project's power and energy to contractors in each fiscal year shall be the average cost of such power and energy purchased in the SLCA during the fiscal year. These costs shall be accrued during the fiscal year in which they are incurred. To the extent they were not anticipated and collected during the same fiscal year, they will be billed to contractors during the following fiscal year or portion thereof, as Western deems appropriate, along with the regular monthly power bill. If the necessary revolving finds, authorizations, or appropriations are not available to Western, then trust funds will be established prior to Western's expenditures for purchasing firming power and energy.

D. Delivery Conditions

1. Subject to Western's approval, as to specific location and voltage, normal delivery will be made at Western's transmission system voltages or at the contractor's transmission voltage at such established locations. Deliveries may continue to be made at subtransmission voltages at powerplant and substation locations where contractors already have systems operating at such lower voltage levels.

2. Modifications to existing facilities and alternate or additional delivery points requested by contractors may be permitted at the discretion of Western; costs for such modifications being assigned to the appropriate parties. Western has no obligation to furnish additional facilities or increase the transmission or transformer capabilities of its power system. Request for taps will be considered on a case-by-case basis with final determination by Western.

3. Designated or equivalent Federal points of delivery will be at:

(a) Points on the SLCA Integrated Projects' transmission system; or

(b) Points on other Western transmission systems or the system of non-Federal entities which have been established as delivery points under arrangements between Western and other entities.

4. If such arrangements are terminated, then the delivery points under (b) above will be rescinded. These points are listed below and may be modified as provided herein.

BILLING CODE 6450-01-M

DESIGNATED OR EQUIVALENT FEDERAL POINTS OF DELIVERY, TAP POINTS, AND VOLTAGES

Arizona	Kilovolt
Glen Canyon	69
Kayenta	230
Long House Valley	230
Mesa 1/ 2/	230
Pinnacle Peak 1/	230
Colorado	
Ault	230
Beaver Creek 2/	115
Collbran Switchyard	115
North Main Tap (Gunnison)	115
Gore Pass Tap	138
Green Mountain	115
Gunnison	115
Hayden	138
Lost Canyon	115, 230 or [345] 3/
Midway	115, 230
Montrose	115
Pueblo 2/	115
Rangely	138
Salida (Poncha Junction)	115
Skito Tap	115
Story 2/	230
Weld	115, 230
New Mexico	**Kilovolts**
Albuquerque 2/	115
Ambrosia Lake 2/	115
Elephant Butte	115
Four Corners	230 or [345] 3/
Shiprock 115, 230, [345] 4/	
Utah	
Brigham City Tap 2/	138
Bountiful Tap 2/	138
Centerfield 2/	138
Deer Creek	46
Fillmore 2/	138
Flaming Gorge	24.9, 69
Hale Plant Tap 2/	138
Hyrum 2/	138
Murray Tap 2/	138
New Castle Tap 2/	138
Paragonah 2/	138
Utah cont'd	
Sigurd 2/	138
Smithfield Tap 2/	138
South Provo Tap 2/	138
Springville 2/	138
St. George 2/	138
Vernal	138
Upalco Tap 2/	138
Henrieville Tap 2/	230
Wyoming	
Archer	115, 230

1/ Deliveries to Southern Division Nevada customers are made from Mesa or Pinnacle Peak.

2/ Points of delivery on another Federal system or the system of a non-Federal entity.

3/ Scheduled for uprating from 230 kV to 345 kV.

4/ A 345-kV yard will be constructed.

BILLING CODE 6450-01-C

The listing of the above points of delivery does not imply any obligation for Western to furnish additional facilities or to increase transmission or transformer capabilities at those points. Additional delivery points requested by the customers and approved by Western will be permitted, provided that they meet the above criteria and will not result in any expense or loss of revenue to the SLCA Integrated Projects. Delivery will not be made from transformer capacity required for project purposes. Taps on the SLCA Integrated Projects' or other transmission systems, at the customer's expense, will be on a case-by-case basis, with final determination of necessity and desirability to be made by Western and/or the owner of such transmission system.

E. Delivery of Power Beyond Delivery Points

1. All costs, including losses, for delivery of power and energy beyond the established delivery locations shall be the responsibility of the contractor.

2. The following alternatives are available to contractors for accomplishing delivery of power beyond the established delivery locations:

(a) The contractor or contractors may build all facilities to accept delivery at the established voltage at identified delivery locations, in which case the contractor will pay the applicable rates for such power. The basic design of such facilities is subject to Western's approval.

(b) Arrangements may be made with a third party to wheel and deliver power to a contractor's point of use. Such arrangements will normally be made by the contractor, or by a group of contractors, with Western's assistance if desired. When the contractor makes its own wheeling arrangements, the contractor will be billed by the wheeling agent and will pay the wheeling charges directly to the wheeling agent. If Western contracts for the wheeling arrangements on behalf of the contractor or a group of contractors, Western will pass the costs through to the contractors.

(c) Western may construct the transmission line facilities required beyond the identified established delivery locations, if the cost of the facilities constructed by Western beyond such locations are paid by the beneficiaries thereof.

Appendix A—Derivation of Marketable Resources

SLCA Integrated Projects*

[Power—MW]

	Winter	Summer
Power at plant:		
CRSP [1]	1691.0	1691.0
Collbran	14.0	14.0
Provo River	5.0	5.0
Rio Grande	27.0	27.0
Total	1737.0	1737.0
Unavailable power [2]	130.0	91.0
Reserves	174.0	174.0
Priority use	39.0	176.0
Marketable firm power	1394.0	1296.0

*In the event that Reclamation's plans for the development of additional generation in connection with uprating units at Flaming Gorge and Blue Mesa powerplants or building new powerplants, such as the Diamond Fork power system, are sufficiently firm to warrant inclusion in this plan, the marketable resources will be appropriately increased prior to finalization. Reclamation is considering the addition of about 130 megawatts with non-Federal funding. If this additional power is available for allocation, the adjustment to the Southern Division allocations and the amounts available to participating customers may be modified.

[1] Based on CRSS model studies simulating future conditions, July 1984. Includes estimated generator uprates at Glen Canyon scheduled for completion in 1987.

[2] Based on 90% hydrologic availability for CRSP and limiting releases at Glen Canyon to 31,500 cubic feet per second.

SLCA Integrated Projects*

[Energy—GWH]

	Winter	Summer
Average generation of plant:		
CRSP [1]	3058.0	3424.0
Collbran	18.7	34.6
Provo River	[2] 0	18.9
Rio Grande	19.5	41.2
Total average generation	3096.2	3518.7
Purchases [3]	+366.0	+34.0
Total	3462.2	3552.7
Losses (7 pct. at load)	−226.5	−232.4
Priority use	−47.1	−339.6
Marketable firm energy	3188.6	2980.7

*In the event that additional resources are included prior to finalization, these amounts will be appropriately increased.

[1] Based on CRSS model studies simulating future conditions and assuming average hydrologic conditions, July 1984.

[2] The average winter season generation of 6.7 GWh was not included as a marketable resource because winter generation has been provided to Utah Power & Light Company as a result of the Weber-Provo water exchange agreement.

[3] Purchases were scheduled to provide the same load factor (52.3%) for the marketable firm power and energy in each season. However, since the Southern Division resource is comprised of CRSP only, whereas the Northern Division resource includes energy from the Collbran, Rio Grande and Provo River projects, the load factor varies slightly between the two divisions.

Considerations in Determining Southern Division Share of CRSP Resoruces:

- Desire to preserve intent of original allocation between Northern and Southern Division.
- Desire to recognize change in Northern Division seasonal load diversity (a key factor in the original allocation).
- Desire to recognize a possible change in the availability of Federal resources in the Southern Division, i.e., the provisions of the Hoover Powerplant Act of 1984.

Southern Division Share of Initial CRSP Resource: 1200 MW × 20% = 240 MW (Summer), 1200 MW × 7% = 84 MW (Winter).

Change in Diversity; Adjustment in Southern Division's Share:

20% − 7% = 13% = Load diversity in Northern Division in 1960's.

Since load estimates indicate there will be little or no load diversity in the Northern Division in 1989, resources for SLCA new customers and others [1] in the summer and winter seasons were equalized by adjusting the seasonal diversity of the Southern Division allocations, as follows:

[1] Referred to as participating customers in Appendix B.

	Winter	Winter	Adjusted difference	Summer	Summer	Adjusted difference
Southern Division	84	119	[2] +35	240	210	[2] −30
SLCA new customers and others [1]	101	75	−26	20	75	+55

[1] Referred to as participating customers in Appendix B.

[2] These differences are related to long-term firm only and are included in the total change in the resources available to the Southern Division on page 1 of 7, Appendix B.

ALLOCATION CRITERIA FOR THE SLCA INTEGRATED PROJECTS

1. Bases for Allocations

The total amounts of long-term power and energy available for allocation to the Northern and Southern Divisions of the SLCA Integrated Projects market area are tabulated below and compared to existing commitments:

	WINTER			SUMMER		
	Avail. for Allocation	Exist. Commit.	Chge.	Avail. for Allocation	Exist. Commit.	Chge.
MARKETABLE FIRM POWER - MW 1/	1394	1293	+101	1296	1276	+ 20
SOUTHERN DIVISION	119	93	+ 26	210	265	- 55
NORTHERN DIVISION	1275	1200	+ 75	1086	1011	+ 75
Existing Customers	1200	1200	0	1011	1011	0
Participating Customers*	75	0	+ 75	75	0	+ 75
DETAIL - NO. DIVISION						
CRSP	1229	1186	+ 43	1040	973	+ 67
Collbran	14	14	0	14	14	0
Provo River	5	0	+ 5	5	0	+ 5
Rio Grande	27	0	+ 27	27	24	+ 3
	1275	1200	+ 75	1086	1011	+ 75
MARKETABLE FIRM ENERGY- GWH 1/	3188.57	2659.90	528.67	2980.71	3041.80	-61.09
SOUTHERN DIVISION	281.48	214.20	+67.28	500.76	612.00	-111.24
NORTHERN DIVISION	2907.09	2445.70	+461.39	2479.95	2429.80	+ 50.15
Existing Customers	2736.08	2445.70	+290.38	2308.68	2429.80	-121.12
Participating Customers*	171.01	0.0	+171.01	171.27	0.00	+171.27
DETAIL - NO. DIVISION						
CRSP	2871.39	2428.20	+443.19	2391.45	2336.30	+ 55.15
Collbran 2/	17.50	17.50	0.00	32.30	32.30	0.00
Provo River 2/	0.00	0.00	0.00	17.70	0.00	+ 17.70
Rio Grande 2/	18.20	0.00	+ 18.20	38.50	61.20	- 22.70
	2907.09	2445.70	+461.39	2479.95	2429.80	50.15

* Participating customers include potential new customers plus those existing customers who were entitled to receive less than 25 percent of their average energy requirements during 1980-82 from Federal resources that were committed on a long-term basis and those who receive allocations based on special circumstances.

1/ These amounts have been rounded for convenience but will be calculated in kilowatts and kilowatt-hours when the final criteria are published.

2/ Energy amounts available for allocation are less than Appendix A amounts because losses (7%, based on load) have been subtracted.

For convenience in referring to the allocation process, the marketable firm power and energy has been divided into the following resource pools:

Resource Pool 1: Southern Division, Winter Season

Resource Pool 2: Southern Division, Summer Season

Resource Pool 3: Northern Division existing customers, Winter Season

Resource Pool 4: Northern Division existing customers, Summer Season

Resource Pool 5: Northern Division participating customers, Winter Season

Resource Pool 6: Northern Division participating customers, Summer Season

The relationship between the power and energy components in each resource pool is shown below $\left(\frac{\text{kWh}}{\text{kW X HRS in season}} = \%\right)$ for comparison with customer's seasonal load factors:

	Resource Pools					
	1	2	3	4	5	6
Winter	54%		52%		52%	
Summer		54%		52%		52%

The percentage change in the proposed amount of seasonal energy for the existing customer group in each division is as follows:

	Winter	Summer
Southern Division	+31.40%	-18.17%
Northern Division 1/	+11.87%	- 4.90%

1/ Certain existing customers participate in Resource Pools 5 and 6. Those amounts are not included in these percentages.

To promote more widespread and equitable distribution of the benefits of available Federal power and energy, power in excess of amounts presently under contract, and associated energy, as adjusted to equalize amounts available in each season, will be reserved for participating customers in the SLCA (Resource Pools 5 and 6). Other Federal resources have been or will be available from the BCA and LFCA to new customers in those areas.

Since CRSP power and energy available to the Southern Division in the post-1989 period is less than presently under contract for the summer season, Resource Pools 1 and 2 will be offered to existing Southern Division customers only. The CRSP resource only will be allocated in the Southern Division in amounts that represent approximately 17 percent of 1200 MW in the summer season and about 10 percent of 1200 MW in the winter season. The balance of the resources from the SLCA Integrated Projects will be allocated in the Northern Division.

Resource Pools 1 and 2 will be allocated in the Southern Division by adjusting existing commitment as follows:

(A temporary Appendix D contains five alternative methods of adjusting Southern Division allocations, together with the impact each method has on each customer. The selected alternative will be described here in the final criteria and Appendix D will be dropped.)

Available energy in Resource Pools 3 and 4 will be allocated to eligible existing customers in the Northern Division for each season based on the proportion that the customer's present long-term firm power bears to the present long-term firm power commitments in total for the applicable season. Peaking power is excluded from consideration.

The energy available in Resource Pools 5 and 6, after any special allocations have been made, will be allocated based on the proportion that the participating customer's average seasonal peak load within the SLCA for the 3-year period bears to the total of all participating customer's average seasonal peak load for the same period, except that a seasonal energy allocation may not exceed an amount of energy associated with 3,500 kilowatts at the seasonal factor of the available resources or an amount equal to the difference between 25 percent of their average energy requirements during 1980–82 and their total available long-term Federal resources for the period, whichever is less.

Eligible applicants for all Resource Pools may request power with allocated energy to reflect their individual system characteristics. If there is insufficient power to satisfy the requests, the Administrator will limit the power allocated to a load factor that is equal to the seasonal factor of the resource pool. The Administrator may deviate from the application of these allocation criteria when special circumstances warrant it. To assist individual existing customers to adjust the diversity between their summer and winter allocations to their best advantage, based on seasonal characteristics of their loads and resources, Western is willing to facilitate the trading of capacity from one season for the other season by matching up those individual customers who desire to trade with other customers within the same division during the allocation process.

2. *Reductions in Allocations:* The proposed allocation of power and energy to an existing contractor may be reduced in whole or part if the contractor is unable to demonstrate that it has complied with the spirit of the Resale of Electric Energy Article in its existing contract. Compliance may be demonstrated by showing that (1) the benefits of low-cost Federal power have been passed on directly to the consumers through lower power rates, or (2) the benefits have been passed on indirectly if power rates to consumers provide revenues to be used to accomplish legitimate public purposes, and those power rates were established in an open and public manner.

3. *Reallocations:* Firm power and energy available for marketing because an allottee has failed to take significant and tangible steps to acquire a distribution system within the time period allowed, or because any allottee has failed to accept a contract within the time period allowed, or because a contract has been terminated, or because allocations have been reduced for noncompliance with contract provisions may be administratively reallocated.

4. *Applicant Qualifications:* The following requirements must be met in order to be eligible for an allocation of long-term Western resources:

(a) Each potential applicant must have submitted substantially complete applicant profile data to Western on or before December 30, 1983.

(b) Each potential new contractor must have had a 1982 load greater than 100 kilowatts.

(c) On or before January 1, 1984, each potential applicant must:

(1) Be a utility, primarily engaged in retail or wholesale sales of electricity, with responsibility for the load to be served; or

(2) Be a Federal or State agency with an ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(3) Be an existing Western contractor for long-term firm power who does not otherwise qualify above; or

(4) Have taken significant and tangible steps to acquire the means to distribute power or have taken initial steps to acquire the means to distribute power and have requested an extension of time for taking significant and tangible steps. Significant and tangible

steps toward becoming a utility would include some combination of the following:

a. Evidence of a financial commitment to purchase or construct a transmission system to distribute power;

b. Evidence of negotiations with a utility regarding distribution system acquisition;

c. Action before a public service or public utility commission to acquire a distribution system;

d. Initiation of condemnation proceedings; and/or

e. Construction of a distribution system.

5. *Application Procedures:* Upon finalization of these criteria, Western will request all qualified applicants to formally apply for a share of energy and power, under these allocation criteria, within a designated period of time. The Administrator will allocate the available resources under the terms of these criteria.

BILLING CODE 6450-01-M

Hypothetical Post-1989 Allocations

SLCA Integrated Projects

Total
Marketable Firm Power and Energy

Resource Pool

		MW	GWh	kWh/kW
1	(See Appendix D)	119.00	281.48	2565.4
2	(See Appendix D)	210.00	500.76	2384.6
3	(See pp. 2-3)	1200.00	2736.08	2280.1
4	(See pp. 4-5)	1011.00	2308.68	2283.6
5	(See pp. 6-7)	75.00	171.01	2280.1
6	(See pp. 6 & 8)	75.00	171.27	2283.6

8/ 2/84

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 3 — EXISTING N. D. CUSTOMERS

		EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
AREA	ENTITY	FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
LF	CENTER	1.50	0.00	1.50	3,825.0	4,247.2	422.2	1.87	0.37
	CODY	2.65	0.71	3.36	6,750.5	7,503.4	752.9	3.30	-0.06
	COLORADO SPRINGS	50.00	20.00	70.00	127,500.0	141,573.6	14,073.6	62.27	-7.73
	FLEMING, TOWN OF	0.05	0.02	0.07	127.5	141.6	14.1	0.06	-0.01
	FORT MORGAN, CITY OF	6.90	1.86	8.76	17,595.0	19,537.2	1,942.2	8.59	-0.17
	FREDERICK	0.04	0.02	0.06	102.0	113.3	11.3	0.05	-0.01
	FT. LARAMIE	0.07	0.03	0.10	178.5	198.2	19.7	0.09	-0.01
	GUERNSEY	0.40	0.11	0.51	1,020.0	1,132.6	112.6	0.50	-0.01
	HAXTON, TOWN OF	0.40	0.11	0.51	1,020.0	1,132.6	112.6	0.50	-0.01
	HOLYOKE, CITY OF	1.50	0.60	2.10	3,825.0	4,247.2	422.2	1.87	-0.23
	LAMAR, CITY OF	2.00	0.54	2.54	5,100.0	5,663.0	563.0	2.49	-0.05
	LINGLE	0.10	0.05	0.15	255.0	283.2	28.2	0.12	-0.03
	LUSK	1.00	0.27	1.27	2,550.0	2,831.5	281.5	1.25	-0.02
	PINE BLUFFS	0.18	0.08	0.26	459.0	509.7	50.7	0.22	-0.04
	PLATTE RVR PWR AUTH	134.90	62.71	197.61	343,995.0	381,965.6	37,970.6	168.00	-29.61
	PUEBLO ARMY DEPOT	4.50	0.00	4.50	11,475.0	12,741.6	1,266.6	5.60	1.10
	TORRINGTON	0.93	0.43	1.36	2,371.5	2,633.3	261.8	1.16	-0.20
	TRI STATE (CO-WY)	179.00	0.00	179.00	456,450.0	506,833.5	50,383.5	222.92	43.92
	WHEATLAND	0.90	0.41	1.31	2,295.0	2,548.3	253.3	1.12	-0.19
	WILLWOOD LIGHT & PWR	0.03	0.02	0.05	76.5	84.9	8.4	0.04	-0.01
	WRAY, CITY OF	0.84	0.23	1.07	2,142.0	2,378.4	236.4	1.05	-0.02
	YUMA	1.07	0.29	1.36	2,728.5	3,029.7	301.2	1.33	-0.03
LF		388.96	88.49	477.45	991,841.0	1101,329.6	109,488.6	484.40	6.95

8/ 2/84

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 3 — EXISTING N. D. CUSTOMERS

AREA	ENTITY	EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
		FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
SL	AZTEC	2.22	0.50	2.72	5,661.0	6,285.9	624.9	2.76	0.04
	BEAVER CITY	2.14	0.57	2.71	5,457.0	6,059.4	602.4	2.67	-0.04
	BOUNTIFUL	34.15	0.00	34.15	87,082.0	96,694.8	9,612.8	42.53	8.38
	BRIDGER VALLEY	8.40	2.26	10.66	21,420.0	23,784.4	2,364.4	10.46	-0.20
	BRIGHAM CITY	11.00	1.00	12.00	28,050.0	31,146.2	3,096.2	13.70	1.70
	DEFENSE DEPOT-OGDEN	3.70	0.60	4.30	9,435.0	10,476.5	1,041.5	4.61	0.31
	DELTA	1.00	0.00	1.00	2,550.0	2,831.5	281.5	1.25	0.25
	DELTA-MONTROSE-COLB	1.33	0.00	1.33	1,741.3	3,765.9	2,024.6	1.33	0.00
	DIXIE-ESCALANTE	18.07	4.85	22.92	46,078.0	51,164.7	5,086.7	22.50	-0.42
	DOE ALBUQ. OP. OFF.	14.60	17.86	32.46	37,230.0	41,339.5	4,109.5	18.18	-14.28
	EMPIRE ELECTRIC-COLB	0.61	0.00	0.61	799.4	1,727.2	927.8	0.61	0.00
	EPHRAIM	2.80	0.75	3.55	7,140.0	7,928.1	788.1	3.49	-0.06
	FAIRVIEW	0.75	0.20	0.95	1,912.0	2,123.6	211.6	0.93	-0.02
	FARMINGTON	15.00	6.98	21.98	38,250.0	42,472.1	4,222.1	18.68	-3.30
	FILLMORE	1.90	0.51	2.41	4,845.0	5,379.8	534.8	2.37	-0.04
	FLOWELL E.A.	0.29	0.08	0.37	739.0	821.1	82.1	0.36	-0.01
	GARKANE PWR ASSN.	14.82	3.98	18.80	37,791.0	41,962.4	4,171.4	18.46	-0.34
	GRAND VALLEY-COLB	0.42	0.00	0.42	547.7	1,189.2	641.5	0.42	0.00
	GUNNISON	6.00	0.00	6.00	15,300.0	16,988.8	1,688.8	7.47	1.47
	GUNNISON-CNTY-COLB	0.50	0.00	0.50	657.1	1,415.7	758.6	0.50	0.00
	HEBER CITY	4.78	1.29	6.07	12,189.0	13,534.4	1,345.4	5.95	-0.12
	HOLDEN	0.28	0.08	0.36	714.0	792.8	78.8	0.35	-0.01
	HOLY CROSS-COLB	2.45	0.00	2.45	3,209.0	6,937.1	3,728.1	2.45	0.00
	HYRUM	2.88	0.77	3.65	7,344.0	8,154.6	810.6	3.59	-0.06
	IREA -	20.90	0.00	20.90	53,295.0	59,177.8	5,882.8	26.03	5.13
	IREA- COLB	2.82	0.00	2.82	3,690.6	7,984.8	4,294.2	2.82	0.00
	KANOSH	0.30	0.08	0.38	765.0	849.4	84.4	0.37	-0.01
	KAYSVILLE	2.10	0.56	2.66	5,355.0	5,946.1	591.1	2.62	-0.04
	LA PLATA-COLB	1.18	0.00	1.18	1,544.2	3,341.1	1,796.9	1.18	0.00
	LEHI	4.02	1.08	5.10	10,251.0	11,382.5	1,131.5	5.01	-0.09
	LEVAN	0.41	0.11	0.52	1,045.5	1,160.9	115.4	0.51	-0.01
	LITTLEFIELD EL COOP	0.15	0.06	0.21	382.5	424.7	42.2	0.19	-0.02
	LOGAN	18.50	4.97	23.47	47,175.0	52,382.2	5,207.2	23.04	-0.43
	MANTI	1.62	0.43	2.05	4,131.0	4,587.0	456.0	2.02	-0.03
	MEADOW	0.22	0.06	0.28	561.0	622.9	61.9	0.27	-0.01
	MONROE CITY	1.14	0.31	1.45	2,907.0	3,227.9	320.9	1.42	-0.03
	MOON LAKE E.A.	47.50	12.77	60.27	121,125.0	134,494.9	13,369.9	59.15	-1.12
	MORGAN	1.98	0.53	2.51	5,049.0	5,606.3	557.3	2.47	-0.04
	MT. PLEASANT	1.49	0.40	1.89	3,799.5	4,218.9	419.4	1.86	-0.03
	MT. WHEELER POWER	12.80	3.44	16.24	32,640.0	36,242.9	3,602.9	15.94	-0.30
	MURRAY	29.10	7.82	36.92	74,205.0	82,395.8	8,190.8	36.24	-0.68
	NAVAJO TRIBAL UT ATH	18.00	8.36	26.36	45,900.0	50,966.5	5,066.5	22.42	-3.94
	NEPHI	2.70	1.23	3.93	6,885.0	7,645.0	760.0	3.36	-0.57
	OAK CITY	0.26	0.07	0.33	663.0	736.2	73.2	0.32	-0.01
	OAK CREEK	0.36	0.15	0.51	918.0	1,019.3	101.3	0.45	-0.06
	PAGE	6.40	1.72	8.12	16,320.0	18,121.4	1,801.4	7.97	-0.15
	PARAGONAH	0.19	0.00	0.19	484.5	538.0	53.5	0.24	0.05
	PAROWAN	1.34	0.41	1.75	3,417.0	3,794.2	377.2	1.67	-0.08
	PAYSON	4.10	0.00	4.10	10,455.0	11,609.0	1,154.0	5.11	1.01
	PLAINS G&T	133.00	50.00	183.00	339,150.0	376,585.8	37,435.8	165.63	-17.37
	PLAINS G&T RG	0.00	0.00	0.00	0.0	0.0	0.0	0.00	0.00
	PROVO	65.60	0.00	65.60	167,280.0	185,744.6	18,464.6	81.70	16.10
	S. DE CRISTO- COLB	0.26	0.00	0.26	339.4	736.2	396.8	0.26	0.00
	SALEM	0.77	0.00	0.77	1,963.5	2,180.2	216.7	0.96	0.19
	SAN ISABEL- COLB	0.60	0.00	0.60	788.5	1,698.9	910.4	0.60	0.00
	SAN LUIS VALLY- COLB	0.37	0.00	0.37	482.0	1,047.7	565.7	0.37	0.00
	SAN MIGUEL-COLB	0.64	0.00	0.64	832.2	1,812.1	979.9	0.64	0.00
	SOUTH EAST- COLB	0.50	0.00	0.50	657.1	1,415.7	758.6	0.50	0.00
	SPANISH FORK	5.65	0.00	5.65	14,407.5	15,997.8	1,590.3	7.04	1.39
	SPRING CITY	0.22	0.06	0.28	561.0	622.9	61.9	0.27	-0.01
	SPRINGVILLE	6.50	0.00	6.50	16,575.0	18,404.6	1,829.6	8.09	1.59
	ST. GEORGE	24.00	6.45	30.45	61,200.0	67,955.3	6,755.3	29.89	-0.56
	STRAWBERRY WTR USERS	1.75	0.00	1.75	4,462.5	4,955.1	492.6	2.18	0.43
	TRUTH OR CONSEQ RG	0.00	0.00	0.00	0.0	0.0	0.0	0.00	0.00
	TRUTH OR CONSEQ.	5.50	2.55	8.05	14,025.0	15,573.1	1,548.1	6.85	-1.20
	WEBER BASIN CONS DST	0.00	0.00	0.00	0.0	0.0	0.0	0.00	0.00
	WHITE RIVER-COLB	0.34	0.00	0.34	438.0	962.7	524.7	0.34	0.00
	YAMPA VALLEY-COLB	1.98	0.00	1.98	2,573.5	5,606.3	3,032.8	1.98	0.00
SL		577.35	145.90	723.25	1454,840.5	1634,750.4	179,909.9	715.60	-7.65
		966.31	234.39	1200.70	2446,681.5	2736,080.0	289,398.5	1200.00	-0.70

8/ 2/34

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 4 — EXISTING N. D. CUSTOMERS

AREA	ENTITY	EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
		FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
LF	CENTER	1.00	0.00	1.00	2,550.0	2,418.8	-131.2	1.06	0.06
	CODY	2.75	0.20	2.95	7,012.5	6,651.8	-360.7	2.92	-0.03
	COLORADO SPRINGS	15.00	0.00	15.00	38,250.0	36,282.5	-1,967.5	15.93	0.93
	FLEMING, TOWN OF	0.08	0.01	0.09	204.0	193.5	-10.5	0.08	-0.01
	FORT MORGAN, CITY OF	7.90	0.59	8.49	20,145.0	19,108.8	-1,036.2	8.39	-0.10
	FREDERICK	0.04	0.01	0.05	102.0	96.8	-5.2	0.04	-0.01
	FT. LARAMIE	0.04	0.01	0.05	102.0	96.8	-5.2	0.04	-0.01
	GUERNSEY	0.36	0.03	0.39	918.0	870.8	-47.2	0.38	-0.01
	HAXTON, TOWN OF	0.52	0.04	0.56	1,326.0	1,257.8	-68.2	0.55	-0.01
	HOLYOKE, CITY OF	1.47	0.12	1.59	3,748.5	3,555.7	-192.8	1.56	-0.03
	LAMAR, CITY OF	2.00	0.15	2.15	5,100.0	4,837.7	-262.3	2.12	-0.03
	LINGLE	0.08	0.01	0.09	204.0	193.5	-10.5	0.08	-0.01
	LUSK	0.32	0.02	0.34	816.0	774.0	-42.0	0.34	0.00
	PINE BLUFFS	0.08	0.01	0.09	216.7	193.5	-23.2	0.08	-0.01
	PLATTE RVR PWR AUTH	116.80	9.14	125.94	297,840.0	282,519.8	-15,320.2	124.01	-1.93
	PUEBLO ARMY DEPOT	4.00	0.00	4.00	10,200.0	9,675.3	-524.7	4.25	0.25
	TORRINGTON	1.76	0.14	1.90	4,488.0	4,257.1	-230.9	1.87	-0.03
	TRI STATE (CO-WY)	252.00	0.00	252.00	642,600.0	609,546.1	-33,053.9	267.55	15.55
	WHEATLAND	0.96	0.07	1.03	2,448.0	2,322.1	-125.9	1.02	-0.01
	WILLWOOD LIGHT & PWR	0.05	0.01	0.06	127.5	120.9	-6.6	0.05	-0.01
	WRAY, CITY OF	0.47	0.04	0.51	1,198.5	1,136.9	-61.6	0.50	-0.01
	YUMA	1.12	0.08	1.20	2,868.0	2,709.1	-158.9	1.19	-0.01
LF		408.80	10.68	419.48	1042,464.7	988,819.3	-53,645.4	434.01	14.53

8/ 2/84

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 4 — EXISTING N. D. CUSTOMERS

AREA	ENTITY	EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
		FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
SL	AZTEC	1.92	0.14	2.06	4,896.0	4,644.2	-251.8	2.04	-0.02
	BEAVER CITY	1.29	0.10	1.39	3,289.0	3,120.3	-168.7	1.37	-0.02
	BOUNTIFUL	24.91	1.95	26.86	63,520.0	60,253.1	-3,266.9	26.45	-0.41
	BRIDGER VALLEY	8.00	0.63	8.63	20,400.0	19,350.7	-1,049.3	8.49	-0.14
	BRIGHAM CITY	7.70	0.58	8.28	19,635.0	18,625.0	-1,010.0	8.18	-0.10
	DEFENSE DEPOT-OGDEN	3.90	0.29	4.19	9,945.0	9,433.5	-511.5	4.14	-0.05
	DELTA	1.00	0.00	1.00	2,550.0	2,418.8	-131.2	1.06	0.06
	DELTA-MONTROSE-COLB	1.27	0.00	1.27	2,641.7	3,071.9	430.2	1.27	0.00
	DIXIE-ESCALANTE	17.25	1.36	18.61	43,987.0	41,724.9	-2,262.1	18.31	-0.30
	DOE ALBUQ. GP. OFF.	14.60	15.05	29.65	37,230.0	35,315.0	-1,915.0	15.50	-14.15
	EMPIRE ELECTRIC-COLB	0.58	0.00	0.58	1,200.8	1,402.9	202.1	0.58	0.00
	EPHRAIM	1.66	0.12	1.78	4,233.0	4,015.3	-217.7	1.76	-0.02
	FAIRVIEW	0.48	0.04	0.52	1,224.0	1,161.0	-63.0	0.51	-0.01
	FARMINGTON	15.00	1.18	16.18	38,250.0	36,282.5	-1,967.5	15.93	-0.25
	FILLMORE	1.70	0.14	1.84	4,335.0	4,112.0	-223.0	1.80	-0.04
	FLOWELL E.A.	4.11	0.32	4.43	10,480.0	9,941.4	-538.6	4.36	-0.07
	GARKANE PWR ASSN.	13.33	1.04	14.37	33,991.0	32,243.1	-1,747.9	14.15	-0.22
	GRAND VALLEY-COLB	0.39	0.00	0.39	820.7	943.3	122.6	0.39	0.00
	GUNNISON	4.55	0.00	4.55	11,602.0	11,005.7	-596.3	4.83	0.28
	GUNNISON-CNTY-COLB	0.39	0.00	0.39	820.7	943.3	122.6	0.39	0.00
	HEBER CITY	3.00	0.24	3.24	7,650.0	7,256.5	-393.5	3.19	-0.05
	HOLDEN	0.22	0.02	0.24	561.0	532.1	-28.9	0.23	-0.01
	HOLY CROSS-COLB	1.96	0.00	1.96	4,062.9	4,740.9	678.0	1.96	0.00
	HYRUM	1.95	0.16	2.11	4,972.0	4,716.7	-255.3	2.07	-0.04
	IREA -	17.35	0.00	17.35	44,242.5	41,966.8	-2,275.7	18.42	1.07
	IREA- COLB	2.27	0.00	2.27	4,723.3	5,490.8	767.5	2.27	0.00
	KANOSH	0.24	0.02	0.26	612.0	580.5	-31.5	0.25	-0.01
	KAYSVILLE	1.64	0.13	1.77	4,182.0	3,966.9	-215.1	1.74	-0.03
	LA PLATA-COLB	0.99	0.00	0.99	2,061.2	2,394.6	333.4	0.99	0.00
	LEHI	2.70	0.21	2.91	6,885.0	6,530.9	-354.1	2.87	-0.04
	LEVAN	0.41	0.03	0.44	1,045.5	991.7	-53.8	0.44	0.00
	LITTLEFIELD EL COOP	0.25	0.08	0.33	637.5	604.7	-32.8	0.27	-0.06
	LOGAN	15.00	1.18	16.18	38,250.0	36,282.5	-1,967.5	15.93	-0.25
	MANTI	1.32	0.10	1.42	3,366.0	3,192.9	-173.1	1.40	-0.02
	MEADOW	0.29	0.02	0.31	739.5	701.5	-38.0	0.31	0.00
	MONROE CITY	0.70	0.05	0.75	1,785.0	1,693.2	-91.8	0.74	-0.01
	MOON LAKE E.A.	46.00	3.61	49.61	117,300.0	111,266.3	-6,033.7	48.84	-0.77
	MORGAN	1.64	0.13	1.77	4,182.0	3,966.9	-215.1	1.74	-0.03
	MT. PLEASANT	1.08	0.08	1.16	2,754.0	2,612.3	-141.7	1.15	-0.01
	MT. WHEELER POWER	22.00	1.72	23.72	56,100.0	53,214.3	-2,885.7	23.36	-0.36
	MURRAY	25.50	2.00	27.50	65,025.0	61,680.3	-3,344.7	27.07	-0.43
	NAVAJO TRIBAL UT ATH	18.00	1.40	19.40	45,900.0	43,539.0	-2,361.0	19.11	-0.29
	NEPHI	3.40	0.27	3.67	8,670.0	8,224.0	-446.0	3.61	-0.06
	OAK CITY	0.20	0.02	0.22	510.0	483.8	-26.2	0.21	-0.01
	OAK CREEK	0.30	0.02	0.32	765.0	725.6	-39.4	0.32	0.00
	PAGE	6.30	0.47	6.77	16,065.0	15,238.7	-826.3	6.69	-0.08
	PARAGONAH	0.12	0.00	0.12	306.0	290.3	-15.7	0.13	0.01
	PAROWAN	0.93	0.08	1.01	2,371.5	2,249.5	-122.0	0.99	-0.02
	PAYSON	3.10	0.24	3.34	7,905.0	7,498.4	-406.6	3.29	-0.05
	PLAINS G&T	113.40	8.88	122.28	289,170.0	274,295.7	-14,874.3	120.40	-1.88
	PLAINS G&T RG	21.88	0.00	21.88	55,794.0	52,924.1	-2,869.9	21.88	0.00
	PROVO	65.60	0.00	65.60	167,280.0	158,675.5	-8,604.5	69.65	4.05
	S. DE CRISTO- COLB	0.24	0.00	0.24	500.1	580.5	80.4	0.24	0.00
	SALEM	0.57	0.04	0.61	1,453.5	1,378.7	-74.8	0.61	0.00
	SAN ISABEL- COLB	0.54	0.00	0.54	1,120.9	1,306.2	185.3	0.54	0.00
	SAN LUIS VALLY- COLB	1.82	0.00	1.82	3,782.5	4,402.3	619.8	1.82	0.00
	SAN MIGUEL-COLB	0.61	0.00	0.61	1,260.8	1,475.5	214.7	0.61	0.00
	SOUTH EAST- COLB	0.94	0.00	0.94	1,961.6	2,273.7	312.1	0.94	0.00
	SPANISH FORK	4.20	0.33	4.53	10,710.0	10,159.1	-550.9	4.46	-0.07
	SPRING CITY	0.21	0.02	0.23	535.0	508.0	-27.0	0.22	-0.01
	SPRINGVILLE	5.15	0.41	5.56	13,132.5	12,457.0	-675.5	5.47	-0.09
	ST. GEORGE	18.00	1.35	19.35	45,900.0	43,539.0	-2,361.0	19.11	-0.24
	STRAWBERRY WTR USERS	1.50	0.11	1.61	3,825.0	3,628.2	-196.8	1.59	-0.02
	TRUTH OR CONSEQ RG	2.12	0.00	2.12	5,406.0	5,127.9	-278.1	2.12	0.00
	TRUTH OR CONSEQ.	3.60	0.28	3.88	9,180.0	8,707.8	-472.2	3.82	-0.06
	WEBER BASIN CONS DST	0.39	0.00	0.39	994.5	943.3	-51.2	0.41	0.02
	WHITE RIVER-COLB	0.34	0.00	0.34	700.7	822.4	121.7	0.34	0.00
	YAMPA VALLEY-COLB	1.66	0.00	1.66	3,442.1	4,015.3	573.2	1.66	0.00
SL		545.66	46.64	592.30	1384,829.0	1319,860.7	-64,968.3	576.99	-15.31
		954.46	57.32	1011.78	2427,293.7	2308,680.0	-118,613.7	1011.00	-0.78

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects

DISTRIBUTION OF RESOURCE POOLS 5 & 6
(Participating Customers)

			RESOURCE POOL NO. 5 (WINTER)	RESOURCE POOL NO. 6 (SUMMER)
POWER				
Marketable Firm Power for Participating Customers (from Appendix B)			75,000 kW	75,000 kW
Tentative Special Allocations:	WINTER	SUMMER		
DOE/Los Alamos 1/	15,000 kW	15,000 kW		
Enterprise 1/	646	496		
Hurricane 1/	1,941	858		
TOTAL	17,587 kW	16,354 kW		
			-17,587	- 16,354
Resultant Resource Amounts For Distribution by Formula			57,413 kW	58,646 kW
ENERGY				
Marketable Firm Energy for Participating Customers (from Appendix B)			171,010,000 kWh	171,270,000 kWh
Tentative Special Allocations:	WINTER	SUMMER		
DOE/Los Alamos 1/	-0- kWh	-0- kWh		
Enterprise 1/	1,472,945	1,132,616		
Hurricane 1/	4,425,674	1,959,243		
TOTAL	5,898,619 kWh	3,091,859 kWh		
			- 5,898,619	- 3,091,859
Resultant Resource Amounts For Distribution by Formula			165,111,381 kWh	168,178,141 kWh

1/ For discussion, refer to Special Allocation Issues section of this FEDERAL REGISTER notice.

8/ 2/84

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 5 AND TOTALS — PARTICIPATING CUSTOMERS

AREA	ENTITY	1980-82 AVERAGE LOAD PEAK POWER (MW)	1980-82 AVERAGE LOAD AVERAGE ENERGY (MWH)	HYPOTHETICAL ALLOCATIONS RES POOL 5 ALLOCATION (MWH)	RES POOL 3 ALLOCATION (MWH)	TOTAL ENERGY (MWH)	RES POOL 5 ALLOCATION (MW)	RES POOL 3 ALLOCATION (MW)	TOTAL POWER (MW)
SL	ASPEN	9.72	23,743.7	2178.4	0.0	2178.4	0.76	0.00	0.76
	BLANDING	4.42	10,113.7	990.6	0.0	990.6	0.34	0.00	0.34
	CANNON AFB	8.20	17,996.0	1837.8	0.0	1837.8	0.64	0.00	0.64
	CEDAR CITY	19.86	53,855.3	4451.0	0.0	4451.0	1.55	0.00	1.55
	CENTRAL VALLEY EL CP	33.54	86,928.4	7516.9	0.0	7516.9	2.61	0.00	2.61
	COUNTY OF LOS ALAMOS	9.07	24,763.0	2032.8	0.0	2032.8	0.71	0.00	0.71
	CUMCD	0.21	427.4	47.1	0.0	47.1	0.02	0.00	0.02
	DELTA	5.69	15,742.1	1104.0	2831.5	3935.5	0.38	1.25	1.63
	DELTA-MONTROSE-COLB	53.00	156,529.3	10066.0	3765.9	13831.9	3.50	1.33	4.83
	DOE ALBUQ. OP. OFF.	61.60	182,341.0	4245.8	41339.5	45585.3	1.48	18.19	19.67*
	EMPIRE ELECTRIC-COLB	24.33	71,027.7	5452.8	1727.2	7180.0	1.90	0.61	2.51
	FARMERS ELEC CO-OP	15.80	37,343.9	3541.1	0.0	3541.1	1.23	0.00	1.23
	FARMINGTON	59.23	183,724.0	3458.9	42472.1	45931.0	1.20	18.69	19.89
	GALLUP	26.27	80,136.7	5887.6	0.0	5887.6	2.04	0.00	2.04
	GLENWOOD SPRINGS	9.74	28,372.5	2182.9	0.0	2182.9	0.76	0.00	0.76
	GRAND VALLEY-COLB	16.67	43,647.3	3736.1	1189.2	4925.3	1.30	0.42	1.72
	GSA #15	0.09	94.3	20.2	0.0	20.2	0.01	0.00	0.01
	GSA #16	0.50	682.0	112.1	0.0	112.1	0.04	0.00	0.04
	GSA #18	2.33	5,336.4	522.2	0.0	522.2	0.18	0.00	0.18
	GSA #20	0.15	199.4	33.6	0.0	33.6	0.01	0.00	0.01
	GSA #21	0.16	60.9	15.2	0.0	15.2	0.01	0.00	0.01
	GSA #28	1.88	2,919.7	421.3	0.0	421.3	0.15	0.00	0.15
	GSA #29	0.09	94.2	20.2	0.0	20.2	0.01	0.00	0.01
	GUNNISON-CNTY-COLB	20.00	46,847.0	4482.4	1415.7	5898.1	1.56	0.50	2.06
	HELPER	2.71	7,363.6	607.4	0.0	607.4	0.21	0.00	0.21
	HILL AFB	27.87	75,304.0	6246.2	0.0	6246.2	2.17	0.00	2.17
	HOLLOMAN AFB	12.36	29,658.7	2770.1	0.0	2770.1	0.95	0.00	0.95
	HOLY CROSS-COLB	97.67	238,597.3	10066.0	6937.1	17003.1	3.50	2.45	5.95
	IVINS	0.75	1,695.0	168.1	0.0	168.1	0.06	0.00	0.06
	KANAB	3.53	9,644.0	791.1	0.0	791.1	0.28	0.00	0.28
	LA PLATA-COLB	47.00	127,704.7	10066.0	3341.1	13407.1	3.50	1.18	4.68
	LA VERKIN	1.42	3,261.3	318.2	0.0	318.2	0.11	0.00	0.11
	LEA CNTY ELEC CO-OP	63.00	219,812.7	10066.0	0.0	10066.0	3.50	0.00	3.50
	LEEDS	0.28	864.0	62.8	0.0	62.8	0.02	0.00	0.02
	LITTLEFIELD EL COOP	15.98	34,335.7	3581.4	424.7	4006.1	1.25	0.19	1.44
	MAPLETON	0.27	4,302.4	60.5	0.0	60.5	0.02	0.00	0.02
	NAVAJO TRIBAL UT ATH	88.15	247,760.7	10066.0	50966.5	61032.5	3.50	22.43	25.93
	NEW HARMONY	0.14	273.0	31.4	0.0	31.4	0.01	0.00	0.01
	PRICE	9.84	28,170.0	2205.3	0.0	2205.3	0.77	0.00	0.77
	RATON	9.36	22,931.0	2097.8	0.0	2097.8	0.73	0.00	0.73
	RICHFIELD	1.42	22,176.4	318.2	0.0	318.2	0.11	0.00	0.11
	ROOSEVELT CNTY EL CP	17.83	40,357.7	3996.0	0.0	3996.0	1.39	0.00	1.39
	SAN MIGUEL-COLB	25.33	71,523.3	5676.9	1812.1	7489.0	1.97	0.64	2.61
	SANDIA/KIRTLAND	35.57	89,616.0	7971.9	0.0	7971.9	2.76	0.00	2.76
	SANTA CLARA	1.90	3,926.3	425.8	0.0	425.8	0.15	0.00	0.15
	SPRINGDALE	0.17	393.7	38.1	0.0	38.1	0.01	0.00	0.01
	TOOELE ARMY DEPOT	7.55	13,952.5	1692.1	0.0	1692.1	0.59	0.00	0.59
	UNIVERSITY OF UTAH	20.52	58,174.1	4598.9	0.0	4598.9	1.60	0.00	1.60
	USDI F&W-DEXTER	0.09	164.7	20.2	0.0	20.2	0.01	0.00	0.01
	UTAH ST. UNIVERSITY	6.92	17,724.6	1550.9	0.0	1550.9	0.54	0.00	0.54
	VIRGIN	0.15	358.0	33.6	0.0	33.6	0.01	0.00	0.01
	WASHINGTON	3.97	9,232.3	889.8	0.0	889.8	0.31	0.00	0.31
	WEBER BASIN CONS DST	3.05	3,836.3	683.6	0.0	683.6	0.24	0.00	0.24
	WEST BOUNTIFUL	2.68	6,741.3	600.6	0.0	600.6	0.21	0.00	0.21
	WHITE RIVER-COLB	13.33	42,817.7	2987.5	962.7	3950.2	1.04	0.34	1.38
	YAMPA VALLEY-COLB	78.33	208,090.0	10066.0	5606.3	15672.3	3.50	1.98	5.48
SL		981.69	2,713,688.9	165,111.4	164,791.6	329,903.0	57.41	70.20	127.61
		981.69	2,713,688.9	165,111.4	164,791.6	329,903.0	57.41	70.20	127.61

* In addition to the hypothetical allocations above, DOE could receive the tentative special winter allocation of 15.00 mw for a total of 34.67 mw and 45,585.3 mwh.

8/ 2/84

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 6 AND TOTALS — PARTICIPATING CUSTOMERS

		1980-82 AVERAGE LOAD		HYPOTHETICAL ALLOCATIONS					
AREA	ENTITY	PEAK POWER (MW)	AVERAGE ENERGY (MWH)	RES POOL 5 ALLOCATION (MWH)	RES POOL 3 ALLOCATION (MWH)	TOTAL ENERGY (MWH)	RES POOL 5 ALLOCATION (MW)	RES POOL 3 ALLOCATION (MW)	TOTAL POWER (MW)
SL	ASPEN	7.87	16,684.8	1610.6	0.0	1610.6	0.56	0.00	0.56
	BLANDING	3.71	7,500.3	759.2	0.0	759.2	0.26	0.00	0.26
	CANNON AFB	10.28	23,629.6	2103.8	0.0	2103.8	0.73	0.00	0.73
	CEDAR CITY	20.26	52,842.0	4146.1	0.0	4146.1	1.45	0.00	1.45
	CENTRAL VALLEY EL CP	39.12	120,793.1	8005.7	0.0	8005.7	2.79	0.00	2.79
	COUNTY OF LOS ALAMOS	7.83	22,209.0	1602.4	0.0	1602.4	0.56	0.00	0.56
	CUMCD	0.45	953.3	92.1	0.0	92.1	0.03	0.00	0.03
	DELTA	5.24	13,947.0	1072.3	2418.8	3491.1	0.37	1.06	1.43
	DELTA-MONTROSE-COLB	44.00	129,128.0	9004.4	3071.9	12076.3	3.14	1.27	4.41
	DOE ALBUQ. OP. OFF.	67.47	201,902.0	10036.2	35315.0	45351.2	3.50	15.51	19.01*
	EMPIRE ELECTRIC-COLB	20.00	61,030.0	4092.9	1402.9	5495.8	1.43	0.58	2.01
	FARMERS ELEC CO-OP	23.15	50,698.4	4737.6	0.0	4737.6	1.65	0.00	1.65
	FARMINGTON	63.73	270,683.5	10036.2	36282.5	46318.7	3.50	15.94	19.44
	GALLUP	25.50	76,014.0	5218.5	0.0	5218.5	1.82	0.00	1.82
	GLENWOOD SPRINGS	9.23	26,403.3	1888.9	0.0	1888.9	0.66	0.00	0.66
	GRAND VALLEY-COLB	13.67	37,873.0	2797.5	943.3	3740.8	0.98	0.39	1.37
	GSA #15	0.13	110.4	26.6	0.0	26.6	0.01	0.00	0.01
	GSA #16	0.53	728.8	108.5	0.0	108.5	0.04	0.00	0.04
	GSA #18	2.58	5,973.6	528.0	0.0	528.0	0.18	0.00	0.18
	GSA #20	0.15	165.6	30.7	0.0	30.7	0.01	0.00	0.01
	GSA #21	0.05	39.7	10.2	0.0	10.2	0.00	0.00	0.00
	GSA #28	2.12	3,345.4	433.8	0.0	433.8	0.15	0.00	0.15
	GSA #29	0.13	110.4	26.6	0.0	26.6	0.01	0.00	0.01
	GUNNISON-CNTY-COLB	13.67	29,106.0	2797.5	943.3	3740.8	0.98	0.39	1.37
	HELPER	2.24	5,911.2	458.4	0.0	458.4	0.16	0.00	0.16
	HILL AFB	31.37	78,344.0	6419.7	0.0	6419.7	2.24	0.00	2.24
	HOLLOMAN AFB	14.30	34,683.3	2926.4	0.0	2926.4	1.02	0.00	1.02
	HOLY CROSS-COLB	67.67	132,877.7	10036.2	4740.9	14777.1	3.50	1.96	5.46
	IVINS	0.87	1,744.3	178.0	0.0	178.0	0.06	0.00	0.06
	KANAB	3.53	8,891.0	722.4	0.0	722.4	0.25	0.00	0.25
	LA PLATA-COLB	34.33	99,351.3	7025.5	2394.6	9420.1	2.45	0.99	3.44
	LA VERKIN	1.56	3,527.0	319.2	0.0	319.2	0.11	0.00	0.11
	LEA CNTY ELEC CO-OP	72.00	238,570.2	10036.2	0.0	10036.2	3.50	0.00	3.50
	LEEDS	0.27	726.0	55.3	0.0	55.3	0.02	0.00	0.02
	LITTLEFIELD EL COOP	21.06	55,349.1	4309.8	604.7	4914.5	1.50	0.27	1.77
	MAPLETON	0.26	4,089.6	53.2	0.0	53.2	0.03	0.00	0.03
	NAVAJO TRIBAL UT ATH	83.63	228,136.3	10036.2	43539.0	53575.2	3.50	19.13	22.63
	NEW HARMONY	0.15	256.7	30.7	0.0	30.7	0.01	0.00	0.01
	PRICE	8.30	23,722.7	1698.6	0.0	1698.6	0.59	0.00	0.59
	RATON	7.94	21,363.9	1624.9	0.0	1624.9	0.57	0.00	0.57
	RICHFIELD	1.36	21,080.4	278.3	0.0	278.3	0.10	0.00	0.10
	ROOSEVELT CNTY EL CP	25.48	65,543.1	5214.4	0.0	5214.4	1.82	0.00	1.82
	SAN MIGUEL-COLB	21.00	55,460.3	4297.6	1475.5	5773.1	1.50	0.61	2.11
	SANDIA/KIRTLAND	38.13	94,888.0	7803.1	0.0	7803.1	2.72	0.00	2.72
	SANTA CLARA	2.22	4,392.3	454.3	0.0	454.3	0.16	0.00	0.16
	SPRINGDALE	0.18	391.0	36.8	0.0	36.8	0.01	0.00	0.01
	TOOELE ARMY DEPOT	6.82	13,654.0	1395.7	0.0	1395.7	0.49	0.00	0.49
	UNIVERSITY OF UTAH	23.26	62,185.9	4760.1	0.0	4760.1	1.66	0.00	1.66
	USDI F&W-DEXTER	0.06	196.4	12.3	0.0	12.3	0.00	0.00	0.00
	UTAH ST. UNIVERSITY	8.35	17,634.0	1708.8	0.0	1708.8	0.60	0.00	0.60
	VIRGIN	0.17	379.0	34.8	0.0	34.8	0.01	0.00	0.01
	WASHINGTON	4.11	9,117.7	841.1	0.0	841.1	0.29	0.00	0.29
	WEBER BASIN CONS DST	5.62	11,332.3	1150.1	943.3	2093.4	0.40	0.41	0.81
	WEST BOUNTIFUL	3.27	7,212.0	669.3	0.0	669.3	0.24	0.00	0.24
	WHITE RIVER-COLB	11.67	38,976.0	2388.2	822.4	3210.6	0.83	0.34	1.17
	YAMPA VALLEY-COLB	57.33	140,163.0	10036.2	4015.3	14051.5	3.50	1.66	5.16
SL		939.38	2,632,020.9	168,178.1	138,913.4	307,091.5	58.65	60.51	119.16
		939.38	2,632,020.9	168,178.1	138,913.4	307,091.5	58.65	60.51	119.16

* In addition to the hypothetical allocations above, DOE could receive the tentative special summer allocation of 15.00 mw for a total of 34.01 mw and 45,351.2 mwh.

BILLING CODE 6450-01-C

Appendix D—Alternative Methods for Adjustment of Southern Division CRSP Energy Allocations

Alternative No. 1—Proportional Adjustment Based on CRSP Firm CROD

This alternative would generate the amounts of long-term firm energy available to each existing CRSP Southern Division customer based on the proportion of each customer's existing CRSP firm contract rate of delivery (CROD) to the existing total CRSP Southern Division firm CROD, excluding peaking power.

For the summer season, the method is detailed, as follows:

—The ratio of existing CRSP summer season firm power (CRSP, F(i)) to the total existing CRSP Southern Division summer season firm power (CRSP, F(T)) is first determined.

—This ratio is then applied to the total proposed summer season adjustment (ADJ.s) to determine the adjustment in summer season power.

—The power adjustment is then subtracted from existing CRSP firm power to generate an adjusted CRSP firm power amount.

—The total marketable firm power and energy available for allocation to Southern Division customers (refer to Appendix B) is then used to determine the equivalent amount of CRSP energy associated with each megawatt of CRSP power, referred to as the seasonal energy factor.

—This seasonal (summer) energy factor is then applied to the adjusted CRSP firm power amount to generate the CRSP firm energy available for allocation.

For the winter season, the same ratio of existing CRSP summer season firm power to the total CRSP Southern Division summer season firm power is applied to the total proposed winter season adjustment (ADJ.w) to determine the adjustment in winter season power. However, a slight adjustment (0.18577%) is required in the summer season percentage to account for those customers without a winter CRSP CROD. Similarly, a seasonal (winter) energy factor is determined, and the CRSP firm energy available for allocation is then computed.

This alternative is similar to the method used in the Northern Division for existing CRSP customers.

1. Power Adjustment (MW) = ADJ.s (MW) $\times \frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}}$ [summer]

-or-

ADJ.w $\times \left(\frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}} + 0.18577\right)$ [winter]

Where

ADJ.s = - 30.00 MW
ADJ.w = + 35.00 MW
CRSP, F = Individual (i) or Total (t) CRSP summer season firm CROD, excl. peaking power

2. Adjusted Power (MW) = Exist. CRSP Firm Power (MW) - Power Adjustment (MW)

3. Adjusted CRSP Energy (MWh) = Adjusted CRSP Power (MW) X Seasonal Energy Factor (MWh/MW)

Where

Seasonal Energy Factor = 2384 MWh/MW (summer)
= 2365 MWh/MW (winter)

BILLING CODE 6450-01-M

ALTERNATIVE NO. 1 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F	=	84.000 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD	=	119.000 MW	281.480 GWh
TOTAL ADJ. S.D. CRSP FIRM	=	35.000 MW	67.280 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F (i) /CRSP,F (t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(i) or Total(t) CRSP Summer Firm CROD
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP WINTER CROD			POWER ADJUSTMENT		ADJ. CRSP POWER	ADJ.CRSP ENERGY
		FIRM	PEAKING	F+P	(MW)	(%) 1/	(MW)	(MWh)
ARIZONA	Ak-Chin	3.300	0.000	3.300	0.722	2.063	4.029	9529.527
	APPA	8.450	0.880	9.330	4.510	12.886	12.967	30672.028
	Chandler Heights	0.200	0.020	0.220	0.131	0.373	0.338	798.348
	Colorado River Irr./Power	0.400	0.040	0.440	0.175	0.499	0.581	1375.017
	Electrical District #3	1.650	0.000	1.650	1.445	4.127	3.101	7335.939
	Electrical District #4	2.450	0.000	2.450	0.904	2.584	3.361	7950.594
	Electrical District #5-M	0.800	0.000	0.800	0.335	0.957	1.142	2701.009
	Electrical District #5-P	1.750	0.000	1.750	0.583	1.666	2.340	5535.146
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	0.000	0.800	0.853	2.438	1.660	3926.861
	Littlefield Elec. Coop.	0.150	0.062	0.212	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	0.000	1.500	0.992	2.834	2.499	5910.671
	NTUA	1.150	0.447	1.597	0.459	1.312	1.616	3822.406
	Ocotillo WCD	0.600	0.000	0.600	0.255	0.728	0.862	2038.013
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	0.000	1.150	0.890	2.542	2.047	4841.071
	Roosevelt Water Cons. Dist.	1.100	0.000	1.100	0.459	1.312	1.566	3704.137
	Safford	0.400	0.090	0.490	0.255	0.728	0.662	1564.937
	Salt River Project	38.250	0.000	38.250	16.306	46.588	54.563	129061.372
	San Carlos Irr. Project	1.000	0.000	1.000	0.342	0.978	1.349	3191.351
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.030	0.280	0.153	0.436	0.409	968.413
	Wellton-Mohawk Irr. Dist.	0.150	0.020	0.170	0.109	0.311	0.266	628.283
	Williams AFB	0.650	0.256	0.906	0.415	1.187	1.072	2536.123
	Yuma Proving Grounds	0.250	0.030	0.280	0.131	0.373	0.388	916.617
NEVADA	Colorado River Commission	17.600	6.825	24.425	4.576	13.074	22.183	52470.628
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	8.700	92.700	34.9998 (35.000)	99.999 (100.00)	118.999 (119.000)	281478.490 (281480.000)

1/ % Adjustment (Resource Pool No.1) = % Adjustment (Resource Pool No.2) + 0.18577%
0.18577% = Adjustment to account or customers with no winter CROD
ED #6, QCID, and STID.

2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO. 1 - RESOURCE POOL NO.2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F	=	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD	=	210.000 MW	500.760 GWh
TOTAL REDUCTION IN CROD, F	=	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F (I) /CRSP,F (t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(t) CRSP Summer Firm CROD
ENERGY MULTIPLIER = 500.760 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP SUMMER CROD			POWER ADJUSTMENT		ADJ. CRSP POWER	ADJ.CRSP ENERGY	
		FIRM	PEAKING	F+P	(MW)	(%)	(MW)	(MWh)	
ARIZONA	Ak-Chin	4.500	0.460	4.960	-0.563	-1.877	3.947	9411.697	
	APPA	30.450	9.983	40.433	-3.810	-12.701	26.650	63548.306	
	Chandler Heights	0.450	0.050	0.500	-0.056	-0.188	0.404	962.631	
	Colorado River Irr./Power	0.750	0.080	0.830	-0.094	-0.313	0.666	1588.488	
	Electrical District #3	9.450	0.000	9.450	-1.182	-3.942	8.278	19738.334	
	Electrical District #4	5.750	1.882	7.632	-0.719	-2.398	5.041	12019.434	
	Electrical District #5-M	1.850	0.000	1.850	-0.231	-0.772	1.629	3883.296	
	Electrical District #5-P	3.550	0.000	3.550	-0.444	-1.481	3.116	7429.817	
	Electrical District #6	6.850	2.249	9.099	-0.857	-2.857	6.003	14314.242	
	Electrical District #7	5.400	0.000	5.400	-0.676	-2.252	4.734	11289.267	
	Littlefield Elec. Coop.	0.250	0.086	0.336	0.000	0.000	0.000	0.000	1/
	Maricopa County MWCD No.1	6.350	0.000	6.350	-0.795	-2.649	5.565	13271.147	
	NTUA	2.700	0.886	3.586	-0.338	-1.126	2.372	5656.557	
	Ocotillo WCD	1.300	0.000	1.300	-0.163	-0.542	1.147	2735.892	
	Queen Creek Irr. Dist.	2.000	0.659	2.659	-0.250	-0.834	1.760	4196.224	
	Roosevelt Irr. Dist.	5.650	1.100	6.750	-0.707	-2.357	4.953	11810.815	
	Roosevelt Water Cons. Dist.	2.700	0.886	3.586	-0.338	-1.126	2.372	5656.557	
	Safford	1.300	0.280	1.580	-0.163	-0.542	1.147	2735.892	
	Salt River Project	111.250	0.000	111.250	-13.921	-46.402	97.339	232112.393	
	San Carlos Irr. Project	1.900	0.000	1.900	-0.238	-0.792	1.672	3987.605	
	San Tan Irr. District	0.950	0.100	1.050	-0.119	-0.396	0.841	2005.725	
	Thatcher	0.600	0.060	0.660	-0.075	-0.250	0.535	1275.559	
	Wellton-Mohawk Irr. Dist.	0.300	0.098	0.398	-0.038	-0.125	0.272	649.702	
	Williams AFB	2.400	0.790	3.190	-0.300	-1.001	2.110	5030.700	
	Yuma Proving Grounds	0.450	0.151	0.601	-0.056	-0.188	0.404	962.631	
NEVADA	Colorado River Commission	30.900	5.000	35.900	-3.867	-12.888	27.043	64487.092	
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	24.800	264.800	-30.000	-100.000	210.000	500760.000	

Alternative No. 2—Proportional Adjustment Based on CRSP Firm and Peaking Power

This alternative is similar to Alternative No. 1, but includes peaking power in the determination of the ratio of each customer's existing CFSP summer season CROD to the total existing CRSP Southern Division summer season firm and peaking power commitments. The ratio, increased by 0.22054% in the winter season to account for those customers without a winter CRSP CROD, is then applied to the total seasonal adjustment in CRSP (ADJ.s or ADK.w) to determine whether the equivalent seasonal adjustment to each customer's existing CRSP firm CROD. The same seasonal energy factors determined in Alternative No. 1 were then applied to the adjusted CFSP CROD to generate the CRSP firm energy available for allocation.

1. CRSP Power Adjustment (MW) = $ADJ.s \times \frac{CRSP, F+P(i)}{CRSP, F+P(t)}$ [summer]

-or-

$ADJ.w \times \left(\frac{CRSP, F+P(i)}{CRSP, F+P(i)} + 0.22054\right)$ [winter]

Where ADJ.s = Total Summer Season CRSP S.D. Adjustment = - 30.00 MW

ADJ.w = Total Winter Season CRSP S.D. Adjustment = + 35.00 MW

CRSP, F+P = Individual (i) or Total (t) CRSP summer season CROD, firm + peaking power

2. Adjusted CRSP Power (MW) = Existing CRSP Firm & Peaking Power (MW) - CRSP Power Adjustment (MW)

3. Adjusted CRSP Energy (MWh) = Adjusted CRSP Power (MW) X Seasonal Energy Factor (MWh/MW)

Where Seasonal Energy Factor (MWh/MW) = 2384 MWh/MW (Summer) = 2365 MWh/MW (Winter)

ALTERNATIVE NO. 2 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F+P	=	92.700 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD	=	119.000 MW	281.480 GWh
TOTAL ADJ. S.D. CRSP FIRM	=	35.000 MW	67.280 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F+P(I)/CRSP,F+P(T)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F+P = Individual(I) or Total(T) CRSP Summer Firm and Peaking CROD
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP WINTER CROD			POWER ADJUSTMENT		ADJ. CRSP POWER	ADJ.CRSP ENERGY
		FIRM	PEAKING	F+P	(MW)	(%) 1/	(MW)	(MWh)
ARIZONA	Ak-Chin	3.300	0.000	3.300	0.735	2.099	4.041	9558.493
	APPA	8.450	0.880	9.330	5.423	15.495	13.880	32831.449
	Chandler Heights	0.200	0.020	0.220	0.145	0.414	0.352	832.613
	Colorado River Irr./Power	0.400	0.040	0.440	0.189	0.539	0.595	1407.400
	Electrical District #3	1.650	0.000	1.650	1.328	3.794	2.985	7060.654
	Electrical District #4	2.450	0.000	2.450	1.088	3.108	3.545	8385.266
	Electrical District #5-M	0.800	0.000	0.800	0.323	0.924	1.130	2672.877
	Electrical District #5-P	1.750	0.000	1.750	0.548	1.566	2.305	5452.197
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	0.000	0.800	0.793	2.265	1.600	3784.605
	Littlefield Elec. Coop.	0.150	0.062	0.212	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	0.000	1.500	0.918	2.624	2.425	5736.042
	NTUA	1.150	0.447	1.597	0.553	1.580	1.710	4044.797
	Ocotillo WCD	0.600	0.000	0.600	0.251	0.717	0.858	2029.494
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	0.000	1.150	0.971	2.775	2.128	5033.525
	Roosevelt Water Cons. Dist.	1.100	0.000	1.100	0.553	1.580	1.660	3926.528
	Safford	0.400	0.090	0.490	0.288	0.822	0.695	1643.938
	Salt River Project	38.250	0.000	38.250	14.783	42.238	53.040	125459.657
	San Carlos Irr. Project	1.000	0.000	1.000	0.330	0.943	1.337	3162.511
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.030	0.280	0.166	0.475	0.423	1000.555
	Wellton-Mohawk Irr. Dist.	0.150	0.020	0.170	0.132	0.376	0.288	681.229
	Williams AFB	0.650	0.256	0.906	0.501	1.430	1.157	2736.743
	Yuma Proving Grounds	0.250	0.030	0.280	0.158	0.453	0.415	981.632
NEVADA	Colorado River Commission	17.600	6.825	24.425	4.824	13.783	22.431	53057.797
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	8.700	92.700	35.0000	100.000	119.000	281480.000

1/ % Adjustment (Resource Pool No.1) = % Adjustment (Resource Pool No.2) + 0.015318%
0.015318% = Adjustment to account for customers with no winter CROD
ED #6, QCID, and STID.
2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO. 2 - RESOURCE POOL NO. 2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP CROD,F+P =	264.800 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD =	210.000 MW	500.760 GWh
TOTAL REDUCTION IN CROD, F =	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F+P(I)/CRSP,F+P(t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F+P = Individual(I) or Total(t) CRSP Summer Firm and Peaking CROD
ENERGY MULTIPLIER = 500.760 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP SUMMER CROD			F+P, % OF	POWER ADJUSTMENT		ADJ. CRSP POWER	ADJ.CRSP ENERGY
		FIRM	PEAKING	F+P	TOTAL	(MW)	(%)	(MW)	(MWh)
ARIZONA	Ak-Chin	4.500	0.460	4.960	1.873	-0.563	-1.878	3.947	9411.903
	APPA	30.450	9.983	40.433	15.269	-4.582	-15.274	25.878	61707.939
	Chandler Heights	0.450	0.050	0.500	0.189	-0.058	-0.194	0.402	958.598
	Colorado River Irr./Power	0.750	0.080	0.830	0.313	-0.096	-0.319	0.664	1583.355
	Electrical District #3	9.450	0.000	9.450	3.569	-1.072	-3.574	8.388	20001.785
	Electrical District #4	5.750	1.882	7.632	2.882	-0.866	-2.887	4.894	11670.093
	Electrical District #5-M	1.850	0.000	1.850	0.699	-0.211	-0.704	1.649	3932.158
	Electrical District #5-P	3.550	0.000	3.550	1.341	-0.404	-1.346	3.156	7525.707
	Electrical District #6	6.850	2.249	9.099	3.436	-1.032	-3.441	5.828	13897.282
	Electrical District #7	5.400	0.000	5.400	2.039	-0.613	-2.044	4.797	11438.789
	Littlefield Elec. Coop.	0.250	0.086	0.336	0.127	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	0.000	6.350	2.398	-0.721	-2.403	5.639	13446.598
	NTUA	2.700	0.886	3.586	1.354	-0.408	-1.359	2.302	5489.283
	Ocotillo WCD	1.300	0.000	1.300	0.491	-0.149	-0.496	1.161	2768.487
	Queen Creek Irr. Dist.	2.000	0.659	2.659	1.004	-0.303	-1.009	1.707	4070.463
	Roosevelt Irr. Dist.	5.650	1.100	6.750	2.549	-0.766	-2.554	4.894	11670.093
	Roosevelt Water Cons. Dist.	2.700	0.886	3.586	1.354	-0.408	-1.359	2.302	5489.283
	Safford	1.300	0.280	1.580	0.597	-0.181	-0.602	1.129	2692.181
	Salt River Project	111.250	0.000	111.250	42.013	-12.605	-42.018	98.655	235249.894
	San Carlos Irr. Project	1.900	0.000	1.900	0.718	-0.217	-0.723	1.693	4037.079
	San Tan Irr. District	0.950	0.100	1.050	0.397	-0.120	-0.402	0.840	2003.040
	Thatcher	0.600	0.060	0.660	0.249	-0.076	-0.254	0.534	1273.361
	Wellton-Mohawk Irr. Dist.	0.300	0.098	0.398	0.150	-0.047	-0.155	0.263	627.142
	Williams AFB	2.400	0.790	3.190	1.205	-0.363	-1.210	2.047	4881.218
	Yuma Proving Grounds	0.450	0.151	0.601	0.227	-0.070	-0.232	0.390	929.983
NEVADA	Colorado River Commission	30.900	5.000	35.900	13.557	-4.069	-13.562	26.841	64004.282
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	24.800	264.800	100.000	-30.000	-100.000	210.000	500760.000

1/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

BILLING CODE 6450-01-C

Alternative No. 3—Adjustment Based on Proportion of CRSP and Other Federal Resources, Excluding Boulder Canyon Uprates

This alternative would generate the amounts of long-term energy available to each existing CRSP Southern Division customer based on the proportion of each customer's existing CRSP summer season firm CROD to total Southern Division summer season CRSP CROD and on the proportion of each customer's existing other Federal summer season entitlements to total other Federal resources.

The magnitude of the adjustment to each customer's existing CRSP seasonal firm CROD would be determined by applying fifty percent of the total CRSP seasonal adjustment (0.50 ADJ.s or 0.50 AADJ.w) first to the proportion of CRSP summer season resources, CRSP(i) / CRSP(t), and then to the proportion of other Federal summer season resources, OF(i) / OF(t). Other Federal resources include either Parker-Davis or Boulder Canyon Project resources, and exclude Boulder Canyon uprates. An adjustment is required in the winter season (0.26132%) to account for those customers without a winter CRSP CROD. The power adjustment is then subtracted from existing CRSP firm power to generate an adjusted CRSP firm power amount.

Similar seasonal energy factors, as in Alternatives Nos. 1 and 2, are then applied to the adjusted CRSP firm power amounts to determine the CRSP energy available for allocation.

Alternative 3 Cont.

1. Power Adj. (MW) $= ADJ.s \times 0.50 \frac{CRSP(i)}{CRSP(t)} + 0.50 \frac{OF(i)}{OF(t)}$ [summer]

-or-

$ADJ.w \times 0.50 \frac{CRSP(i)}{CRSP(t)} + 0.50 \frac{OF(i)}{OF(t)} + 0.26132$ [winter]

where ADJ.s = Total Summer Season CRSP S. D. Adjustment
= -30.00 MW

ADJ.w = Total Winter Season CRSP S. D. Adjustment
= +35.00 MW

CRSP = Individual(i) or Total(t) CRSP Firm CROD excl. peaking.

OF = Individual(i) or Total(t) Other Federal resources, excl. Boulder Canyon Uprates.

2. Adjusted CRSP Power (MW) = Existing CRSP Firm Power (MW) - CRSP Power Adjustment (MW)

3. Adjusted CRSP Energy (MWh) = Adjusted CRSP Power (MW) X Seasonal Energy Factor (MWh/MW)

Where Seasonal Energy Factor (MWh/MW) = 2384 MWh/MW (Summer)
= 2365 MWh/MW (Winter)

BILLING CODE 6450-01-M

ALTERNATIVE NO.3 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP FIRM CROD =	84.000 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD =	119.000 MW	281.480 GWh
TOTAL ADJUSTMENT, FIRM CROD =	35.000 MW	67.280 GWh

POWER ADJUSTMENT = 0.5ADJ * (CRSPI / CRSPt + OFIwo/BCPI / OFtwo/BCPI)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(I) or Total(t) RSP Summer Firm CROD
OF = Individual(I) or Total(t) Summer Season
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh / MW

STATE	CUSTOMER	CRSP FIRM (MW)	CRSP + OF, SUMMER (%) 1/	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ.CRSP POWER (MW)	ADJ. CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	3.300	2.136	0.374	1.068	3.681	8708.120
	APPA	8.450	23.707	4.149	11.853	12.606	29818.707
	Chandler Heights	0.200	0.632	0.111	0.316	0.318	752.613
	Colorado River Irr./Power	0.400	2.382	0.417	1.191	0.824	1950.240
	Electrical District #3	1.650	6.886	1.205	3.443	2.863	6771.236
	Electrical District #4	2.450	6.456	1.130	3.228	3.588	8485.833
	Electrical District #5-M	0.800	1.235	0.216	0.618	1.024	2421.716
	Electrical District #5-P	1.750	4.626	0.809	2.313	2.567	6072.167
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	4.563	0.799	2.282	1.606	3799.323
	Littlefield Elec. Coop.	0.150	0.000	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	4.634	0.811	2.317	2.319	5484.378
	NTUA	1.150	1.386	0.243	0.693	1.400	3312.101
	Ocotillo WCD	0.600	1.270	0.222	0.635	0.830	1963.110
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	3.245	0.568	1.623	1.726	4081.617
	Roosevelt Water Cons. Dist.	1.100	2.707	0.474	1.353	1.581	3740.489
	Safford	0.400	0.803	0.141	0.401	0.548	1296.602
	Salt River Project	38.250	60.634	10.611	30.317	48.869	115592.818
	San Carlos Irr. Project	1.000	4.544	0.795	2.272	1.803	4264.591
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.582	0.102	0.291	0.360	850.498
	Wellton-Mohawk Irr. Dist.	0.150	1.585	0.277	0.793	0.435	1028.978
	Williams AFB	0.650	1.261	0.221	0.631	0.878	2077.669
	Yuma Proving Grounds	0.250	1.512	0.265	0.756	0.522	1235.460
NEVADA	Colorado River Commission	17.600	63.106	11.044	31.553	28.651	67771.034
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	199.895	34.982 (35.000)	99.948 (100.000)	119.000	281479.298 (281480.000)

1/ % Adjustment (Resource Pool No. 1) = % Adjustment (Resource Pool No. 2) + 0.261318%
0.261318% = Adjustment to account for customers with no winter CROD
2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO.3 - RESOURCE POOL NO. 2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP FIRM CROD =	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD =	210.000 MW	500.760 GWh
TOTAL ADJUSTMENT, FIRM CROD =	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = 0.5ADJ * (CRSPi / CRSPt + OFiwo/BCPi / OFtwo/BCPt)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(i) or Total( ) CRSP Summer Firm CROD
OF = Individual(i) or Total(t)
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER = 500.76 GWh / 210.000 MW = 2.384 GWh / MW

STATE	CUSTOMER	CRSP FIRM (MW)	OTHER FED. RESOURCES (MW)	CRSP + OF, % of TOTAL	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ.CRSP POWER (MW)	ADJ. CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.000	1.875	-0.282	-6.514	4.228	10082.230
	APPA	30.450	52.950	23.445	-3.517	-11.802	26.943	64246.435
	Chandler Heights	0.450	0.900	0.370	-0.056	-12.737	0.404	962.914
	Colorado River Irr./Power	0.750	8.900	2.121	-0.319	-42.750	0.441	1052.192
	Electrical District #3	9.450	13.225	6.624	-0.994	-10.772	8.466	20187.042
	Electrical District #4	5.750	18.700	6.195	-0.930	-16.422	4.830	11517.695
	Electrical District #5-M	1.850	1.000	0.974	-0.147	-8.182	1.713	4085.391
	Electrical District #5-P	3.550	14.200	4.364	-0.655	-18.708	2.905	6926.536
	Electrical District #6	6.850	7.700	4.419	-0.663	-9.935	6.197	14776.164
	Electrical District #7	5.400	10.100	4.302	-0.646	-12.212	4.764	11360.241
	Littlefield Elec. Coop.	0.250	0.000	0.104	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	8.500	4.373	-0.657	-10.590	5.703	13600.260
	NTUA	2.700	0.000	1.125	-0.169	-6.524	2.541	6058.266
	Ocotillo WCD	1.300	2.300	1.009	-0.152	-11.941	1.158	2761.381
	Queen Creek Irr. Dist.	2.000	0.000	0.833	-0.126	-6.532	1.884	4493.391
	Roosevelt Irr. Dist.	5.650	3.100	2.984	-0.448	-8.183	5.212	12427.814
	Roosevelt Water Cons. Dist.	2.700	6.500	2.446	-0.367	-13.860	2.343	5585.906
	Safford	1.300	0.000	0.542	-0.082	-6.549	1.228	2928.516
	Salt River Project	111.250	69.000	60.373	-9.057	-8.391	102.203	243711.331
	San Carlos Irr. Project	1.900	17.185	4.283	-0.643	-34.098	1.267	3020.966
	San Tan Irr. District	0.950	0.500	0.497	-0.075	-8.171	0.885	2109.750
	Thatcher	0.600	0.350	0.321	-0.049	-8.384	0.561	1338.198
	Wellton-Mohawk Irr. Dist.	0.300	5.900	1.324	-0.199	-66.649	0.111	264.211
	Williams AFB	2.400	0.000	1.000	-0.151	-6.527	2.259	5387.605
	Yuma Proving Grounds	0.450	5.235	1.251	-0.188	-42.096	0.272	647.864
NEVADA	Colorado River Commission	30.900	245.950	62.845	-9.427	-30.759	21.483	51226.818
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	492.195	200.000	-30.000		210.000	500759.118 (500760.000)

1/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

BILLING CODE 6450-01-C

Alternative No. 4—Adjustment Based on Proportion of Total Federal Resources

This alternative would generate the amounts of long-term energy available to each existing CRSP Southern Division customer based on the ratio of each customer's existing summer season total Federal Resources to the summer season total. Total Federal Resources would include CRSP, Parker-Davis and Boulder Canyon Project resources, excluding CRSP peaking power and Boulder Canyon uprate allocations. The summer season ratio is applied to the proposed total seasonal adjustment in CRSP firm power (ADJ.s or ADJ.w) to determine the seasonal adjustment to each customer's existing CRSP firm CROD. An adjustment is required in the winter season (0.11195%) to account for those customers without a winter CRSP CROD. Adjusted seasonal power is then translated to CRSP firm energy available for allocation.

1. Power Adjustment (MW) = ADJ.s (MW) $\times \frac{\text{Total Fed.(i)}}{\text{Total Fed.(t)}}$ [summer]

-or-

ADJ.w $\times \left(\frac{\text{Total Fed.(i)}}{\text{Total Fed.(t)}} + 0.11195\right)$ [winter]

Where

ADJ.s = Total Summer Season CRSP S.D. Adjustment = - 30.00 MW

ADJ.w = Total Winter Season CRSP S.D. Adjustment = + 35.00 MW

Total Fed. = Individual (i) or Total (t) Federal Resources, excl. CRSP peaking and BCP uprates.

2. Adjusted CRSP Power (MW) = Existing CRSP Firm Power (MW) - CRSP Power Adjustment (MW)

3. Adjusted CRSP Energy (MWh) = Adjusted CRSP Power (MW) X Seasonal Energy Factor (MWh/MW)

Where

Seasonal Energy Factor (MWh/MW) = 2384 MWh/MW (Summer)
= 2365 MWh/MW (Winter)

ALTERNATIVE NO.4 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

	POWER	ENERGY
EXISTING S.D. CRSP FIRM CROD =	84.000	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD =	119.000	281.480 GWh
TOTAL ADJ. CRSP FIRM CROD =	35.000	67.280 GWh

ADJUSTMENT = ADJ * (CRSPI + OFIwo/BCPII / CRSPt + OFIwo/BCPIt)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(I) or Total(t) CRSP Summer Firm CROD
OFIwo/BCPI = Individual(I) or Total(t) Summer Season
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER= 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP FIRM (MW)	% OF TOTAL FED. RES. (%) 1/	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	3.300	0.728	0.255	7.827	3.562	8424.476
	APPA	8.450	11.504	4.026	47.755	12.483	29527.283
	Chandler Heights	0.200	0.298	0.104	52.203	0.311	735.638
	Colorado River Irr./Power	0.400	1.431	0.501	125.343	0.908	2147.182
	Electrical District #3	1.650	3.210	1.124	68.201	2.780	6576.623
	Electrical District #4	2.450	3.453	1.208	49.430	3.665	8669.622
	Electrical District #5-M	0.800	0.503	0.176	22.094	0.983	2324.467
	Electrical District #5-P	1.750	2.538	0.888	50.858	2.645	6256.298
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	2.230	0.781	97.680	1.587	3754.785
	Littlefield Elec. Coop.	0.150	0.000	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	2.141	0.750	50.074	2.256	5337.055
	NTUA	1.150	0.482	0.169	14.779	1.326	3135.389
	Ocotillo WCD	0.600	0.605	0.212	35.398	0.819	1936.193
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	1.308	0.458	39.926	1.615	3819.454
	Roosevelt Water Cons. Dist.	1.100	1.370	0.479	43.692	1.586	3752.066
	Safford	0.400	0.291	0.102	25.557	0.509	1203.060
	Salt River Project	38.250	24.731	8.656	22.737	46.913	110966.242
	San Carlos Irr. Project	1.000	2.720	0.952	95.302	1.959	4633.211
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.243	0.085	34.135	0.342	808.679
	Wellton-Mohawk Irr. Dist.	0.150	0.960	0.336	224.126	0.493	1165.751
	Williams AFB	0.650	0.441	0.154	23.858	0.811	1918.780
	Yuma Proving Grounds	0.250	0.890	0.311	124.671	0.568	1344.059
NEVADA	Colorado River Commission	17.600	37.924	13.273	75.524	30.880	73043.606
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	100.000	35.000		119.000	281479.918 (281480.000)

1/ % Total Fed. Resources(Resource Pool No.1) = % Total Fed. Resources (Resource Pool No. 2) + 0.1119%
0.1119% = Adjustment to account for customers with no winter CROD
ED #6, QCID, and STID.
2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO.4 - RESOURCE POOL NO. 2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

	POWER	ENERGY
EXISTING S.D. CRSP FIRM CROD =	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD =	210.000 MW	500.760 GWh
TOTAL ADJ. CRSP FIRM CROD =	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * (CRSPI + OFIwo/BCPII / CRSPt + OFIwo/BCPIt)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(I) or Total(t) CRSP Summer Firm CROD
OFIwo/BCPI = Individual(I) or Total(t) Summer Season
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER = 500.76 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP FIRM (MW)	OTHER FED. RESOURCES (MW)	TOTAL FED. RESOURCES (MW)	% OF TOTAL FED. RES. (%) 1/	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.000	4.500	0.616	-0.185	-4.270	4.325	10313.784
	APPA	30.450	52.950	83.400	11.392	-3.418	-11.387	27.042	64484.700
	Chandler Heights	0.450	0.900	1.350	0.186	-0.056	-12.546	0.404	964.032
	Colorado River Irr./Power	0.750	8.900	9.650	1.319	-0.396	-52.936	0.364	868.474
	Electrical District #3	9.450	13.225	22.675	3.098	-0.929	-9.999	8.531	20341.673
	Electrical District #4	5.750	18.700	24.450	3.341	-1.002	-17.593	4.758	11345.337
	Electrical District #5-M	1.850	1.000	2.850	0.391	-0.117	-6.498	1.743	4155.878
	Electrical District #5-P	3.550	14.200	17.750	2.426	-0.728	-20.662	2.832	6753.885
	Electrical District #6	6.850	7.700	14.550	1.989	-0.597	-8.873	6.263	14935.618
	Electrical District #7	5.400	10.100	15.500	2.118	-0.635	-11.932	4.775	11385.173
	Littlefield Elec. Coop.	0.250	0.000	0.250	0.000	0.000	0.000	0.000	0.000
	Maricopa County MWCD No.1	6.350	8.500	14.850	2.030	-0.609	-9.752	5.751	13714.022
	NTUA	2.700	0.000	2.700	0.370	-0.111	-4.276	2.599	6197.419
	Ocotillo WCD	1.300	2.300	3.600	0.493	-0.148	-11.542	1.162	2771.087
	Queen Creek Irr. Dist.	2.000	0.000	2.000	0.275	-0.082	-4.282	1.928	4596.611
	Roosevelt Irr. Dist.	5.650	3.100	8.750	1.196	-0.359	-6.516	5.301	12640.806
	Roosevelt Water Cons. Dist.	2.700	6.500	9.200	1.258	-0.377	-14.140	2.333	5562.354
	Safford	1.300	0.000	1.300	0.179	-0.054	-4.293	1.256	2995.803
	Salt River Project	111.250	69.000	180.250	24.619	-7.386	-6.803	103.874	247695.603
	San Carlos Irr. Project	1.900	17.185	19.085	2.608	-0.782	-41.341	1.128	2688.910
	San Tan Irr. District	0.950	0.500	1.450	0.199	-0.060	-6.461	0.900	2146.547
	Thatcher	0.600	0.350	0.950	0.131	-0.039	-6.719	0.571	1360.798
	Wellton-Mohawk Irr. Dist.	0.300	5.900	6.200	0.848	-0.254	-84.977	0.056	132.490
	Williams AFB	2.400	0.000	2.400	0.329	-0.099	-4.278	2.311	5511.359
	Yuma Proving Grounds	0.450	5.235	5.685	0.778	-0.233	-52.017	0.227	540.492
NEVADA	Colorado River Commission	30.900	245.950	276.850	37.812	-11.344	-36.875	19.566	46657.245
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	492.195	732.195	100.000	-30.000		210.000	500760.103 (500760.000)

1/ Adjustment made to (CRSP + OF)% to account for deletion of Littlefield Electric Cooperative.
Adjustment = 0.00034/25 = 0.0000136 = 0.00136%
2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

Alternative No. 5—Proportional Adjustment Based on CRSP Firm CROD

This alternative is a variation on Alternative No. 1. The procedure for determination of the summer season adjustment is the same. However, the winter season adjustment (ADJ.w) is determined as follows:

—The ratio of existing CRSP winter season firm power (CRSP, F(i)) to the total existing CRSP Southern Division winter season firm power (CRSP, F(T)) is determined.

—This ratio is then applied to the total proposed winter season adjustment (ADJ.w) to determine the adjustment in winter season power.

—The power adjustment is then subtracted from existing CRSP firm power to generate an adjusted CRSP firm power amount.

—The total marketable firm power and energy available for allocation to Southern Division customers (refer to Appendix B) is then used to determine the equivalent amount of CRSP energy associated with each megawatt of CRSP power, referred to as the seasonal energy factor.

—This seasonal energy factor is then applied to the adjusted CRSP firm power amount to generate the CRSP firm energy available for allocation.

1. Power Adjustment (MW) = ADJ.s (MW) $\times \frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}}$ [summer]

-or-

ADJ.w $\times \frac{\text{(CRSP, F(i)}}{\text{(CRSP, F(t)}}$ [winter]

Where ADJ.s = - 30.00 MW
ADJ.w = + 35.00 MW
CRSP, F = Individual (i) or Total (t) CRSP CROD, excl. peaking power

2. Adjusted Power (MW) = Exist. CRSP Firm Power (MW) - Power Adjustment (MW)

3. Adjusted CRSP Energy (MWh) = Adjusted CRSP Power (MW) X Seasonal Energy Factor (MWh/MW)

Where Seasonal Energy Factor = 2384 MWh/MW (summer)
= 2365 MWh/MW (winter)

ALTERNATIVE NO. 5 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP CROD,FIRM =	84.000 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD =	119.000 MW	281.480 GWh
TOTAL ADJ IN CRSP FIRM =	35.000 MW	67.280 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F(I)/CRSP,F(t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(t) CRSP Winter Firm CROD
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP WINTER CROD			POWER ADJUSTMENT		ADJ. CRSP	ADJ. CRSP
		FIRM	PEAKING	F+P	(MW)	(%)	POWER (MW)	ENERGY (MWh)
ARIZONA	Ak-Chin	3.300	0.000	3.300	1.378	3.936	4.685	11080.951
	APPA	8.450	0.880	9.330	3.523	10.067	11.980	28338.355
	Chandler Heights	0.200	0.020	0.220	0.086	0.245	0.293	692.998
	Colorado River Irr./Power	0.400	0.040	0.440	0.169	0.483	0.576	1363.189
	Electrical District #3	1.650	0.000	1.650	0.690	1.971	2.347	5551.879
	Electrical District #4	2.450	0.000	2.450	1.023	2.924	3.480	8232.641
	Electrical District #5-M	0.800	0.000	0.800	0.336	0.960	1.143	2703.570
	Electrical District #5-P	1.750	0.000	1.750	0.732	2.090	2.489	5886.974
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	0.000	0.800	0.336	0.960	1.143	2703.570
	Littlefield Elec. Coop.	0.150	0.062	0.212	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	1.500	0.000	1.500	0.628	1.793	2.135	5049.236
	NTUA	1.150	0.447	1.597	0.482	1.376	1.639	3876.403
	Ocotillo WCD	0.600	0.000	0.600	0.253	0.721	0.860	2033.379
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	0.000	1.150	0.482	1.376	1.639	3876.403
	Roosevelt Water Cons. Dist.	1.100	0.000	1.100	0.461	1.317	1.568	3708.855
	Safford	0.400	0.090	0.490	0.169	0.483	0.576	1363.189
	Salt River Project	38.250	0.000	38.250	15.940	45.543	54.197	128196.736
	San Carlos Irr. Project	1.000	0.000	1.000	0.419	1.198	1.426	3373.760
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.030	0.280	0.107	0.305	0.364	860.546
	Wellton-Mohawk Irr. Dist.	0.150	0.020	0.170	0.065	0.186	0.222	525.451
	Williams AFB	0.650	0.256	0.906	0.273	0.781	0.930	2200.927
	Yuma Proving Grounds	0.250	0.030	0.280	0.107	0.305	0.364	860.546
NEVADA	Colorado River Commission	17.600	6.825	24.425	7.336	20.960	24.943	58999.570
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	8.700	92.700	34.993 (35.000)	99.979 (100.000)	119.000	281479.129 (281480.000)

1/ Littlefield Electric Cooperative I Included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO. 5 - RESOURCE POOL NO.2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP CROD,FIRM =	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD =	210.000 MW	500.760 GWh
TOTAL ADJ IN CRSP FIRM =	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F(I)/CRSP,F(t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(t) CRSP Summer Firm CROD
ENERGY MULTIPLIER = 500.760 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP SUMMER CROD			POWER ADJUSTMENT		ADJ. CRSP POWER	ADJ. CRSP ENERGY
		FIRM	PEAKING	F+P	(MW)	(%)	(MW)	(MWh)
ARIZONA	Ak-Chin	4.500	0.460	4.960	-0.564	1.879	3.946	9410.114
	APPA	30.450	9.983	40.433	-3.807	12.692	26.653	63554.757
	Chandler Heights	0.450	0.050	0.500	-0.057	0.192	0.403	959.794
	Colorado River Irr./Power	0.750	0.080	0.830	-0.095	0.317	0.665	1585.744
	Electrical District #3	9.450	0.000	9.450	-1.182	3.942	8.278	19738.283
	Electrical District #4	5.750	1.882	7.632	-0.720	2.400	5.040	12018.238
	Electrical District #5-M	1.850	0.000	1.850	-0.232	0.775	1.628	3880.892
	Electrical District #5-P	3.550	0.000	3.550	-0.445	1.483	3.115	7427.940
	Electrical District #6	6.850	2.249	9.099	-0.857	2.858	6.003	14313.386
	Electrical District #7	5.400	0.000	5.400	-0.676	2.254	4.734	11287.963
	Littlefield Elec. Coop.	0.250	0.086	0.336	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	0.000	6.350	-0.795	2.650	5.565	13270.137
	NTUA	2.700	0.886	3.586	-0.339	1.129	2.371	5654.416
	Ocotillo WCD	1.300	0.000	1.300	-0.164	0.546	1.146	2733.318
	Queen Creek Irr. Dist.	2.000	0.659	2.659	-0.251	0.837	1.759	4193.867
	Roosevelt Irr. Dist.	5.650	1.100	6.750	-0.707	2.358	4.953	11809.588
	Roosevelt Water Cons. Dist.	2.700	0.886	3.586	-0.339	1.129	2.371	5654.416
	Safford	1.300	0.280	1.580	-0.164	0.546	1.146	2733.318
	Salt River Project	111.250	0.000	111.250	-13.907	46.358	97.353	232143.856
	San Carlos Irr. Project	1.900	0.000	1.900	-0.239	0.796	1.671	3985.217
	San Tan Irr. District	0.950	0.100	1.050	-0.120	0.400	0.840	2003.044
	Thatcher	0.600	0.060	0.660	-0.076	0.254	0.534	1272.769
	Wellton-Mohawk Irr. Dist.	0.300	0.098	0.398	-0.039	0.129	0.271	646.819
	Williams AFB	2.400	0.790	3.190	-0.301	1.004	2.109	5028.467
	Yuma Proving Grounds	0.450	0.151	0.601	-0.057	0.192	0.403	959.794
NEVADA	Colorado River Commission	30.900	5.000	35.900	-3.864	12.879	27.046	64493.681
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	24.800	264.800	-30.000	100.000	210.000	500759.819 (500760.000)

1/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

[FR Doc. 84-23335 Filed 8-31-84; 8:45 am]
BILLING CODE 6450-01-C

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2664-2]

Transfer of Air and Water Permit and Monitoring Date to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's intent to transfer air and water permit monitoring data to contractor. EPA has contracted with Putnam, Hayes and Bartlett, Inc. (PHB) to assemble plant specific data for the pulp and paper and iron and steel industries in EPA regional and state air and water files collected under sections 308 and 402 of the CWA and Section 114 of the CAA. Our objective is to expand and improve our estimates of the costs of carrying out the Clean Air and Clean Water Acts. Some of the information PHB will collect may contain confidential business information.

DATE: The transfer of data submitted to EPA and claimed to be confidential will occur no sooner than Sept. 11, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph Luken, Chief, Benefits Branch, Economic Analysis Division, Office of Policy Planning and Evaluation, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202/382–5490.

SUPPLEMENTARY INFORMATION: As required by Congress, EPA periodically estimates and reports the costs of carrying out the Clean Air (section 312(c)) and Clean Water Acts (section 516(b)). The latest report is *The Cost and Clean Air and Water: Report to Congress*, May 1984, EPA 230–05–84–008. EPA is currently updating its estimates of both the costs and reductions in pollutant discharges mandated by these two acts. Our objective is to markedly improve the accuracy of the estimates by making full use of EPA's computerized data bases and other up-to-date information sources. While the methodology developed in this effort will be a general one, it will be implemented on an industry-specific basis. The first two prototype industries to which the methodology will be applied are pulp and paper (SIC 26), and iron and steel (SIC 331).

EPA will require the assistance of outside experts to carry out this effort. We have hired Putnam, Hayes & Bartlett, Inc. (PHB) (Contract #68–01–6543), a consulting firm with extensive EPA experience. Part of its initial effort is directed toward augmenting and updating information on the pulp and paper and iron and steel industries contained in various EPA data bases with information from the regional and state air and water files collected under sections 308 and 402 of the CWA and section 114 of th CAA. At present it appears they will want to visit Regions I, II, IV, V, IX, and X during September.

The types of data PHB is interested in seeing include plant-specific data regarding:

- Pollutant discharge limitations;
- Status of compliance with various guidelines or standards (e.g., BPT, BAT, and NSPS);
- In-place and required control equipment (including any additional equipment or control measures required to bring plants into compliance);
- Pollution control performance or monitoring results; and
- Production levels and product mix.

Pursuant to 40 CFR 2.301(h) and 2.302(h) EPA has determined that it may need to disclose confidential business information to PHB. Under the terms of the contract, EPA will provide PHB with information in its files on production level and product mix and other data described in the previous paragraph.

If any of the information is claimed to be confidential, reports prepared by PHB will be treated as confidential. After preparing these reports, PHB will return the confidential business information and any reports, prepared by PHB, to EPA. Since PHB will collect and utilized information claimed to be confidential, EPA is publishing this notice to inform all submitters of permit and monitoring information that PHB will receive confidential business information from EPA.

PHB is legally required under the terms of its contract to safeguard from any unauthorized disclosure the confidential business information and any other information generated during PHB's analysis. PHB's contract specifically prohibits disclosure of any of this information to any third party in any form without prior written authorization from EPA.

Dated: August 29, 1984.

Frederick W. Allen,

Acting Office Director, Office of Policy Analysis, Office of Policy Planning and Evaluation.

[FR Doc. 84–23348 Filed 8–31–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1476]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 24, 1984.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: amendment of § 73.202(b), Table of Assignments, Television Broadcast Stations. (Dover and Seaford, Delaware; Asbury Park, Atlantic City, New Brunswick, Newton, Vineland, West Milford and Wildwood, New Jersey; Kingston and Syracuse, New York; and Bethlehem, Lebanon and State College, Pennsylvania) (BC Docket No. 79–269, RM's 3392 & 3398)

Filed by: James A. Gammon, Atty., for Delaware Valley Broadcasters, Limited Partnership on 8–15–84.

Subject: Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services. (Second Computer Inquiry) (CC Docket No. 81–893)

Filed by: James A. DeBois & Terry L. Trantina, Attorneys for AT&T Information Systems Inc., on 8–6–84.

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Murray, Kentucky) (MM Docket No. 83–1122, RM–4342)

Filed By: Harry F. Cole, Attorney for Local Power Television, Inc., on 8–13–84.

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Longmont, Colorado) (MM Docket No. 83–1325, RM–4584)

Filed by: Michael L. Glaser, Attorney for Saint Vrain Broadcasting Company on 8–14–84.

Subject: American Telephone & Telegraph Co. Provision of Basic Services Via Resale by Separate Subsidiary. (CC Docket No. 83–1375)

Filed by: Daniel A. Huber, Assistant General Counsel for U.S. Telephone, Inc., on 8–10–84.

David W. Matson, General Attorney & Carolyn C. Hill, Assistant Washington Counsel for United Telephone System, Inc. on 8–16–84.

Leo I. George, Attorney for Telesphere Network, Inc., on 8–16–84.

David D. Kardell, Vice President and General Counsel & James T. Roche,

Senior Attorney for ISACOMM, Inc., on 8–16–84.

Robert F. Heath for RCA Communications, Inc., on 8–16–84.

John F. Beasley, Vincent L. Sgrosso & Francis B. Semmes for BellSouth Corporation on behalf of South Central Bell Telephone Company & Southern Bell Telephone and Telegraph Company on 8–16–84.

Peter Tannenwald & Vonya B. McCann, Attorneys for Teltec Saving Communications Co. & Satelco Incorporated on 8–16–84.

Kay Yarnevic, Assistant Director Federal Regulatory & Diane M. Bieneman, Robert L. Barada & Stanley J. Moore, Attorneys for Pacific Bell & Nevada Bell on 8–16–84.

Richard C. Schramm, Daniel P. Behuniak & Lawrence W. Katz, Attorneys for The Bell Atlantic Companies on 8–16–84.

Philip M. Walker & Donald E. Ward, Attorneys for GTE Service Corporation on 8–17–84.

Thomas J. O'Reilly, Attorney for United States Telephone Association on 8–13–84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–23343 Filed 8–31–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–721–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Pennsylvania (FEMA–721–DR), dated August 27, 1984, and related determinations.

DATED: August 27, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0501.

Notice: Notice is hereby given that, in a letter of August 27, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage in certain areas of the State of Pennsylvania, resulting from severe storms, and flooding, beginning on or about August 3, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Alfred A. Hahn of the Federal Emergency Management Agency to act as the Federal Coordinating Office for this declared disaster.

I do hereby determine the following areas of the State of Pennsylvania to have been affected adversely by this declared major disaster:

Bedford and Somerset Counties for Individual Assistance and Public Assistance.

Armstrong, Allegheny, Blair, McKean, and Westmoreland Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–23310 Filed 8–31–84; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOME LOAN BANK BOARD

[No. 84–471]

Application for Insurance of Accounts

August 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request," Application for Insurance of Accounts", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

COMMENTS: Comments on the information collection request are welcome and are due by September 18, 1984. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy Odea, Office of District Banks, Federal Home Loan Bank Board. Phone: 202–377–6789.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–23305 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

Fidelity Federal Savings and Loan Association, Baltimore, MD; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Sec. 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Fidelity Federal Savings and Loan Association, Baltimore, Maryland, on August 27, 1984.

Dated: August 29, 1984.

J.J. Finn,

Secretary.

[FR Doc. 84–2338 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

[No. 84–472]

Application for Permission To Organize

Date: August 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information

collection request," Application for Permission to Organize", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and are due by September 18, 1984. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy Odea, Office of District Banks, Federal Home Loan Bank Board, Phone 202–377–6789.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary

[FR Doc. 84–23391 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

[No. 84–462]

Claim of Insurance and Assignment of Insured Account

Dated: August 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection request, "Claim of Insurance and Assignment of Insured Account", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments on the information collection request are welcome and should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Gail Padgett, Federal Savings and Loan Insurance Corporation. Phone 202–377–6620.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary

[FR Doc. 84–23392 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 231–002206–002.

Title: California Association of Port Authorities and Northwest Marine Terminal Association Marine Terminal Conference Agreement.

Parties:

Port of Anacortes
Port of Astoria
Port of Everett
Port of Grays Harbor
Port of Longview
Port of Olympia
Port of Port Angeles
Port of Portland
Port of Seattle
Port of Tacoma
Port of Vancouver
Encinal Terminals
Port of Long Beach
Port of Los Angeles
Port of Oakland
Port of Hueneme
Port of Redwood City
Port of Sacramento
Port of San Diego
Port of San Francisco
Port of Stockton

Synopsis: This amendment modifies the basic agreement by allowing the two associations to confer, discuss, and make recommendations on rates and charges and other tariff matters, in addition to their present authority to discuss and make recommendations on practices.

Agreement No. 224–003596–001.

Title: San Juan Marine Terminal Agreement.

Parties: Puerto Rico Ports Authority (Authority) Agencias Intermares, Inc. (AII).

Synopsis: This amendment modifies the basic agreement by renewing the agreement to January 14, 1988; changes to open space of the leased premises at Pier No. 12 (San Juan) to 13,691.80 sq. ft; changes the rental fees; changes the charges for utilities; reduces the security for payments of rentals and other charges; and reduces the termination penalty charges.

Agreement No. 224–003957–004.

Title: Oakland Marine Terminal Agreement.

Parties: The Port of Oakland (Port) Neptune Orient Lines, Ltd. (NOL).

Synopsis: The amendment modifies the basic agreement between the parties whereby the Port preferentially assigns certain marine terminal facilities in the Port's Outer Harbor Terminal to NOL. Amendment No. 4 extends the time in which NOL may exercise its right to terminate the agreement to the 31st day of December 1984, and reduces the minimum notice period for such termination from 24 months to 20 months.

Agreement No. 221–004049–001.

Title: Seattle Marine Terminal Agreement.

Parties: The Port of Seattle Matson Terminals, Inc.

Synopsis: This amendment modifies the basic agreement between the parties by adding two acres to the leased premises at Terminal 18, Seattle, with a corresponding increase in rent. The two acres are being deleted from Seattle International Terminal, Inc., lease covered by Agreement No. T–4042.

Agreement No. 203–010633.

Title: Flota Mercante Grancolombiana/Adino Chemical Shipping Company Bulk Liquid Cooperative Working Agreement.

Parties: Flota Mercante Grancolombiana, S.A. Andino Chemical Shipping Company, Inc.

Synopsis: The proposed agreement would establish a corporation which

would transport liquid bulk parcels between ports in the United States and ports on the Atlantic Coast of Colombia.

Agreement No. 221-010634.

Title: San Juan Foreign Marine Terminal Agreement.

Parties: Puerto Rico Port Authority Luis A. Ayala Colon, Sucrs., Inc.

Synopsis: The Puerto Rico Ports Authority will grant to Luis A. Ayala Colon, Sucrs., Inc., preferential and exclusive use of premises at Pier B, Puerto Nuevo, San Juan, Puerto Rico, for the docketing and mooring of vessels, and the loading and unloading of cargo from such vessels. The term of the agreement shall be for three years commencing on the effective date as determined by the Commission.

Dated: August 28, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney

Secretary

[FR Doc. 84-23336 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

Inactive Tariffs—Bureau of Tariffs; Order

By Notice published in the **Federal Register** on July 19, 1984, the Commission notified the carriers named therein of its intent to cancel certain of their tariffs which appeared to be inactive. Carriers were given 30 days to show cause why such tariffs should not be cancelled.

The Notice was served on 166 carriers by certified mail, July 16, 1984. Of the 166, eight (8) carriers responded requesting that their tariffs remain active; three (3) requested cancellation of the tariff(s). Other carriers acknowledged receipt of the Notice but did not respond. The Notice could not be delivered to some carriers because they were no longer at the address shown in the Commission's files.

It is misleading to the public, potentially unfair to competing carriers, and an administrative burden on the Commission's staff for inactive tariffs to be kept on file. Inactive tariffs contravene the implicit requirements of section 8(a)(1) of the Shipping Act of 1984 (46 U.S.C. app. § 1707) which necessitate the prompt submission of accurate information concerning the services offered by a common carrier including the suspension of all or any part of the operations described in its published tariffs.

Therefore, it is ordered, that pursuant to section 8(a)(1) of the Shipping Act of 1984 (46 U.S.C. app. § 1707), the tariffs identified on the attached list are cancelled.

It is further ordered, that this Order be published in the **Federal Register** and a copy thereof filed with the tariffs.

By the Commission pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Tariffs.

Tariffs Cancelled

A.A.C. International Freight Forwarders Co., Inc.	FMC 1.
ACE Lines Limited	FMC 1.
ACL Trading Co	FMC 2.
Action Container Co	FMC 1.
Alfa Steamship Company	FMC 4.
Allied Transport Service	FMC 1.
American Container Line	FMC 1.
American Industrial Carriers, Inc	FMC 31 and 32.
American Pacific Shipping Co	FMC 1.
American Shipping Co. Inc	FMC 4 and 5.
The Americus Shipping Lines, Inc	FMC 1 and 2.
Aniara Lines, Inc	FMC 2.
Associated North American	FMC 1.
Associated Trade Development, Inc	FMC 1.
Bermuda Ocean Shipping Services Ltd	FMC 1.
Bailey Shipping Ltd	FMC 1.
J.E. Bernard & Co	FMC 10, 11, 12, 13 and 14.
Benedict Shipping International, Inc	FMC 1.
Blue Bay Shipping Corp	FMC 1.
B.W.I Shippers and Movers, Ltd	FMC 1.
California Freight Specialists	FMC 1.
Cal-Latin Lines, Inc	FMC 1.
Cargo Lift, Inc	FMC 1.
Cargo International Freight Service Corp	FMC 1.
Carg-O-Matic Express, Inc	FMC 1 and 2.
Carbbean Container Services, Inc	FMC 1.
Carbbean Sea Carriers, Ltd	FMC 1.
Caribe Cargo Express, Inc	FMC 1.
C.C. Line	FMC 2.
Celadon Shipping Co., Inc	FMC 1.
Celtic Bulk Carriers	FMC 4 and 5.
Chalship Lines, Ltd	FMC 1.
Clipper Intermodal Lines	FMC 1 and 2.
Coloship Inc	FMC 1.
Combines Maritime (America) Container Line.	FMC 1.
Compagnie D'Affretement Et De Transport, S.A.	FMC 1.
Compagnie Nationale Haitenne De Navigation S.A M.	FMC 1 and 2.
Compania Maritima Ecuatoriana Ciamare S.A.	FMC 1.
Consolidation Atlantic Transportation Lines, Inc. (C.A.T. Line).	FMC 4, 7, 8, 9 and 10.
Conveca, Inc	FMC 1.
CTO Lines, Inc	FMC 1, 2, 3, and 4.
Cylanco, S.A	FMC 3.
Damco-Baltimore, Inc	FMC 3.
Damco-Boston, Inc	FMC 5.
Dart Containerline	FMC 30.
Delval Transatlantic Service, Inc	FMC 2.
Diamond Shipping Ltd	FMC 1.
Dongsu Shipping Co., Ltd	FMC 1.
Eastern Car Liner, Ltd	FMC 1.
Eastern Container Lines, Ltd	FMC 3.
Egyptian National Line	FMC 6.
Emerald Lines, Inc	FMC 1.
Emery Ocean Freight	FMC 4.
Empacadora Del Norte S.A	FMC 2.
Euro-Baltic Line, Inc	FMC 1.
Euro-Con International of Georgia, Inc	FMC 1.
Euro-Con International of Pennsylvania, Inc.	FMC 1.
Euro-Con International, Inc	FMC 4.
Eurolines Spa	FMC 1.
European-Middle East Shipping	FMC 2.
F.A.K. Inc	FMC 1.
The A.W. Fenton Co., Inc	FMC 1.
Finsec Export, Inc	FMC 1.
First International Shipping Co	FMC 1.
Flonac Line	FMC 1.
Franco Express Lines, S.A	FMC 1 and 2.
Frans Maas Container Services	FMC 1 and 2.
Freight-Base, Inc	FMC 1.
G.M.S International Corp	FMC 2.
Galapagos Line S.A	FMC 1.

Tariffs Cancelled—Continued

National Galleon Shipping Corp	FMC 66, 72, 74 and 75.
Gemini Shipping, Inc	FMC 1.
Genact Cargo Lines, Inc	FMC 1.
General Maritime Enterprise	FMC 1 and 2.
Golden Bear Trading Co., Inc	FMC 1.
Gulf Ports Shipping Company	FMC 1.
Hellenic Lines, Ltd	FMC 1, 3, 4, 5, 7, 16, 28, 31, 32, 33, 34, 35, 36, 37, 39, 40, 42, 44, 45, 53, 54, 55 and 56.
Inovative Freighting, Inc	FMC 1.
Inter-American Moving Service, Inc	FMC 1.
Interconex, Inc	FMC 1.
Interconex Transport International, Inc	FMC 1.
Intercontinental Export Services, Inc	FMC 1.
International Navigation Services, Corp	FMC 1.
Islander Freight & Supply Ltd	FMC 1.
Islands Freight Transportation, Inc	FMC 1.
Italian Line	FMC 30.
I.W. Transport, Inc	FMC 1.
Japan Pacific Service	FMC 14.
Jeco Shipping Line International, N.V	FMC 1, 2 and 3.
Jugobrod Group-Yugoslavia	FMC 1.
Kambara Kisen Company, Ltd	FMC 5.
Kenron Container Lines, Ltd	FMC 1.
Koplamar Line, Inc	FMC 1.
Kyowa Shipping Co. Ltd	FMC 4.
Latte Corporation	FMC 1.
Logistics Transport, Ltd	FMC 1.
Marine Overseas, Inc	FMC 1.
Marine Fleet, Inc	FMC 1.
Maritime Commercial Carriers, Ltd	FMC 1.
Maritime Company of the Philippines	FMC 19 and 20.
Mayan Lines	FMC 2.
Meridian Marine Lines	FMC 1.
Merit Container Express, Inc	FMC 1.
Meteor Lines	FMC 1.
Michael Davis (Shipping) Inc	FMC 1.
Mid-Atlantic Lines	FMC 1.
Multi-Sea Maritime, Inc	FMC 1.
Nanica Line	FMC 27, 28 and 29.
The National Shipping Co. of Saudi Arabia.	FMC 4 and 5.
Navieras Allanticas, Inc	FMC 1.
Navieras Caribe Ltd	FMC 1.
Navinsa, S.A	FMC 2.
Nautical Shipping Agencies, Inc	FMC 1.
Navieracontinental S.A	FMC 1.
Negoicios Amazonicos Peruanos, S.A. (Napesa).	FMC 1.
Pacific Common Carrier Line	FMC 2.
Pan Africa Line, Inc	FMC 1.
Pelican Cargo Services, Inc	FMC 1.
Peninsula Express Line.	FMC 1.
Pac Transport	FMC 1.
Pharaonic Shipping Company	FMC 2.
Pikes Arm Shipping Ltd	FMC 1.
P & O Lines	FMC 11.
Pracht Shipping	FMC 2.
Prexco Marine Lines	FMC 1.
Pro Cargo Services, Inc	FMC 1.
Radix Group International, Inc	FMC 1.
Rivergate Shipping Inc	FMC 1.
Rolland International (U.K.) Ltd	FMC 1.
Royal African Steamship & Navigation Co.	FMC 1.
Scan Tropic Line, Ltd	FMC 1.
Scott Line, A.S	FMC 1.
Seal	FMC 1.
Sealax Container Lines	FMC 1.
Sea Freight Corp	FMC 1.
Sea Freight, Inc	FMC 1.
Sea Mar Consolidators Corp	FMC 1.
Seaply Carriers	FMC 1.
Sea Span International, Ltd	FMC 2.
Sea Star Line	FMC 2.
Seatrade Container Services, Inc	FMC 1.
Seatrade Transport, Inc	FMC 20.
Seatrade Welgrow, Inc	FMC 1.
Seatransport Service, Inc	FMC 1.
Seaward Ocean Lines, Ltd	FMC 1 and 2.
Texas Gulf Iberia Navigation Company	FMC 1.
Uiterwyk Lines, C.A	FMC 7, 8, 10, 11, 12, 13, 14 and 16.
Uiterwyk Lines (West Africa Ltd.	FMC 3, 5, 6 and 8.

Tariffs Cancelled—Continued

Xebec Maritime Corp..... FMC 1.

[FR Doc. 84-23337 Filed 8-31-84; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Stena Cargo Line Ltd. and Imperial Ocean Services Ltd. (BAHAMAS), c/o Fiesta Cruise Line, Inc., 400 Comercio Street, San Juan, Puerto Rico 00903.

Dated: August 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23334 Filed 8-31-84; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Stena Cargo Line Ltd., Imperial Ocean Service Ltd. (BAHAMAS) and Fiesta Cruise Line, Inc., c/o Fiesta Cruise Line, Inc., 400 Comercio Street, San Juan, Puerto Rico 00903.

Dated: August 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23333 Filed 8-31-84; 8:45 am]
BILLING CODE 6730-01-M

Intent To Terminate Agreement No. 203-009856

Agreement No.: 203-009856
Title: International Passenger Association Passenger Ship Conference.
Parties:

Bahama Cruise Line
Costa Cruises
Cunard Line, Ltd.
Holland America Line
Cunard/NAC
Home Lines Cruises
Norwegian Carib. Lines
Royal Viking Line
Sun Line Cruises

Synopsis: The parties to the referenced agreement having provided notice of the termination of the agreement, the Commission hereby gives notice of its intent to terminate its previously granted approval of the agreement effective August 17, 1984, the date the Commission received the parties' termination notice.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23380 Filed 8-31-84; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000057-137.
Title: Pacific Westbound Conference.
Parties:

American President Lines, Ltd.
Japan Line Ltd.
Kawasaki Kisen Kaisha Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit a party who has adopted another carrier's independent action proposal to maintain the proposal for its own account, should the initiating carrier withdraw the proposal prior to its effective date.

Agreement No.: 202-010491-001.
Title: North Europe—U.S. South Atlantic Rate Agreement.
Parties:

Atlantic Container Line G.I.E.
Dart—ML Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would permit any member organized under Agreement No. 203-009498 to charter space to Wallenius Line and modifies previously adopted model language relating to independent action.

Agreement No.: 202-010492-001.
Title: U.S. South Atlantic—Europe Rate Agreement.
Parties:

Atlantic Container Line G.I.E.
Dart—ML Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would permit any member organized under Agreement No. 203-009498 to charter space to Wallenius Line and modifies previously adopted model language relating to independent action.

Dated: August 29, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23379 Filed 8-31-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Norstar 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 (12 CFR 225.14) 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 September 24, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp Inc.*, Albany, New York, through its wholly-owned subsidiary Northeast Bankshare Association, Portland, Maine; to merge with Banc of Maine Corporation, Augusta, Maine, thereby indirectly acquiring Bank of Maine, N.A., Augusta, Maine.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Seneca Bancshares, Inc.*, Fairlea, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The Ronceverte National Bank, Fairlea, West Virginia.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *RBDC Corporation*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bancorp, Co., Chicago, Illinois, thereby indirectly acquiring Republic Bank of Chicago, Chicago, Illinois.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lismore Financial Services, Inc.*, Lismore, Minnesota; to become a bank holding company by acquiring 86.02 percent of the voting shares of State Bank of Lismore, Lismore, Minnesota. Comments on this application must be received not later than September 18, 1984.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Oak Park Bancshares, Inc.*, Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Oak Park National Bank, Overland Park, Kansas.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Citadel Bancorp, Inc.*, Burleson, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Burleson, Burleson, Texas.

2. *Overton Bancshares, Inc.*, Fort Worth, Texas; to acquire 80 percent of the voting shares of each of the following banks; Ridglea National Bank, Fort Worth, Texas; and First National Mansfield, Mansfield, Texas.

3. *Tyler Bancshares, Inc.*, Tyler, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Tyler National Bank, Tyler, Texas.

4. *United Bankers, Inc.*, Waco, Texas; to acquire 100 percent of the voting shares of Texas Southwest Bancorp, Inc., Mesquite, Texas, thereby indirectly acquiring Southwest Bank, Mesquite, Texas, and Southwest Bank-Garland, Garland, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23286 Filed 8-31-84; 8:45 am]

BILLING CODE 6210-01-M

Sunrise Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 (12 CFR 225.21(a)) 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1984.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Sunrise Bancorp*, Citrus Heights, California; to engage *de novo* through its subsidiary, Western Sunrise Mortgage Corporation, Citrus Heights, California, in providing mortgage banking services including originating, making, acquiring and brokering, for its own account and for sale to others, residential, commercial and construction loans and other extensions of credit such as would be made by a mortgage company and servicing such loans and extensions of credit.

Board of Governors of the Federal Reserve System, August 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23287 Filed 8-31-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Occupational Health Survey of Mining; Objective Evaluation of Low Back Injuries, Particle Size Distribution in Underground Coal Mines (Diesel and Non-Diesel) for Compliance and Assessment of Control Technology; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

National Occupational Health Survey of Mining

Date: September 18, 1984
Time: 9:00 a.m. to 5:00 p.m.

Place: Room 800, Hubert H. Humphrey (HHH) Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

Purpose: To discuss the field work conducted during the first months of the National Occupational Health Survey of Mining and to obtain comments on the plans for reporting the survey results. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited. Formal presentations should be accompanied by written text. Informal comments and questions also will be entertained during the meeting.

Additional information and copies of the research protocol and proposed report format may be obtained from: Mr. Wallace Carr, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923–4496, Commercial: 304/291–4496.

The following meetings will be held in Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505:

Objective Evaluation of Low Back Injuries

Date: September 20, 1984
Time: 9:00 a.m. to 5:00 p.m.

Purpose: To review the NIOSH project protocol concerned with the refinement of the objective evaluation clinical instrument for industrial low back injuries.

Additional information may be obtained from: Roger M. Nelson, Ph.D., Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923–4454, Commercial: 304/291–4454.

Particle Size Distribution in Underground Coal Mines (Diesel and Non-Diesel) for Compliance and Assessment of Control Technology

Date: September 26, 1984
Time: 9:00 a.m. to 12 noon

Purpose: To discuss the research protocol of a two-part project involving development of techniques for separating diesel particulate from coal mine dust.

Additional information and copies of research protocols may be obtained from: Mr. Frank J. Hearl, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923–4421, Commercial: 304/291/4421.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: August 23, 1984.

William C. Watson,

Acting Director, Centers for Disease Control.

[FR Doc. 84–23303 Filed 8–31–84; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket Nos. 84V–0035 et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH), for certain specified sunlamp and sunlamp products manufactured or imported by six organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below under **"SUPPLEMENTARY INFORMATION."**

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the six organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted for the listed products to vary as specified from that portion of § 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally ultraviolet–A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. FDA's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturer does not result in severe, acute skin burns or corneal injury. Therefore, some of the requirements of § 1040.20 are not appropriate for these UVA products. Even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk to chemically sensitized lenses or of cornea damage or of long-term development of lens opacities.

CDRH has determined that, in lieu of the requirements of § 1040.20(c)(2)(ii), suitable or alternate means of radiation safety and protection are provided by constraints on the physical and optical design and by warning in the user manual and on the products. Therefore, on the dates specified in the table below, FDA approved the requested variances by letter to each manufacturer or importer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/termination date
84V–0046	Tan Body Sun Systems, Mfg. Inc., 1423 Prospect Street, Flint, MI 48503.	Hexagon 40 Suntan booth	Mar. 19, 1984 to Mar. 19, 1989.
84V–0074	Eurotan International, 3701 Montrose Bldv., Houston, TE 77006.	Waldmann Suntanning Equipment Models 550000.00, 300 and Quelle imported from Waldmann Solarien.	May 7, 1984 to May 7, 1989.
84V–0104	Tanning Systems Int., Inc., 14804 S. Drexel Avenue, Dolton, IL 60419.	Midas Hexagon UVA Tanning Booths	Apr. 25, 1984 to Apr. 25, 1989.
84V–0110	SUNN-TEK, 11740 S.W. Berkshire, Portland, OR 97225.	UVA suntanning beds with or without a canopy manufactured by SUNN-TEK.	May 7, 1984 to May 7, 1989.
84V–0139	Daavlin Company, P.O. Box 626, Bryan, OH 43506.	UVA Sunlamp products manufactured by Daavlin Company.	June 8, 1984 to June 8, 1989.
84V–0140	Grantan, 355 S.W. Madison, Corvallis, OR 97333	Grantan Salon Model Tanning Bed manufactured by Grantan.	June 8, 1984 to June 8, 1989.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23294 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84V-0149]

Baystate Medical Center; Availability of Approved Variance for Diagnostic X-Ray Systems

AGENCY: Food and Drug Administation.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for diagnostic x-ray systems and their major components has been approved for the Baystate Medical Center by FDA's Center for Devices and Radiological Health (CDRH) for a special procedures medical x-ray unit with Fluoricon II Image Intensifier and DXR 1250 Generator.

DATES: The variance became effective June 20, 1984, and ends June 20, 1989, or after the manufacture of one unit of the product, whichever occurs first.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn Conklin, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Baystate Medical Center, Department of Radiology, Springfield, MA 01199, a variance from § 1020.30(p)(1) (21 CFR 1020.30(p)(1)) of the performance standard for diagnostic x-ray systems and their major components for a special procedures medical x-ray unit with Fluoricon II Image Intensifier and DXR 1250 Generator.

The specific requirement of the standard for which a variance has been granted pertains to the provision of § 1020.30(p)(1) that requires components which are assembled into x-ray systems that contain one or more previously certified components be those which have themselves been so certified. All other provisions of the performance standard remain applicable to the product.

The variance will be applicable to 21 CFR 1020.30(p)(1)(ii), in that is will permit, for a limited time, the installation and use of uncertified replacement components into an existing diagnostic x-ray system containing one or more certified components.

CDRH has determined that: (a) The requirement of § 1020.30(p)(1) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by constraints on the physical and optical design and on the labeling of the product. Furthermore, CDRH recognizes that the replacement components will provide an improved image at a decreased radiation exposure to the patient and that Baystate Medical Center will be conserving their resources by using uncertified components already in their possession. Therefore, on June 20, 1984, FDA approved the requested variance by letter to the manufacturer from the Deputy Director of CDRH.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23295 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0262]

Grated Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Trumpy Cheese Co., Inc., to market test grated cheese containing powdered cellulose as an anticaking agent. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Trumpy Cheese Co., Inc., Monroe, WI 53566.

The permit covers limited interstate marketing tests of grated cheese that deviates from the standard of identity for grated cheeses (21 CFR 133.146). Powdered cellulose, an ingredient not currently permitted for use in grated cheese, will be used as an anticaking agent, either alone or in combination with other anticaking agents listed in § 133.146(b)(2) in an amount not to exceed 2 percent by weight of the finished food. The test product meets all requirements of § 133.146, with the exception of this deviation. The permit provides for the temporary marketing of 3 million pounds of grated cheese. The test product will be distributed throughout the United States.

The test product is to be manufactured at the Trumpy Cheese Co., Inc., plant located in Blanchardville, WI 53516.

Each of the ingredients used in the food, including the powdered cellulose, is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-23293 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0264]

Grated Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Sargento Cheese Co., Inc., to market test grated cheese containing powdered cellulose as an anticaking agent. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Sargento Cheese Co., Inc., Plymouth, WI 53073.

The permit covers limited interstate marketing tests of grated cheese that deviates from the standard of identity for grated cheeses (21 CFR 133.146). Powdered cellulose, an ingredient not currently permitted for use in grated cheese, will be used as an anticaking agent, either alone or in combination with other anticaking agents listed in § 133.146(b)(2) in an amount not to exceed 2 percent by weight of the finished food. The test product meets all requirements of § 133.146, with the exception of the deviation. The permit provides for the temporary marketing of 39 million pounds of grated cheese. The test product will be distributed throughout the United States and in Pureto Rico.

The test product is to be manufactured at the Sargento Cheese Co., Inc., plant located in Plymouth, WI 53073.

Each of the ingredients used in the food, including the powdered cellulose, is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-23292 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0232, NADA Nos. 6-395, 8-142, 8-989, 9-415, and 10-741]

Hess & Clark, et al.; Nitrofurazone (NF-7); Notice of Hearing on a Proposal To Withdraw Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's). On August 17, 1976, the Director of FDA's Center for Veterinary Medicine) (the Center) (formerly the Bureau of Veterinary Medicine) issued a notice of opportunity for hearing (41 FR 34899) proposing to withdraw approval of the NADA's for nitrofurazone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), and Hess & Clark, Inc. (Hess & Clark), responded by filing requests for a hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Acting Commissioner of Food and Drugs announced that a formal evidentiary hearing would be held on the proposal to withdraw approval of NADA's 6-395, 8-142, 8-989, 9-415, and 10-741, for the use of nitrofurazone (NF-7) in food-producing animals. This notice of hearing provides additional factual and legal information concerning the proposal to withdraw approval of the NADA's, and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: Prehearing conference on Monday, November 19, 1984, beginning at 10 a.m.; written notices of participation due by October 4, 1984; disclosure of data and information due by November 5, 1984.

ADDRESSES: The prehearing conference will be held in Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:

I. Background

Nitrofurazone (NF-7) is a member of a class of chemicals called "nitrofurans," which are used in animals for therapeutic purposes. The initial NADA for nitrofurazone was approved by FDA in 1948 for use in food-producing animals. It is currently approved for use in mastitis products for dairy cattle (dry cow treatment only), for the treatment of genital tract infections in large female animals, for the prevention and treatment of surface bacterial infections (all animals), as a medication in feed for swine, for chickens and turkeys for treatment and control of fecal and intestinal coccidiosis, and for chickens for prevention of pullorum. There are several regulations in effect relating to the use of nitrofurazone in food-producing animals (21 CFR 510.515, 558.15(g)(1), and 558.370).

In a notice of opportunity for hearing published in the **Federal Register** of August 17, 1976 (41 FR 34899), the Center proposed to withdraw approval of the NADA's for nitrofurazone under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act). The Center based this proposal on new evidence that nitrofurazone, when fed to laboratory animals, produced tumors. Section 512(e)(1)(B) of the act, often referred to as the "Safety Clause," provides that:

(e)(1) The Secretary shall, after due notice and opportunity for hearing to the application, issue an order withdrawing approval of the application filed pursuant to subsection (b) with respect to any new animal drug if the Secretary finds—

* * * * *

(B) that the new evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved. * * *

21 U.S.C. 360b(e)(1)(B).

The notice of opportunity for hearing failed inadvertently to list nitrofurazone NADA No. 8–989 which is owned by SmithKline Animal Health Products, 1600 Paoli Pike, West Chester, PA 19380. Because NADA 8–989 permits the use of nitrofurazone in food-producing animals, it will also be subject to this notice of hearing.

Norwich-Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, and Hess & Clark, Inc., 7th & Orange Sts., Ashland, OH 44805, the NADA-holders, filed requests for hearing in response to the notice of opportunity for hearing. Subsequently, SmithKline purchased from Norwich NADA's 8–989 and 9–415 for nitrofurazone.

In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Commissioner announced that a formal evidentiary public hearing would be held on the Center's proposal to withdraw approval of the NADA's for nitrofurazone. This notice provides additional information concerning the proposed withdrawal of the NADA's for nitrofurazone. Elsewhere in this issue of the **Federal Register**, the Commissioner is issuing a notice of hearing on two related drugs, furaltadone and furazolidone. Because these drugs raise safety issues similar to those raised by nitrofurazone, the agency will hold one hearing for all three drugs.

II. Statutory Grounds Proposed for Withdrawal of the NADA's for Nitrofurazone

Under the Safety Clause, "the [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [nitrofurazone] and the residues that may result from its use may be inferred" (44 FR 54852, 54861; September 21, 1979). The necessary "serious questions" about nitrofurazone's safety can be raised from evidence about either the parent drug or its metabolites. Any substance that enters an animal's body can be metabolized (changed) by being transformed into other molecules (metabolites), by the drug and/or its metabolites binding to other molecules already present in the body, and/or by a combination of transformation and binding. Residues of an animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Accordingly, when considering the safety of a new animal drug, all drug-related residues, including metabolites, are to be taken into account. This principle complies with the statutory directive that FDA, before approving a new animal drug, evaluate the safety of both the drug and "any substance formed in or on food" because of the use of the drug (21 U.S.C. 360b(d)(2)(A)).

"Serious questions" can be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can also relate to adverse effects other than carcinogenicity, such as tumorigenicity or other toxicological endpoints. Thus, the Center is not required to demonstrate that nitrofurazone, or its metabolites, are carcinogenic to invoke the Safety Clause. Assuming the Center does provide a basis for questioning nitrofurazone's safety, the sponsors will have the ultimate burden of showing the drug's safety (44 FR 54861).

III. Summary of the Evidence

In accordance with FDA's procedural regulations (21 CFR 12.85) the Center has placed on file with the Dockets Management Branch (address above), copies of all documents in the Center's files containing information that is relevant to issues in the hearing and a narrative statement summarizing the evidence the Center plans to introduce at the hearing. For the benefit of those who are unable to inspect these documents, the information placed on file by the Center is summarized below.

The primary factual issue at the hearing will be whether the evidence raises serious questions about the potential carcinogenicity of nitrofurazone that must be resolved by more definitive testing. The 1976 notice of opportunity for hearing discussed in detail feeding studies in rats conducted by Norwich (41 FR 34901–08). The Center believed that these studies showed that nitrofurazone caused an increase in mammary tumors in female rats as compared with control rats maintained on drug-free diets (41 FR 34901). The Center concluded that nitrofurazone is tumorigenic in rats, and that the data raise questions about the potential carcinogenicity of nitrofurazone. The Center also pointed to evidence concerning the carcinogenicity of furazolidone as raising serious questions about the potential carcinogenicity of nitrofurazone because the two compounds share similar structural and biological properties.

The Center concluded that the sponsor's studies are not adequate to assess the cumulative effects of exposure to nitrofurazone and its potential carcinogenicity and other toxicity because the studies were not of sufficient duration, not enough animals were tested, and only one dose level was tested (41 FR 34899–34904). Thus, a safe concentration for total residues of nitrofurazone cannot be established.

The Center states that nitrofurazone is mutagenic in the reverse mutation assay using various strains of *E. coli WP 2*. Nitrofurazone has also been found to be mutagenic for *Salmonella typhimurium* in tester strains TA 1535, TA 98, and TA 100. In addition, numerous scientific studies have shown that other nitrofurans are mutagenic in several test systems. The Center concludes that these results also raise "serious questions" about the safety of nitrofurazone.

Finally, the Center states that residues of nitrofurazone are present in edible animal tissue (41 FR 34907).

In its request for a hearing, Norwich argues that FDA cannot proceed to a hearing without issuing an environmental impact statement. The Center has prepared a comprehensive document entitled "Finding of No Significant Impact and Environmental Assessment for the Prohibition of Use of Three Nitrofuran Compounds in Food-Producing Animals." This document carefuly examines the possible environmental consequences of withdrawing approval of nitrofurazone and two other nitrofuran compounds, and concludes that the impact is not sufficient to warrant an environmental impact statement. The environmental assessment is available at the Dockets Management Branch (address above).

Because the Commissioner believes that the Center's document adequately considers the possible environmental consequences of the proposed withdrawals, ther is not reason to delay a hearing on the proposed withdrawals. The agency has fulfilled its obligation under the National Environmental Policy Act to take a close look at the environmental consequences of withdrawing approval of the NADA's for nitrofurazone. Although environmental factors will not be an issue in the hearing, the Commissioner will review the environmental assessment as part of the agency's final decision.

IV. Conclusion

Upon review of the sponsors' responses to the notice of opportunity for hearing, the Commissioner concludes that a hearing is appropriate with respect to the proposal to withdraw the approval of the new animal drug applications for nitrofurazone. The issues in the hearing will be as follows:

(1) Whether new evidence shows that nitrofurazone or its metabolites are not now shown to be safe for use under the conditions of use upon the basis of which the applications were approved. This issue includes:

(a) Whether there is a reasonable basis from which serious questions about the safety of nitrofurazone and the residues that may result from its use may be inferred;

(b) Whether nitrofurazone-related residues are likely to occur in edible tissues when conditions of use approved in the NADA's are followed;

(c) Whether the residues in edible tissues resulting from the use of nitrofurazone have been identified, or evaluated, and shown to be safe; and

(d) Whether a safe concentration can be established for total residues of nitrofurazone.

The hearing on these issues will take place in FDA Hearing Rm. 4A–35. Administrative Law Judge Daniel J. Davidson will preside. Parties to the hearing will be the Center and the sponsors of the NADA's for nitrofurazone. Any other interested person may participate in the hearing and be accorded the rights granted to participants by FDA regulations. Participants are required to assume the obligations of participation as set forth in FDA regulations. Written notices of participation shall be filed with the Dockets Management Branch no later than October 4, 1984. (See 21 CFR 12.45.) A notice of participation shall be identified with the docket number found in brackets in the heading of this document and clearly labeled "Nitrofurazone Hearing."

A prehearing conference will be held on November 19, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92 which sets forth the procedure and matters to be considered at such conference.

As discussed above, the Center has filed with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a detailed factual description of the evidentiary background upon which it intends to rely at the hearing. The Center has also filed with the Dockets Management Branch the other documents required by 21 CFR 12.85, including copies of the NADA's, published studies, and other data bearing on the question of whether nitrofurazone has not been shown to be safe. Intrerested persons may obtain a copy of the narrative statement from the Dockets Managment Branch. The data described above (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) may also be examined at the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

The other parties to the hearing shall submit all the written data, information, and views required by 21 CFR 12.85(b) by November 5, 1984. Any request to extend the period for submission of the required materials or for a postponement of the prehearing conference scheduled, shall be addressed to the Administrative Law Judge.

The prehearing conference and hearing session will be open to the public. Any participants may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on relevant matters.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceedings. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 24, 1984.

Frank E. Young,

Comissioner of Food and Drugs.

[FR Doc. 84–23300 Filed 8–31–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 76N–0231, NADA Nos. 12–738 and 65–059]

Norwich-Eaton Pharmaceuticals; Furaltadone (NF–260); Notice of Hearing on a Proposal to withdraw Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's). On August 17, 1976, the Director of FDA's Center for Veterinary Medicine (the Center) (formerly the Bureau of Veterinary Medicine) issued a notice of opportunity for hearing (41 FR 34891) proposing to withdraw approval of the NADA's for furaltadone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), responded by filing requests for a hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Acting Commissioner of Food and Drugs announced that a formal evidentiary hearing would be held on the proposal to withdraw approval of NADA's 12–738 and 65–059, for the use of furaltadone (NF–260) in food-producing animals. This notice of hearing provides additional factual and legal information concerning the proposal to withdraw approval of the NADA's, and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: Prehearing conference on Monday, November 19, 1984, beginning at 10 a.m.; written notices of participation due by October 4, 1984; disclosure of data and information due by November 5, 1984.

ADDRESSES: The prehearing conference will be held in Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information are to be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION:

I. Background

Furaltadone (NF–260) is a member of a class of chemicals called "nitrofurans," which are used in animals for therapeutic purposes. The initial new animal drug application for furaltadone was approved by FDA in 1962 for treating mastitis in dairy cows via infusion into the mammary gland. There are several regulations in effect relating to the use of furaltadone (21 CFR 526.1014, 540.874g, and 556.280).

In a notice of opportunity for hearing published in the **Federal Register** of

August 17, 1976 (41 FR 34891), the Center proposed to withdraw approval of the NADA's for furaltadone under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act). The Center based this proposal on new evidence that furaltadone, when fed to laboratory animals, produced tumors. Section 512(e)(1)(B) of the act, often referred to as the "Safety Clause," provides that:

(e)(1) The Secretary shall, after due notice and opportunity for hearing to the applicant, issue an order withdrawing approval of an application filed pursuant to subsection (b) with respect to any new animal drug if the Secretary finds—

* * * * *

(B) that new evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *.

21 U.S.C. 360b(e)(1)(B).

Norwich-Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, the sponsor, filed a request for hearing in response to the notice of opportunity for hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Commissioner announced that a formal evidentiary public hearing would be held on the Center's proposal to withdraw approval of the NADA's for furaltadone. This notice provides additional information concerning the proposed withdrawal of the NADA's for furaltadone. Elsewhere in this issue of the **Federal Register**, the Commissioner is issuing a notice of hearing on two related drugs, nitrofurazone and furazolidone. Because these drugs raise safety issues similar to those raised by furaltadone, the agency will hold one hearing for all three drugs.

II. Statutory Grounds Proposed for Withdrawal of the NADA's for Furaltadone

Under the Safety Clause, "the Bureau [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [furaltadone] and the residues that may result from its use may be inferred" (44 FR 54852, 54861; September 21, 1979). The necessary "serious questions" about furaltadone's safety can be raised from evidence about either the parent drug or its metabolites. Any substance that enters an animal's body can be metabolized (changed) by being transformed into other molecules (metabolites), by the drug and/or its metabolites binding to other molecules already present in the body, and/or by a combination of transformation and binding. Residues of an animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Accordingly, when considering the safety of a new animal drug, all drug-related residues, including metabolites, are to be taken into account. This principle complies with the statutory directive that FDA, before approving a new animal drug, evaluate the safety of both the drug and "any substance formed in or on food" because of the use of the drug (21 U.S.C. 360b(d)(2)(A)).

"Serious questions" can be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can also related to adverse effects other than carcinogenicity, such as tumorigenicity or other toxicological endpoints. Thus, the Center is not required to demonstrate that furaltadone, or its metabolites, are carcinogenic to invoke the Safety Clause. Assuming the Center does provide a basis for questioning furaltadone's safety, the sponsors will have the ultimate burden of showing the drug's safety (44 FR 54861).

III. Summary of the Evidence

In accordance with FDA's procedural regulations (21 CFR 12.85) the Center has placed on file with the Dockets Management Branch (address above), copies of all documents in the Center's files containing information that is relevant to issues in the hearing and a narrative statement summarizing the evidence the Center plans to introduce at the hearing. For the benefit of those who are unable to inspect these documents, the information placed on file by the Center is summarized below.

The primary factual issue at the hearing will be whether the evidence raises serious questions about the potential carcinogenicity of furaltadone that must be resolved by more definitive testing. The 1976 notice of opportunity for hearing discussed in detail feeding studies in rats conducted by Norwich (41 FR 34892). The Center believed that these studies showed that furaltadone induced mammary tumors in female rats, that furaltadone caused an increase in the number of mammary adenocarcinomas (cancers) which developed in female rats compared with control rats maintained on drug-free diets, and that furaltadone may be a more potent tumor inducer than furazolidone (41 FR 34892). The Center concluded that furaltadone is tumorigenic in rats, and that the data raise questions about the potential carcinogenicity of furaltadone. The Center also pointed to evidence concerning the carcinogenicity of furaltadone as raising serious questions about the potential carcinogenicity of furaltadone because the two compounds share similar structural and biological properties.

The Center concluded that the sponsor's studies are not adequate to assess the cumulative effects of exposure to furaltadone and its potential carcinogenicity and other toxicity because the studies were not of sufficient duration, not enough animals were tested, and only one dose level was tested (41 FR 34844, 34892–34985). Thus, a safe concentration for total residues of furaltadone cannot be established.

The Center states that furaltadone is mutagenic in the reverse mutation assay using various strains of *E. coli WP 2* and that numerous scientific studies have shown that other nitrofurans are mutagenic in several test systems. The Center concludes that these results also raise "serious questions" about the safety of furaltadone.

Finally, the Center states that residues of furaltadone are present in edible animal tissue (41 FR 34898).

In its request for a hearing, Norwich argues that FDA cannot proceed to a hearing without issuing an environmental impact statement. The Center has prepared a comprehensive document entitled "Finding of No Significant Impact and Environmental Assessment for the Prohibition of Use of Three Nitrofuran Compounds in Food-Producing Animals." This document carefully examines the possible environmental consequences of withdrawing approval of furaltadone and two other nitrofuran compounds, and concludes that the impact is not sufficient to warrant an environmental impact statement. The environmental assessment is available at the Dockets Management Branch.

Because the Commissioner believes the the Center's document adequately considers the possible environmental consequences of the proposed withdrawals, there is no reason to delay a hearing on the proposed withdrawals. The agency has fulfilled its obligation under the National Environmental Policy Act to take a close look at the environmental consequences of withdrawing approval of the NADA's for furaltadone. Although environmental

factors will not be an issue in the hearing, the Commissioner will review the environmental assessment as part of the agency's final decision.

IV. Conclusion

Upon review of the sponsor's responses to the notice of opportunity for hearing, the Commissioner concludes that a hearing is appropriate with respect to the proposal to withdraw the approval of the new animal drug applications for furaltadone. The issues in the hearing will be as follows:

(1) Whether new evidence shows that furaltadone or its metabolites are not now shown to be safe for use under the conditions of use upon the basis of which the applications were approved. This issue includes:

(a) Whether there is a reasonable basis from which serious questions about the safety of furaltadone and the residues that may result from its use may be inferred;

(b) Whether furaltadone-related residues are likely to occur in edible tissues when conditions of use approved in the NADA's are followed;

(c) Whether the residues in edible tissue resulting from the use of furaltadone have been identified, or evaluated, and shown to be safe; and

(d) Whether a safe concentration can be established for total residues of furaltadone.

The hearing on these issues will take place in FDA Hearing Rm. 4A–35. Administrative Law Judge Daniel J. Davidson will preside. Parties to the hearing will be the Center and the sponsors of the NADA's for furaltadone. Any other interested person may participate in the hearing and be accorded the rights granted to participants by FDA regulations. Participants are required to assume the obligations of participation as set forth in FDA regulations. Written notices of participation shall be filed with the Dockets Management Branch no later than November 5, 1984. A notice of participation shall be identified with the docket number found in brackets in the heading of this document and clearly labeled "Furaltadone Hearing."

A prehearing conference will be held on November 19, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92 which sets forth the procedure and matters to be considered at such conference.

As discussed above, the Center has filed with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a detailed factual description of the evidentiary background upon which it intends to rely at the hearing. The Center has also filed with the Dockets Management Branch the other documents required by 21 CFR 12.85, including copies of the NADA's, published studies, and other data bearing on the question of whether furaltadone has not been shown to be safe. Interested persons may obtain a copy of the narrative statement from the Dockets Management Branch. The data described above may also be examined (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

The other parties to the hearing shall submit all the written data, information, and views required by 21 CFR 12.85(b) by November 5, 1984. Any request to extend the period for submission of the required materials or for a postponement of the prehearing conference scheduled, shall be addressed to the Administrative Law Judge.

The prehearing conference and hearing session will be open to the public. Any participants may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on relevant matters.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administration proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 24, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-23301 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 80P–0100 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for six organizations that manufacture and produce laser light shows, light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under **"SUPPLEMENTARY INFORMATION."**

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the six organizations listed in the table below a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light whow projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date/ termination date
80P-0100 (extension)	Coherent Innovations, Inc., 2799 152 Avenue, N.E., Redmond, Washington 98052.	Coherent Innovations, Class IV "Rainbow" projectors and the laser light shows manufactured, assembled, and produced by Coherent Innovations, Inc., incorporating these projectors.	June 8, 1984–June 6, 1986.
80P-0157 (extension)	Image Engineering Corp., 10 Beacon Street, Somerville, Mass. 02143.	Laser light shows and the Model Series 300 laser projectors manufactured, assembled, and produced by Image Engineering Corp.	June 11, 1984–June 11, 1986.
81P-0001 (extension)	Lighting Systems Design, Inc.; 4301 Walbridge Street, Orlando, Florida 32809.	Lighting Systems Design laser light shows and the incorporated Lighting Systems Design Model PM2500AD Lumia Projection System which contains a Class IV ion laser.	May 31, 1984–May 31, 1986.
84V-0142	Walt Disney Productions, dba Walt Disney World, Sunbank Suite 405, P.O. Box 40, Lake Buena Vista, Florida 32830.	Walt Disney Productions laser light show, "A New World Fantasy"	June 8, 1984–June 8, 1989.
84V-0160	Advanced Dimensional Displays, Inc., 16472 Staff Avenue, No. 102, Van Nuys, California 91406.	Advanced Dimensional Displays, Inc. laser light shows and the Large Format Holographic Displays and Display Devices incorporated into these laser light show.	June 8, 1984–June 8, 1986.
84V-0163	Laser Media, Inc., 2046 Armacost Avenue, Los Angeles, California 90025.	Manufacture of the Laser Media Chroma Ray and Sting Ray Models I and II laser projectors. This variance does not cover the production of laser light shows.	June 8, 1984–June 8, 1986.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23297 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0274]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl for use as an antioxidant/stabilizer for polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3813) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 20532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR § 178.2010) be amended to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl for use as an antioxidant/stabilizer for polystyrene and rubber-modified polystrene complying with 21 CFR 177.1640.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: August 27, 1984.

Taylor M. Quinn,

Acting Director, Center Food Safety and Applied Nutrition.

[FR Doc. 84-23298 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84V-0143]

Elscint, Inc.; Availability of Approved Variance for Computed Tomography X Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for computed tomography x-ray (CT) systems manufactured by Elscint, Inc. The electronic product employs lasers to provide a pattern of alignment lines for proper positioning of the patient prior to a CT scan.

DATES: The variance became effective June 11, 1984, and ends June 11, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under §1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Elscint, Inc., 930 Commonwealth Ave., Boston, MA 02215, a variance from § 1040.10(f)(6) (21 CFR 1040.10(f)(6)) of the performance standard for laser products for its CT systems.

The specific requirements of the standard for which a variance has been granted pertain to the provision of § 1040.10(f)(6) that otherwise would require the CT systems to be equipped with beam attenuators to reduce the laser radiation output of the laser for

patient alignment to below Class I limits. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that: (a) The requirement of § 1040.10(f)(6) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by constraints on the physical and optical design by warnings in the user manual and on the product and by procedures for personnel who will operate the product. Therefore, on June 11, 1984, FDA approved the requested variance by letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the CT systems shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) any may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs..

[FR Doc. 84-23296 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0172, NADA Nos. 9-073, 9-393, 11-698, 12-061, and 13-805]

Hess & Clark, et al.; Furazolidone (NF-180); Hearing on a Proposal To Withdraw Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's). On May 13, 1976, the Director of FDA's Center for Veterinary Medicine (the Center) (formerly the Bureau of Veterinary Medicine) issued a notice of opportunity for hearing (41 FR 19907) proposing to withdraw approval of the NADA's for furazolidone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), and Hess & Clark, Inc. (Hess & Clark), responded by filing requests for a hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Acting Commissioner of Food and Drugs announced that a formal evidentiary hearing would be held on the Director's proposal to withdraw approval of NADA's 9-073, 9-393, 11-698, 12-061, and 13-805, for the use of furazolidone (NF-180) in food-producing animals. This notice of hearing provides additional factual and legal information concerning the proposal to withdraw approval of the NADA's, and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: Prehearing conference on Monday, November 19, 1984, beginning at 10 a.m.; written notices of participation due by October 4, 1984; disclosure of data and information due by November 5, 1984.

ADDRESSES: The prehearing conference will be held in Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:

I. Background

Furazolidone (NF-180) is a member of a class of chemicals called "nitrofurans," which are used in animals for therapeutic purposes. The initial NADA for furazolidone was approved by FDA in 1953. Furazolidone is marketed under several NADA's for use in poultry and swine as an antibacterial and antiprotozoan agent. There are several regulations in effect relating to the use of furazolidone (21 CFR 510.515, 556.290, 558.15(g)(1), and 558.262).

In a notice of opportunity for hearing published in the **Federal Register** of August 4, 1971 (36 FR 14343), the Center proposed to withdraw approval of the NADA's for furazolidone under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act). The Center based this proposal on new evidence that furazolidone, when fed to laboratory animals, produced tumors. Section 512(e)(1)(B) of the act, often referred to as the "Safety Clause," provides that:

(e)(1) The Secretary shall, after due notice and opportunity for hearing to the applicant, issue an order withdrawing approval of an application filed pursuant to subsection (b) with respet to any new animal drug if the Secretary finds—

* * * * *

(B) that new evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *.

2 U.S.C. 360b(e)(1)(B).

Norwich and Hess & Clark, the sponsors, filed requests for hearing in response to the notice of opportunity for hearing.

The agency did not, however, hold a hearing. After reviewing additional evidence, including long-term feeding studies submitted after publication of the 1971 notice, the Center concluded that furazolidone was carcinogenic, and not just tumorigenic. The Center withdrew the original notice and published a second notice of opportunity for hearing in the **Federal Register** of May 13, 1976 (41 FR 19907). The 1976 notice cited only 21 U.S.C. 360b(d)(1))(H) as the basis for proposing to withdraw approval of the NADA's. This provision, known as the "Delaney Clause," requires the Secretary of Health and Human Services (the Secretary) to refuse approval of an NADA if:

Such drug induces cancer when ingested by man or animal or, after tests which are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal * * * [unless] the Secretary finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice, (i) such drug will not adversely affect the animals for which it is intended, and (ii) no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary * * *) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals.

The 1976 notice of opportunity for hearing said that evidence showed furazolidone to be carcinogenic, and noted that the Delaney Clause bars the use of carcinogenic animal drugs unless a method of analysis has been approved that can assure that "no residue" of the

drug is found in edible tissue (41 FR 19913).

Norwich-Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, and Hess & Clark, Inc., 7th and Orange Sts., Ashland, OH 44805, responded to the 1976 notice of opportunity for hearing by filing requests for hearing. Subsequently, SmithKline Animal Health Products, 1600 Paoli Pike, West Chester, PA 19380, purchased from Norwich furazolidone NADA's 9–393 and 13–805.

In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Commissioner announced that a formal evidentiary public hearing would be held on the Center's proposal to withdraw approval of the NADA's for furazolidone. This notice provides additional information concerning the proposed withdrawal of the furazolidone NADA's. Elsewhere in this issue of the **Federal Register**, the Commissioner is issuing notices of hearing on two related new animal drugs, nitrofurazone and furaltadone. Because these drugs raise safety issues similar to those raised by furazolidone, the agency will hold one hearing for all three drugs.

II. Statutory Grounds Now Proposed for Withdrawal of the NADA's for Furazolidone

The agency has, in the two notices of opportunity for hearing described above, proposed to withdraw approval of the NADA's for furazolidone under the Safety Clause (in the 1971 notice) and the Delaney Clause (in the 1976 notice). This notice of hearing is based on both of these provisions of the act. The act requires withdrawal of an approved NADA if new evidence shows either that the approved drug is "not shown to be safe * * * *or* that [the Delaney Clause] applies to such drug." (Emphasis added). See *Rhone-Poulenc, Inc.* v. *Food and Drug Administration*, 636 F.2d 750 (D.C. Cir. 1980). The statutory language thus clearly permits reliance on the Safety Clause and the Delaney Clause as independent grounds for withdrawal of the NADA's for furazolidone.

The legislative history surrounding enactment of the anti-cancer provisions of the act likewise shows that approved NADA's, even when subject to the Delaney Clause, are also subject to the Safety Clause. From the enactment of section 409 of the act (Food Additives Amendment of 1958; Pub. L. 85–929), the first provision of the act to contain an anti-cancer clause, through passage of the Animal Drug Amendments of 1968 (Pub. L. 90–399), which consolidated various provisions of the act governing the premarketing approval of animal drugs, Congress always intended that all regulated compounds would be subject both to their respective anti-cancer clauses and to their general safety provisions. For a full discussion of the relevant legislative history, see FDA's proposal on "Chemical Compounds in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues," published in the **Federal Register** of March 20, 1979; 44 FR 17071–73.

In sum, the evidence that furazolidone is carcinogenic is relevant to the question of whether the NADA's for the drug should be withdrawn under the Safety Clause, as well as the Delaney Clause. Therefore, the Commissioner concludes that both the Delaney Clause and the Safety Clause may serve as potential bases for withdrawing approval of the NADA's for the use of furazolidone in food-producing animals. Including the Safety Clause as an independent ground for the proposed action is consistent with the 1971 notice of opportunity for hearing and the NADA-holders will not be prejudiced by the citation of this provision in the notice of hearing. See, e.g., 44 FR 11835–36; March 2, 1979, where the notice of opportunity for hearing for Alevaire raised only effectiveness as an issue, while the notice of hearing added safety of the drug as an additional issue. Since 1976, the sponsors have known the basic facts upon which the Center will rely; invoking the Safety Clause has the primary effect in this proceeding of providing a separate statutory ground against which the available evidence must be measured to determine if approval should be withdrawn.

A. The Delaney Clause

Under the Delaney Clause, the Center is required to establish that furazolidone has been shown to cause cancer in laboratory animals. As originally enacted, the Delaney Clause banned all animal drugs that induced cancer in man or laboratory animals. This provision was amended in 1962 to allow approval of carcinogenic animal drugs, provided that "no residue" of the drug is found in animal tissue when an approved analytical method is used. This amendment is known as the "DES exception." It provides that the agency can approve a carcinogenic animal drug if, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice, the drug "will not adversely affect the animals for which it is intended" and that "no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary * * *), in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals" (21 U.S.C. 360b(d)(1)(H)).

If applied literally, the "no residue" requirements of the DES exception would be unworkable, largely because the development of a more sensitive analytical method for detecting residues of a compound would result in the identification of residues in animal tissue, thereby requiring withdrawal of the compound's approval. As a result of this dilemma, FDA has attempted to reconcile the purpose and language of the exception with the statutory objective of minimizing public exposure to carcinogenic compounds in the edible portions of food-producing animals. In the mid-1970's, FDA began to develop procedures and criteria designed to permit the identification of that concentration of residue of a carcinogenic compound in edible animal tissue that is of no carcinogenic concern. (See, e.g., 38 FR 19226; July 9, 1973, 42 FR 10411; Feb. 22, 1977, and 44 FR 17070; March 20, 1979.) The procedures call for a quantitative estimate of the risk of cancer presented by the residues of a carcinogenic compound used in food-producing animals. Before a carcinogenic compound can be shown to be safe for use in food-producing animals, a practicable analytical method must be available that can measure the carcinogenic residues of the compound at concentrations equal to or below that estimated to be of no carcinogenic concern. FDA defines the concentration that is of no carcinogenic concern as "no residue" and thereby implements the DES exception.

Therefore, if the Center in this hearing establishes the carcinogenicity of furazolidone in laboratory animals, furazolidone coud still be marketed under the DES exception to the Delaney Clause if the sponsor of the drug can demonstrate the existence of a practicable method of analysis that can measure the total residue of the animal drug at a concentration low enough to be of no carcinogenic concern, and that the residue concentration under conditions of use reasonably certain to be followed in practice is at or below that concentration (44 FR 17070; March 20, 1979).

The "total residue" of the drug under the DES exception includes residues of both the parent drug, and of its metabolites. Any substance that enters an animal's body can be metabolized (changed) by being transformed into other molecules (metabolites), by the drug and/or its metabolites binding to other molecules already present in the body, and/or by a combination of transformation and binding. Residues of

a carcinogenic animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Accordingly, when considering the safety of a carcinogenic new animal drug, in the absence of information to the contrary, all drug-related residues, including metabolities, are assumed to be potential carcinogens, and must be taken into account in determining if there is "no residue." This principle complies with the statutory directive that FDA, before approving a new animal drug, evaluate the safety of both the drug and "any substance formed in or on food" because of the use of the drug (21 U.S.C. 360b(d)(2)(A)). It also conforms to the Delaney Clause's prohibition against the presence of any "residue" of the carcinogenic parent drug in any edible portion of the animals.

In their requests for a hearing, both sponsors contended that the Delaney Clause applied only to the parent drug, and not to metabolites. For the reasons stated above, the agency concludes that the sponsors have misinterpreted the meaning of that Clause. The question of whether metabolites are included in the Delaney clause's ban on "residue" was decided in the affirmative in the decision withdrawing approval of the NADA for diethylstilbestrol (DES) (44 FR 54852, 54856; Sept. 21, 1979). Because this issue is strictly a legal and policy one and already the subject of a well-established agency policy, the Commissioner has concluded that the issue should not be a subject of the administrative hearing. The parties will be free, of course, to raise this issue in their exceptions to any adverse decision.

In its hearing request, Hess & Clark also argued that the DES exception can apply even if no official method for detecting a residue has been approved. According to Hess & Clark, Congress did not intend that an official method exist for a carcinogenic animal drug to be approved; rather, the amendment simply gave FDA the authority to prescribe an approved method. Hess & Clark's interpretation of the DES exception was considered, and rejected, in the Commissioner's decision to withdraw approval of DES (44 FR 54852). There, the Commissioner reassessed the approved analytical method for DES, found in inadequate, and revoked it. Because the approval of DES, a carcinogen, depended on the existence of an approved method, the Commissioner found that approval of the NADA had to be withdrawn (44 FR 54858–60). Thus, the availability of the DES exception for furazolidone is contingent upon approval of an official method for determining total residue concentration.

B. The Safety Clause

The Safety Clause presents a different evidentiary burden: "the Bureau [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [furazolidone] and the residues that may result from its use may be inferred" (44 FR 54861). The necessary "serious questions" about furazolidone's safety can be raised from evidence about either the parent drug or its metabolites. "Serious questions" can also be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can also relate to adverse effects other than carcinogenicity, such as tumorigenicity or other toxicological endpoints. Thus, even if the Center does not demonstrate that furazolidone, or its metabolites, are carcinogenic, the evidence could nevertheless raise a "serious question" about its safety. Assuming the Center does provide a basis for questioning furazolidone's safety, the sponsors will have the ultimate burden of showing the drug's safety (44 FR 54861).

III. Summary of the Evidence

In accordance with FDA's procedural regulations (21 CFR 12.85) the Center has placed on file with the Dockets Management Branch (address above) copies of all documents in the Center's files containing information that is relevant to issues in the hearing and a narrative statement summarizing the evidence the Center plans to introduce at the hearing. For the benefit of those who are unable to inspect these documents, the information placed on file by the Center is summarized below.

A. Evidence of Carcinogenicity

One factual issue at the hearing will be whether furazolidone is carcinogenic. The 1976 notice of opportunity for hearing discussed in detail four chronic toxicity studies conducted by Norwich to assess the carcinogenic and tumorigenic effects of furazolidone in laboratory animals. Only one of these studies involved lifetime exposure to furazolidone. The Center previously explained why it believed the studies showed furazolidone to be carcinogenic (41 FR 19908–11).

Since publication of the 1976 notice of opportunity for hearing, additional information has become available. In 1977, FDA furnished to the National Cancer Institute (NCI) the results of the four chronic studies. NCI was also provided with histopathological slides of skin tumors for certain of the male Fischer 344 rats used in one of the chronic toxicity studies. Based on its review of the biological and statistical data, NCI agreed with the Center's position that furazolidone is carcinogenic.

In a study involving less than lifetime feeding of furazolidone to Fishcher rats, NCI found that the drug induced statistically significant increases in the number of benign and malignant tumors of the mammary glands in females, and of thyroid adenomas of males and females. From its own review of histopathological slides, NCI also concluded that the drug significantly increased, in a dose-related manner, skin carcinomas and epitheliomas in males.

In a study involving less than lifetime feeding of high doses of furazolidone to Sprague-Dawley rats, NCI found that furazolidone caused a number of biologically significant malignant tumors including a dose-related increased incidence of malignant mammary neoplasms in females. Furazolidone also caused a statistically significant increased incidence and multiplicity and decreased onset time of both benign and malignant mammary neoplasms. NCI also found an increased incidence in male rats of neural astrocytomas, a relatively rare glioma.

In a study involving lifetime feeding of lower doses of furazolidone to Sprague-Dawley rats, after adjusting for differences in the tumor onset time between control and experimental animals, the Center found a significant increase in mammary neoplasms in the females.

In another of the Norwich studies, furazolidone was fed to MBR/ICR Swiss mice. NCI agreed with Norwich's conclusion that furazolidone induced an increased incidence of bronchial adenocarcinoma in these mice.

Based on its review of the data from the feeding studies, NCI concluded that furazolidone causes cancer in rodents.

B. Determining a Safe Concentration of Residues

If the Center shows that furazolidone is carcinogenic, the sponsors of the drug are required to show that no residue of carcinogenic concern will appear in edible tissue. The agency uses a statistical extrapolation procedure to calculate from the tumor data the concentration of residue causing no more than one in a million additional cancers over a lifetime in the test species.

In the case of furazolidone, the Center has concluded that three of the chronic

feeding studies in rodents submitted by the sponsors do not provide an adequate basis for statistical extrapolation of the concentration of drug residue that is of no carcinogenic concern because they involved less than lifetime exposure of the test animals to the drug. Therefore, these three studies permit only a determination of an upper bound of the residue concentration of no carcinogenic concern. The Center has concluded that statistical extrapolation based on tumor data from these three studies indicates that the upper bound on the amount of total furazolidone residue that is of no carcinogenic concern is in the range of 0.3–8.2 parts per billion (ppb) in the diet of the test animals, depending upon the species and tumor type used. Statistical extrapolation from the one study involving lifetime feeding of furazolidone gives a concentration of no carcinogenic concern of 1 ppb in the diet of the test animal.

In order to determine a safe concentration in the diet of people, the agency uses the "one in a million" level of risk which represents a policy decision that reflects the agency's best judgment about what constitutes an insignificant risk of cancer to people and also corrects for the amount of the diet of people derived from food-producing animals (44 FR 17086–93). The agency has also decided that it will use the lowest extrapolated value from the tumor data in the test species to determine what constitutes an insignificant risk to people (44 FR 17086–93). The agency then corrects this value to account for the fact that only a portion of the diet of people is derived from the food-producing animals (44 FR 17086–93). In the case of furazolidone, the Center concluded that the lowest extrapolated value is 0.3 ppb. After adjusting this value for consumption of meat, the upper bound on the total residue concentration of no carcinogenic concern is approximately 0.9 ppb.

Among the information submitted by the sponsors in support of their NADA's are data concerning the concentration of actual residues of furazolidone in edible tissue. According to the Center's interpretation of these data, total furazolidone residues are in the parts per million (ppm) range. For example, a sponsor submitted two studies in which chickens were administered radiolabeled furazolidone. Residues in edible tissue after the 5-day withdrawal period called for in current labeling of the drug were reported to be in the low ppm range. Data submitted by the sponsors are also said to show that pigs fed furazolidone have similar total residue concentrations in the low ppm range. The Center therefore has found that the residues derived from furazolidone in edible tissue exceed the concentration of furazolidone that is of no carcinogenic concern.

In an attempt to meet its burden of showing that the concentration of furazolidone in edible tissue is safe, Norwich contends that the bulk of the radiolabel does not represent radiolabeled furazolidone or its metabolites, but rather radiolabeled carbon that has become incorporated into naturally occurring substances within the body of the animal. One of the issues in the hearing will be whether Norwich can establish its endogenous incorporation hypothesis; this burden includes showing what proportion of the total residues, if any, is radiolabeled carbon that has become endogenously incorporated.

The Center has proposed several pathways by which furazolidone may be metabolized in the target animals. If the Center demonstrates the carcinogenicity of furazolidone, the sponsors have the burden of identifying the metabolites of furazolidone in each of the target animals, the concentration of each metabolite, and the safety of these metabolites.

The sponsors have also submitted studies purporting to show that the metabolites present in swine liver and urine are not mutagenic. Because mutagenicity is believed to suggest carcinogenicity, the sponsors contend that these negative results show that the drug is not likely to be carcinogenic. Immature pigs were treated daily for 5 days with furazolidone. Urine and liver extracts were tested in the Ames mutagenicity assay. Based on the negative results in this assay, the sponsors contend that furazolidone's metabolites are not mutagenic.

The Center disagrees with the sponsors' conclusion. The Center says that the test dose of 5 mcg/g per plate of total metabolites was too small for a negative finding to be meaningful, and notes that no valid inferences can be drawn from a negative finding unless it can be shown that all significant metabolites of furazolidone in edible animal tissues have been tested at adequate concentration. According to the Center, this showing has not been made.

Whether the sponsors' data on mutagenicity show that metabolites of furazolidone are safe is an issue to be examined at the hearing.

C. Demonstrating the Existence of an Official Method

As noted earlier, the DES exception to the Delaney Clause is not available unless an official method for detecting residue has been approved (21 U.S.C. 360b(d)(1)(H)). The sponsors have submitted several methods which they believe measure the parent drug at or below the concentration considered to be of no carcinogenic concern. Whether the sponsors are correct will be an issue at the hearing.

For the DES exception to apply, the sponsors must provide a method that is capable of showing that the major edible tissues do not contain any drug-derived residue above the concentration considered to be of no carcinogenic concern.

The 1976 notice described, in detail, the methods then available and the reasons the Center believed they were unacceptable. Since then, the sponsors have submitted several new methods in an attempt to satisfy the requirement of having an approved analytical method for furazolidone. The Center believes that none of these methods is adequate. Two methods with claimed sensitivity in the low ppb range are discussed below.

With respect to the method based on measuring furazolidone using high pressure liquid chromatographic separation and ultraviolet detection submitted by Norwich and Hess & Clark, the Center contends that even if the method adequately measured the concentration of furazolidone in edible tissue, the total furazolidone-derived residue could still not be adequately monitored due to the absence of suitable metabolism studies demonstrating the quantitative relationship between furazolidone and the total drug residue, including metabolites.

Hess & Clark has also proposed an electron capture gas chromatographic method that measures 5-nitro-2-furaldehyde formed upon acid hydrolysis of furazolidone. Hess & Clark asserts that this method can detect furazolidone and all its metabolites that contain a furan ring with a 5-nitro group and a "-(H)C-N" structure in the 2 position, which, upon acid hydrolysis, forms 5-nitro-2-furaldehyde. The Center contends that not all postulated metabolites that may contain the 5-nitrofuran moiety can be hydrolyzed to 5-nitro-2-furaldehyde. The Center claims that Hess & Clark has not submitted data to show the percentage of total residue that this method measures, so that Hess & Clark has not satisfied the requirement of demonstrating that the method can measure the total furazolidone residues at the concentration that is of no carcinogenic concern.

Several other methods have been submitted since the 1976 notice. The

Center contends that these methods are deficient in several ways, e.g., inability to measure furazolidone at sufficiently low concentrations, incomplete reliability data, or inferior recovery and precision. Whether these methods, or any others, are practicable is an issue to be decided at the hearing, assuming that carcinogenicity is shown. The sponsors will have the burden of demonstrating that the methods they have proposed satisfy these requirements.

In its request for a hearing, Norwich argues that FDA cannot proceed to a hearing without issuing an environmental impact statement. The Center has prepared a comprehensive document entitled "Finding of No Significant Impact and Environmental Assessment for the Prohibitition of Use of Three Nitrofuran Compounds in Food-Producing Animals." This document carefully examines the possible environmental consequences of withdrawing approval of furazolidone and two other nitrofuran compounds, and concludes that the impact is not sufficient to warrant an environmetal impact statement. The environmental assessment is available at the Dockets Management Branch (address above).

Because the Commissioner believes that the Center's document adequately considers the possible environmental consequences of the proposed withdrawals, there is no reason to delay a hearing on the proposed withdrawals. The agency has fulfilled its obligation under the National Environmental Policy Act to take a close look at the environmental consequences of withdrawing approval of the NADA's for furazolidone. Although environmental factors will not be an issue in the hearing, the Commissioner will review the environmental assessment as part of the agency's final decision.

IV. Conclusion

Upon review of the sponsor's responses to the notice of opportunity for hearing, the Commissioner concludes that a hearing is appropriate with respect to the proposal to withdraw the approval of the new animal drug applications for furazolidone. The issues in the hearing will be as follows:

(1) Whether new evidence shows that furazolidone or its metabolites are not now shown to be safe for use under the conditions of use upon the basis of which the applications were approved. This issue will include:

(a) Whether there is a reasonable basis from which serious questions may be inferred about the safety of furazolidone and the residues that may result from its use;

(b) Whether furazolidone-related residues are likely to occur in edible tissues when conditions of use approved in the NADA's are followed; and

(c) Whether the residues in edible tissue resulting from the use of furazolidone have been identified, or evaluated, and shown to be safe.

(2) Whether furazolidone, or its metabolites, induces cancer when ingested by man or animal.

(3) If furazolidone does cause cancer in man or animals, what concentration of drug residue, consisting of both the parent drug and its metabolites, is of no carcinogenic concern.

(4) Whether the sponsors have demonstrated that a practicable method exists that is capable of detecting and identifying residues in edible tissue resulting from the use of furazolidone that are at or below the concentration determined to be of no carcinogenic concern.

(5) Whether under the conditions of use specified in the labeling, the actual concentration of drug residue is shown to be at or below the concentration of furazolidone residue which is determined to be of no carcinogenic concern.

The hearing on these issues will take place in FDA Hearing Rm. 4A–35. Administrative Law Judge Daniel J. Davidson will preside. Parties to the hearing will be the Center and the sponsors of the NADA's for furazolidone. Any other interested person may participate in the hearing and be accorded the rights granted to participants by FDA regulations. Participants are required to assume the obligations of participation as set forth in FDA regulations. Written notices of participation shall be filed with the Dockets Management Branch no later than October 4, 1984. (See 21 CFR 12.45.) A notice of participation should be identified with the docket number found in brackets in the heading of this document and clearly labeled "Furazolidone Hearing."

A prehearing conference will be held on November 19, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92 which sets forth the procedure and matters to be considered at such conference.

As discussed above, the Center has filed with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a detailed factual description of the evidentiary background upon which it intends to rely at the hearing. The Center has also filed with the Dockets Management Branch the other documents required by 21 CFR 12.85, including copies of the NADA's, published studies, and other data bearing on the question of whether furazolidone has not been shown to be safe, and whether it may be exempted from the prohibition of carcinogenic animal drugs. Interested persons may obtain a copy of the narrative statement from the Dockets Management Branch. The data described above may also be examined (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The other parties to the hearing shall submit all the written data, information, and views required by 21 CFR 12.85(b) by November 5, 1984. Any request to extend the period for submission of the required materials or for a postponement of the scheduled prehearing conference, shall be addressed to the Administrative Law Judge.

The prehearing conference and hearing session will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on relevant matters.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for more complete explanation of the guideline's effect on this hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 24, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-23299 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0325; DESI 3265]

Drugs for Human Use; Pathilon Tablets; Final Order Denying Hearing Request and Withdrawing Approval of Less-Than-Effective Indication

Correction

In FR Doc. 84-19701 beginning on page 30128 in the issue of Thursday, July 26, 1984, make the following corrections.

1. On page 30130, column 1, second complete paragraph, line 10, insert a period after "Carter-Wallace" and begin a new sentence by inserting "Both Milpath 400, manufactured by Carter Wallace" before "and".

2. On page 30133, column 2, the second paragraph under the heading "V. Findings", line 4, "335(e)" should read "355(e)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Intent To Prepare a Supplement to the Coal Programmatic Environmental Impact Statement (EIS)

AGENCY: Interior.

ACTION: Notice of intent to prepare a supplement to an EIS.

SUMMARY: This notice advises the public that the Department of the Interior intends to prepare a supplement to the coal programmatic environmental impact statement, which was filed in April 1979. This notice is made in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4421 et. seq. (1970). Written comments are solicited.

DATES: Written commentsn will be received by October 4, 1984.

ADDRESS: Comments should be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Tom Walker (202) 343-4636.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has determined that the purposes of the National Environmental Policy Act of 1969 (NEPA) would be furthered by the preparation of a supplement to the *Federal Coal Management Program Final Environmental Statement* (April 1979). This statement was prepared when the Federal Coal Management Program was instituted. Conditions forming the basis of the analysis in that document may have changed in the five years since then, and numerous changes have been made or proposed to the program since the initial rulemaking.

The supplement will analyze as its proposed action the potential impacts of the program identified as the preferred alternative in the 1979 EIS as revised to reflect rule changes promulgated in 1982 and 1983, changes in procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Other alternatives will also be analyzed, such as no leasing and emergency and preference right leasing only. The draft is expected to be available for public comment in January 1985.

The recent program reviews being considered for implementation are the Department's response to recommendations made by the Linowes Commission on Fair Market Value Policy for Federal Coal Leasing and the options presented by the Office of Technology Assessment (OTA). The Secretary responded to the Linowes Commission recommendations in *Review of Federal Coal Leasing* (March 19, 1984) and to the OTA report in *Review of Planning Considerations in Federal Coal Leasing* (July 9, 1984). Both documents are available in single copies from the Office of Public Affairs, Bureau of Land Management, Room 5600, Main Interior Building, 18th and C Streets, NW., Washington D.C. 20240.

The public is invited to send written comments on the range of issues to be addressed and the significant environmental issues related to the proposed action. Comments will be received in Room 3610 of the Main Interior Building (address above) until Close of Business on the date specified above.

Dated: August 28, 1984.

Garrey E. Carruthers,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 84-23429 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held October 4, 1984.

On October 4, the meeting will be held at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

(1) A discussion of the Medford District's Supplemental Environmental Impact Statement on timber;

(2) A discussion on the disposition of logging residues; and

(3) The area of critical environmental concern (ACEC) decision record.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board between 9:00 a.m. and 9:30 a.m. on October 4, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by October 1, 1984. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date signed: August 24, 1984.

Hugh R. Shera,

District Manager.

[FR Doc. 84-23389 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

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 August 24, 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 September 19, 1984.

Bruce MacDougal,

Acting Chief of Registration, National Register.

ALABAMA

Limestone County

Athens vicinity, *Blackburn House*, W of Athens

ARIZONA

Mojave County

Fort Mojave Anthropomorphic Figures, D–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuma County

Cibola Valley Figure, H–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Limekiln Wash Figure, E–15 (Earth Figures of California-Arizona Colorado River Basin TR),
Man in Circle, E–29 (Earth Figures of California-Arizona Colorado River Basin TR),
Parker Rattlesnake, E–26 (Earth Figures of California-Arizona Colorado River Basin TR),
Ripley Circles, F–5 (Earth Figures of California-Arizona Colorado River Basin TR),
Ripley Eagle Group, F–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Ripley Giants, F–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Ripley Lizard, F–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Sidewinder Road Figure, F–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–28 (Earth Figures of California-Arizona Colorado River Basin TR),
Site F–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Site F–6 (Earth Figures of California-Arizona Colorado River Basin TR),
Site F–8 (Earth Figures of California-Arizona Colorado River Basin TR),
Site H–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Thunderbird E–27 (Earth Figures of California-Arizona Colorado River Basin TR),

ARKANSAS

Howard County

Nashville, *Hold, Elbert W., House,* 902 N. Maine St.

Washington County

Fayetteville, *Guisinger Building,* E. Mountain St.

CALIFORNIA

Alameda County

Oakland, *Oakland YWCA Building,* 1515 Webster St.

Calaveras County

Angels Camp, *Choy, Sam, Brick Store,* Bird Way

Imperial County

Chocolate Drop Figure, N–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Coyote Valley Site, P–15 (Earth Figures of California-Arizona Colorado River Basin TR),
Hillside Figure, C–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Main Yuha Site, P–18 (Earth Figures of California-Arizona Colorado River Basin TR),
North Cargo Muchacho, L–3 (Earth Figures of California-Arizona Colorado Basin TR),
Ocotillo Wells 322B, P–13 (Earth Figures of California-Arizona Colorado River Basin TR),
Ogilby Site A, L–6 (Earth Figures of California-Arizona Colorado River Basin TR),
Palo Verde Circles and Arrow, G–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Pilot Knob Anthropomorphic Figure, M–8 (Earth Figures of California-Arizona Colorado River Basin TR),
Pilot Knob Anthropomorphic Figure, M–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Pilot Knob Horse, M–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Pilot Knob Lizard, M–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Pilot Knob Ring, M–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Pinto Wash, P–17 (Earth Figures of California-Arizona Colorado River Basin TR),
Quail, The, L–5 (Earth Figures of California-Arizona Colorado River Basin TR),
Running Man, L–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–A, O–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–B, O–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–C, O–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–D, O–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–E, O–5 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–F, O–6 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–G, O–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–H, O–8 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–I, O–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–J, O–10 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–K, O–11 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–L, O–12 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 1–M, O–13 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 2–A, O–14 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 2–B, O–15 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element 2–C, O–16 (Earth Figures of California-Arizona Colorado River Basin TR),
Singer Element R–1, O–18 (Earth Figures of California-Arizona Colorado River Basin TR),
Site G–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Site L–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Site L–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Site M–11 (Earth Figures of California-Arizona Colorado River Basin TR),
Site M–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Site P–14 (Earth Figures of California-Arizona Colorado River Basin TR),
Site P–8 (Earth Figures of California-Arizona Colorado River Basin TR),
Stonehead, L–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Sweeney Pass Site, S–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Walter's Camp Anthro, I–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Walter's Camp Linear Figure, I–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Winterhaven Anthropomorth and Bowknot, L–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Winterhaven Anthropomorth, L–8 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Schneider Site P–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Shrine P–12 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site A, P–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site B, P–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site C, P–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site E, P–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site F, P–5 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site G–1, P–6 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site H; 322E, P–10 (Earth Figures of California-Arizona Colorado River Basin TR),
Yuha Site I; 322–G, P–11 (Earth Figures of California-Arizona Colorado River Basin TR),

Los Angeles County

Claremont, *Scripps College for Women,* Columbia and 10th St.

Los Angeles, *Federal Reserve Bank of San Francisco*, 409 W. Olympic Blvd.
Los Angeles, *Heinsbergen Decorating Company Building*, 7415 Beverly Blvd.

Monterey County

Salinas, *Black, Samuel M., House*, 418 Pajaro St.

Orange County

Santa Ana, *Downtown Santa Ana Historic District*, Roughly bounded by Civic Center Dr., First, Ross, and Spurgeon Sts.

Riverside County

Aha Quien Lodge Circles, E–30 (Earth Figures of California-Arizona Colorado River Basin TR),
Black Point Group, E–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Blythe Giants, E–18 (Earth Figures of California-Arizona Colorado River Basin TR),
Blythe Southern Boundary, E–13 (Earth Figures of California-Arizona Colorado River Basin TR),
Bones Site E–23 (Earth Figures of California-Arizona Colorado River Basin TR),
Dancing Shaman Group, E–5 (Earth Figures of California-Arizona Colorado River Basin TR),
Hook figure, E–45 (Earth Figures of California-Arizona Colorado River Basin TR),
Little Bird and 1,000 Seats, E–4a E–4b (Earth Figures of California-Arizona Colorado River Basin TR),
Military Site E–16 (Earth Figures of California-Arizona Colorado River Basin TR),
Quien Sabe 111, E–12 (Earth Figures of California-Arizona Colorado River Basin TR),
Quien Sabe Bird-Slaughter Tree Wash Dance Pattern, E–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Quien Sabe Group, E–10 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–11 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–19 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–20 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–22 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–24 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–6 (Earth Figures of California-Arizona Colorado River Basin TR),

San Bernardino County

Beale Slough Figures, D–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Lake Havasu Site, D–10 (Earth Figures of California-Arizona Colorado River Basin TR),
Park Moabi Site, D–11 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–12 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–6 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–21 (Earth Figures of California-Arizona Colorado River Basin TR),

San Diego County

Anza Borrego-Plao Verde Site, S–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Anza Borrego-Sin Nombre, S–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Anza Borrego-Split Mountain Site,, S–3 (Earth Figures of California-Arizona Colorado River Basin TR),

San Francisco County

San Francisco, *Chambord Apartments*, 1298 Sacramento St.

San Mateo County

San Carlos, *Southern Pacific Depot*, 559 El Camino Real

Santa Barbara County

Santa Maria, *Minerva Club of Santa Maria*, 127 W. Boone St.

Santa Cruz County

Aptos vicinity, *Valencia Hall*, Valencia Rd.

Sonoma County

Santa Rosa, *Gables, The*, 4257 Petaluma Hill Rd.

COLORADO

Delta County

Hotchkiss, *Hotchkiss Hotel*, 101 Bridge St.

Denver County

Denver, *Carter-Rice Building*, 1623–1631 Blake St.
Denver, *Dunning-Benedict House*, 1200 Pennsylvania St.
Denver, *McPhee and McGinnity Building*, 2301 Blake St.
Denver, *Midwest Steel and Iron Works Company Complex*, 25 Larimer St.
Denver, *Pacific Express Stable*, 2363 Blake St.
Denver, *Pierce-Haley House*, 857 Grant St.
Denver, *Smith, Pierce T., House*, 1751 Gilpin St.

Douglas County

Castle Rock, *Castle Rock Elementary School*, 3rd and Cantril Sts.

El Paso County

Colorado Springs, *Hagerman Mansion*, 610 N. Cascade Ave.

Kit Carson County

Burlington, *Burlington State Armory*, 191 14th St.

Pueblo County

Pueblo, *Streit, J.L., House*, 2201 Grand Ave.

IDAHO

Benewah County

St. Maries, *St. Maries 1910 Fire Memorial (North Idaho 1910 Fire Sites TR)*, St. Maries Cemetery

Shoshone County

Avery vicinity, *Bullion Tunnel (North Idaho 1910 Fire Sites TR)*, E of Avery
Avery vicinity, *Cedar Snags (St. Joe North Fork) (North Idaho 1910 Fire Sites TR)*, N of Avery
Avery vicinity, *Grand Forks (North Idaho 1910 Fire Sites TR)*, E of Avery
Avery, *Avery Depot*, Chicago, Milwaukee, St. Paul, and Pacific RR track
Red Ives vicinity, *Halm Creek, Bean Creek Fire (North Idaho 1910 Fire Sites TR)*, S of Red Ives
Wallace vicinity, *Pulaski, Edward, Tunnel and Placer Creek Escape Route (North Idaho 1910 Fire Sites TR)*, SW of Wallace
Wallace vicinity, *Wallace 1910 Fire Memorial (North Idaho 1910 Fire Sites TR)*, N of Wallace

INDIANA

Elkhart County

Goshen vicinity, *Violett, William N., House*, 3004 S. Main St.

Howard County

Kokomo, *Haynes, Elwood, House*, 1915 S. Webster St.
Kokomo, *Learner Building*, 107–111 E. Sycamore St.

Porter County

Hebron vicinity, *Gilson, Clinton D., Barn*, 522 W. 650 S.

Posey County

New Harmony, *Bentel, George, House*, Brewery and Granary St.

Putnam County

Greencastle, *Van Arsdel, William C., House*, 125 Wood St.

St. Joseph County

New Carlisle vicinity, *Studebaker Clubhouse and Tree Sign*, 32132 IN 2
South Bend, *Union Station*, 326 W. South St.

MASSACHUSETTS

Norfolk County

Canton, *Canton Viaduct*, Neponset and Walpole Sts.

MINNESOTA

Hennepin County

Minneapolis, *Hinkle-Murphy House*, 619 Tenth St. S.

Polk County

Crookston, *Crookston Commercial Historic District*, Roughly Main St. and Broadway between Fletcher and W. 2nd St.
East Grand Forks, *Hamm Brewing Company Beer Depot*, 401 DeMers Ave.

MISSOURI

Cape Girardeau County

Jackson vicinity, *McKendree Chapel*, Off I–55

Franklin County

Washington, *Thias, Henry C., House*, 304 Elm St.

PENNSYLVANIA

Philadelphia County

Philadelphia, *Washington Square West Historic District*, Roughly bounded by 8th, Locust, Broad, and Lombard Sts.

TEXAS

Bexar County

San Antonio, *Partee, Hiram, House*, 605 Belknap Pl.

Tom Green County

San Angelo, *Hilton Hotel (Hotel Cactus)*, 36 E. Twohig St.

WISCONSIN

Dane County

Madison, *Agricultural Dean's House*, 10 Babcock Dr.

[FR Doc. 84–23354 Filed 8–31–84; 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 officials 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.

Bruce MacDougal,

Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.

We are presently requesting comments on the proposed boundary for Mesilla Plaza Historic Landmark, located at Mesilla, Dona Ana County, New Mexico:

Beginning at the intersection of Calle de Principal and Calle de Parian the boundary runs south for about 200′ then proceeds east along the south side of Building 5 to Calle de Guadelupe for about 200′. The boundary then goes north for about 50 feet before going east again for about 150′ along the south side of Building 6. At this point the boundary goes north along the east side of Building 6, across Calle de Parian and along the east side of Building 7. From the northeast corner of Building 7 the boundary goes about 50′ east to Calle de Albino and runs north along this street for about 200′ before running west to Calle de Guadalupe a distance of about 200 feet. From this point the boundary runs north along Calle de Guadalupe for about 300′ before running west behind Building 9 to Calle de Principal a distance of about 200′. From this point the boundary runs south along Calle de Principal for about 280′ near the northwest corner of Building 1 before running west to Calle del Arroyo, a distance of about 300′. From this point the boundary runs south along Calle del Arroyo for about 200′ before running east to a point about 150′ into the block. From this point the boundary runs south for about 75′ to Calle de Parian and then east for a distance about 150′ to the point of origin.

We are presently requesting comments on the proposed boundary for Blood Run Site Historic Landmark, located at Larchwood, Lyon County, Iowa:

Point of Beginning: (Point A) A 1330 feet MSL monument at the center of Section 24, T 100 N, R 49 W. The boundary proceeds from this point of beginning 900 feet (274 m.) south to the edge of a headward eroding draw in the second terrace margin then about 250 feet (76 m.) down that draw onto the first terrace of Blood Run. It proceeds 1000 feet (305 m.) in a southeasterly direction across both first terraces as well as intervening floodplain and channel of Blood Run to the mouth of a secondary tributary and 1310 feet contour south southeast of the Chicago, Rock Island, and Pacific railroad bed (Point B). It follows the 1310 feet and the 1320 feet contours in a general southwestern vector for approximately 2000 feet (610 m.) as they constitute the toe of a northwest facing terrace slope. The boundary crosses a second northwest draining tributary to Blood Run at about 1310 feet elevation and follows thatr contour around the northern edge of a remnant ridge. It then proceeds 1000 feet (305 m.) south southwest up an unnamed draw to an elevation of 1350 feet south of a knoll with a midpoint elevation of 1410+ feet MSL. It then proceeds about 500 feet (152 m.) on a west northwest vector bisecting the low point of a saddle between the knoll and north facing high terrace slope south of the saddle. The boundary subsequently proceeds 600 feet (183 m.) south up a draw from 1350 to 1400 feet elevation. It then passes through a second saddle proceeding 300 feet (91 m.) southwest to a complimentary 1400 feet contour. It proceeds downslope in a southwest (area of Point C) then westerly direction for about 1200 feet (366 m.) and reaches the back of the second terrace above Big Sioux River at an elevation of 1340+—1350-feet MSL. The boundary then swings in a southwest, west (area of Point D), and northwest direction across the second and first terraces to the Big Sioux River in an arc with a general west northwest cord distance of 3500 feet (1067 m.) (Point E).

The boundary crosses the Big Sioux River and the Iowa-South Dakota State line at UTM Zone 14, 694210E, 4814170N. The boundary traverses the South Dakota floodplain and joins the first terrace at the point of initiation between a colluvial slope and laterally planned floodplain. It proceeds 1850 feet (564 m.) north northeast against the toe of the second terrace slope at a general elevation of 1270 feet to a point on tangent between that contour and the Chicago, Rock Island and Pacific Railroad bed. It follows railroad grade benching for about 400 feet (122 m.) in a northwesterly direction (to Point F) then swings north across Spring Creek at a vector distance of 1200 feet (366 m.) upstream from it confluence with Big Sioux River. The boundary ascends a steep terrace to the 1300 feet contour (Point G) and follows that elevation until the toe of the second terrace slope is defined by the 1280 and then 1270 feet contours down Spring Creek Canyon to its restricted north bank juncture with the Big Sioux River Valley. The boundary remains between 1270+—1280-feet MSL following the Western margin of the first terrace above Big Sioux River (passing through Point H) until reaching the mouth of an unnamed draw approximately 3000 feet (914 m.)

south of springdale Cemetery. It meanders up the draw flowline for a vector distance of 2800 feet (853 m.) north (area of Point I) and emerges onto the second (i.e. high) terrace by crossing a dirt road south and east of Springdale Cemetery that has been looped northeast around headward erosion of a minor draw. The boundary traverses that terrace in a northeasterly direction through a slight swale at an elevation of 1430+—1440-feet MSL. It then follows the second terrace (Point J) escarpment in a dramatically meandering southeast direction for a vector distance of 1200 feet (366 m.) (area of Point K). The boundary departs the second terrace proceeding east southeast down a steep draw and crosses the Big Sioux River as well as the South Dakota-Iowa State line at UTM Zone 14, 695340E, 4815735N. It proceeds 1500 feet (457 m.) east southeast across the first terrace and then climbs east northeast onto the second terrace at an escarpment elevation of 1320 feet. The boundary then arcs up grade east northeast, east, and southeast for a cord distance of about 800 (244 m.) feet to the 1330 feet MSL monument point of beginning (Point A).

We are presently requesting comments on the proposed boundary for Erie Canal Historic Landmark, located at Florida and Glen, Montgomery County, New York:

Beginning at Point A, the southeasternmost corner of Section 38 Block 1 Lot 1 in the north line of the New York, West Shore, and Buffalo Railroad right-of-way, then proceeding westerly along the north line of the railroad right-of-way, crossing Queen Ann Street, to the so-called Blue Line at the west side of Queen Ann Street; then proceeding westerly along the Blue Line to Point B, the easternmost point of Section 38 Block 1 Lot 2; then proceeding westerly along the Blue Line and the north line of Section 38 Block 1 Lot 2 approximately 1300' to Point C, an angle in the said lines approximately 150' east of the eastern edge of Wemp's Basin; then proceeding due south across Section 38 Block 1 Lot 2 to the north line of the New York, West Shore and Buffalo Railroad right-of-way; then proceeding westerly in the north line of the railroad right-of-way approximately 975'; then proceeding due north across Section 38 Block 1 Lot 2 to Point D, an angle in the said north line of said lot and the Blue Line; then proceeding westerly and southerly in the Blue Line, crossing the Voorhees Culvert, to Point E, approximately 710' southwest of the Voorhees Culvert; then proceeding southeasterly, perpendicular to the Blue Line, approximately 80', to Point F; then proceeding southwesterly, at right angles to the 80' line approximately 890', to Point G; then proceeding northwesterly, perpendicular to the Blue Line, approximately 90' to Point H, on the Blue Line; then proceeding southwesterly in the Blue Line to Point I, approximately 50' northeast of the Enders house (#5) and formerly the intersection with a property line; then proceeding southeasterly, perpendicular to the Blue Line, to the north side of Railroad Street; then proceeding southeasterly along and in the course of the north side of Railroad Street, and the extension of this line, to the mean low water mark in the east bank of Schoharie Creek; then proceeding northwesterly along the mean low water mark of the east bank to a point opposite a small outbuilding (identified as building #7 in the attached Description) approximately 100' southeast of the Blue Line; then proceeding southwesterly across Schoharie Creek, parallel to the Blue Line, into the Town of Glen, and through Section 53 Block 1 Lot 3 approximately 875' to Point J; then proceeding northwesterly, at a right angle to the 875' line, through Section 53 Block 1 Lot 3 to the Blue Line; then proceeding northerly, westerly, and southerly in the Blue Line, crossing Hartley Lane, to the north line of the New York State Thruway; then proceeding westerly in the north line of the Thruway to the northernmost of the two Blue Lines of the 1820 canal; then proceeding easterly and northerly in the Blue Line, again crossing Hartley Lane, to the mean low water mark in the west bank of Schoharie Creek; then proceeding northeasterly across Schoharie Creek to the Blue Line at the mean low water mark in the east bank of Schoharie Creek; then proceeding northerly and easterly in the Blue Line, crossing Main Street and East Church Street, to Point K, approximately 1615' northeast of the east side of East Church Street; then proceeding northwesterly perpendicular to the mid-line of the 1820 canal approximately 75' to Point L; then proceeding northeasterly roughly parallel to the Blue Line approximately 875' to Point M; then proceeding southeasterly, perpendicular to the Blue Line, approximately 100' to the Blue Line; then proceeding northerly and easterly in the Blue Line and partially in the mean low water mark of the south banks of a small creek and the Mohawk River to Point N, approximately 225' west of the west side of Emery's Culvert; then proceeding along the mean low water mark of the south bank of the Mohawk River to Point O, approximately 50' east of the east side of Emery's Culvert; then proceeding due south through Section 38 Block 1 Lot 1 to the Blue Line; then proceeding easterly in the Blue Line and partially along the mean low water mark of the south bank of the Mohawk River (to include Putnam's Culvert) to Point P, approximately 125' due north of Point A; then proceeding due south approximately 125' to Point A, the place of beginning.

We are presently requesting comments on the proposed boundary for Arrow Rock Historic District located at Arrow Rock, Saline County, Missouri:

The boundaries are contiguous with those for Arrow Rock State Park and the town of Arrow Rock as they join to form a single, contiguous 260-acre area. Some of the few generally unobtrusive features which do not contribute to the national significance of the landmark include: a water tower, rudimentary picnic facilities, and a few modern structures in the town of Arrow Rock.

We are presently requesting comments on the proposed boundary for Leadville Historic District, located at Leadville, Lake County, Colorado:

Beginning at the point where Harrison Avenue meets the right-of-way of the Burlington Northern Railroad, follow the tracks northeast to the crossing of E 12th Street, then follow E 12th to Poplar Street. Follow Poplar south to the alley between E 10th and E 11th, and follow the alley one block to Hemlock. Go north ½ block on Hemlock to E 11th and follow this street northeast to where it crosses Evans Gulch. Follow Evans Gulch in an easterly direction to the point where it crosses the 12,000 foot contour line; follow the contour line as it curves in a southerly direction to a point on the SW slope of East Ball Mountain that is due east of the southern point of the 12,000 foot contour line around Ball Mountain; then in a straight line south to the North Fork of Iowa Gulch. Follow this gulch a short distance west to the point where it meets a dirt road running along the southern slop of Printer Boy Hill; then follow the road as it passes between Printer Boy and Rock Hills to a point 400' west of the road's fork, and then in a straight line north to the 10,800 foot contour line. Follow this contour line as it curves west around Rock Hill to UTM point (F) 13/391349/4342660, and then in a straight line SW to the southern bank of California Gulch. Follow the gulch to and around the large tailings pile at the city limits, then in a straight line north to Harrison Avenue. Follow Harrison north to W 2nd Street, then turn west and go two blocks to Spruce Street. Turn south on Spruce and

go 2½ blocks to the alley between Elm and Front Streets; then go west one block to Leiter Street. Turn north on Leiter to Elm and go one block west to Maple. Go south ½ block to the alley between Elm and Front Streets, and follow the alley one block to James Street. Go north on James ½ block to Elm, and go west on Elm to the intersection of Elm, Washington, and McWethy Drive. Cross the intersection and pass behind the structures on the south side of the road in a straight line to the edge to the motel parking lot. Go north along the edge of the parking lot to a point behind the structures on the north side of the road, then go east behind these buildings in a straight line to the intersection of Elm, Washington, and McWethy Drive. Turn northeast on Washington and follow the street to the alley between W 3rd and W 4th Streets; follow the alley east two blocks to Maple Street, then north on Maple to the alley between W 4th and W 5th Street. Follow the alley one block to Leiter, go north on Leiter ½ block to W 5th Street. Follow W 5th east one block to Spruce Street; go north on Spruce 1½ blocks to the alley between W 6th and W 7th. Go west along the alley 2½ blocks, then north along the property lines to W 8th, then west along W 8th to Maple and north to the alley between W 8th and W 9th. Follow the alley two blocks east to the homes on the northwest corner of Spruce and the alley; go north behind these homes to W 9th Street. Turn east on W 9th to Spruce, go north on Spruce to the alley between W 9th and W 10th; follow the alley to Harrison Avenue, then turn north to the point of beginning.

[FR Doc. 84-23355 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Office of Compliance and Consumer Assistance
Title of Form: Financial Responsibility—Trucking and Freight Forwarders
OMB Form No.: 3120-0081, 82, 86, 87, 90, 91, 95 and 96
Agency Form No.: BMC-32, 34, 35, 36, 83, 84, 90 and 91
Frequency: Recordkeeping—on occasion
Respondents: ICC Regulated Transportation Entities
No. of Respondents: 43,704
Total Burden Hrs.: 10,926

James H. Bayne,

Secretary.

[FR Doc. 84-23315 Filed 8-31-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-43 (Sub-120X)]

Illinois Central Gulf Railroad Co.; Abandonment Exemption in Jacksonville, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by the Illinois Central Gulf Railroad Company of 0.58 miles of track in Jacksonville, IL, subject to standard labor protective conditions.

DATES: This exemption shall be effective on October 3, 1984. Petitions to stay must be filed by September 14, 1984. Petitions for reconsideration must be filed by September 24, 1984.

ADDRESSES: Send pleadings referring to AB-43 (Sub-No. 120X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Richard M. Kamowski, 233 North Michigan Avenue, 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: August 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-23314 Filed 8-31-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, and the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 15, 1984, a proposed Consent Decree in *United States* v. *Fischer & Porter Company*, Civil Action No. 80-3900 (E.D.Pa.) was lodged with the United States District Court for the Eastern District of Pennsylvania. The complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act and the Safe Drinking Water Act by the Fischer & Porter Company at its Warminster, Pennsylvania facility. The alleged violation consisted of the contamination of groundwater with trichloroethylene (TCE) and perchloroethylene (PCE), two industrial degreasing agents. The complaint sought injunctive relief to require defendant to reduce TCE and PCE contamination in the groundwater to the lowest levels technologically feasible, and to provide alternative water supplies or water treatment systems to the two local municipal water supply authorities whose wells were contaminated. In the Consent Decree the Fischer & Porter Company has agreed to install and operate a groundwater recovery system, described in detail in the Decree, which will reduce TCE and PCE contamination to the lowest levels technologically achievable. In addition, the Fischer & Porter Company has agreed to pay the two municipal water supply authorities sums totalling $545,000, to be used specifically for water treatment systems.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Fischer & Porter Company*, D.J. Ref. 90-7-1-28.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of

Pennsylvania, Room 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, at the Region III Office of the Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-23319 Filed 8-31-84; 8:45 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

Cancellation of Call for Riders for Board Decision; Volume 14

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Cancellation of Call for Riders for *Decisions of the United States Merit Systems Protection Board*, Volume 14.

SUMMARY: The purpose of this notice is to cancel the call for riders to Volume 14 of the Board decision volumes which was announced in the August 13 Federal Register (49 FR 32287).

DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Ada R. Kimsey, Information Services Division, Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653-8891.

SUPPLEMENTARY INFORMATION: Earlier decision volumes 5 through 12 are still in print and may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Ordering information is as follows: *Decisions of the United States Merit Systems Protection Board*, Volumes 5 through 7, covering the period January 1, 1981 through September 30, 1981 (stock number 062-000-00011-2; $40), and *Decisions of the United States Merit Systems Protection Board*, Volumes 8 through 11, covering the period October 1, 1981 through September 30, 1982 (stock number 062-000-00014-7; $53). Volume 12 (October 1, 1982 through December 31, 1982) and Volume 13 (January 1, 1983 through March 31, 1983) are being printed, and will be announced in the Federal Register when available for sale.

Dated: August 28, 1984.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 84-23302 Filed 8-31-84; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL SCIENCE FOUNDATION

Directorate for Science and Engineering Education

AGENCY: National Science Foundation.

ACTION: Notice of program announcement and guidelines.

SUMMARY: This notice sets forth the program announcement and guidelines for the National Science Foundation's College Science Instrumentation Program.

EFFECTIVE DATE: Proposals may be submitted at any time after the appearance of this announcement in the Federal Register, but they must be received in the Foundation by 5:00 p.m. January 11, 1985, to insure inclusion in the competitive review process established for this program.

FOR FURTHER INFORMATION CONTACT: Please address requests for further information to the National Science Foundation, Directorate for Science and Engineering Education, Washington, DC 20550, Attention: College Science Instrumentation Program.

SUPPLEMENTARY INFORMATION: The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), authorizes the National Science Foundation to initiate and support programs to strengthen science education at all levels. Furthermore, the FY 1985 HUD-Independent Agencies Appropriations Act requires the Foundation to establish this program. This Program Announcement describes the Foundation's college science instrumentation program.

The Federal Domestic Assistance Catalog Number for this program is 47.063.

College Science Instrumentation Program

Program Description

Purpose and Scope

The predominantly undergraduate colleges in the United States make a vital contribution to the preparation of the Nation's future scientists and engineers, teachers, and leaders in business and government. The purpose of the College Science Instrumentation Program (CSIP) is to assist these institutions in achieving and maintaining strong, high quality undergraduate science and engineering instructional programs for all of their students.

Students in science and engineering courses—majors and non-majors alike—must have experience with suitable, up-to-date equipment in order to become involved in the work that is at the heart of scientific understanding and progress.

Through the College Science Instrumentation Program, the National Science Foundation provides matching support for purchase of laboratory and instructional equipment to implement new or improved undergraduate programs in the sciences and engineering.

The specific objectives of CSIP are to encourage and support the:

- Introduction of modern equipment to improve the experiences of undergraduate students in science and engineering courses, laboratories, and field work;
- Interfacing of computers with scientific instrumentation and other appropriate uses of current educational technology in science and engineering instruction;
- Development of new instrumentation that extends instructional capabilities;
- Establishment of equipment sharing capability via consortia or centers.

The program addresses these objectives by providing for the:

- Acquisition of new, state-of-the-art instructional scientific equipment
- Renovation, replacement, and upgrading of existing equipment.

CSIP seeks proposals which request funds for instructional scientific equipment. Up to $50,000 may be requested from NSF; grantee institutions must provide an equal or greater matching contribution to the project. The minimum grant request to NSF for CSIP is $5,000.

Grants in support of CSIP activities are normally made for a 2-year period. It is expected that the requested equipment will be acquired during this time.

Requirements for Matching Funds

A proposing institution must agree to provide matching funds in an amount equal to or greater than the funds provided by the Foundation. The proposal budget must detail the

expenditure of the combined total of requested NSF funds and the institution's funds. Matching funds may be non-Federal or Federal (but not NSF) sources. However, funds from a CSIP grant, or the institutional matching contribution to it, cannot be counted as an institutional contribution to another Federally supported project. If a grantee receives a gift of equipment from non-Federal sources that is identical or equivalent to items listed in the proposal, the cash value of such gifts may be counted as institutional matching funds.

An institution may obligate or receive its matching funds or gifts at any time following the closing date under which the awarded proposal was submitted, but before the grant expiration date specified in the grant document. This normally provides a period of about 2½ years during which the institution must fulfill the agreement to match NSF funds as described in the award proposal. To count as matching, these funds must be used specifically for the equipment listed in the proposal unless prior approval is received from the NSF.

Eligibility Criteria and Limitations

Eligible Institutions

Proposals to the College Science Instrumentation Program will be accepted from:

a. Any 4-year college or university in the United States or its territories that offers instruction in the sciences leading to the baccalaureate degree, and *does not* offer the Ph.D. degree in any of the eligible fields of science and engineering listed below.

b. Any campus of a recognized "system" of institutions provided that it satisfies a. above and is separated geographically and is not administratively subordinate to any other campus in the system. A branch campus seeking separate eligibility should consult CSIP program staff before submitting a proposal, and be prepared to provide appropriate details to support its request.

c. Any formally organized consortium of institutions, the majority of which satisfy a. above, which has an established central office and approved fiscal management capability. Proposals from informal consortia of institutions are not eligible.

Number of Proposals Allowed

There are no limits to the number of proposals which may be submitted by an institution; however, only one proposal per department within an institution will be accepted.

A consortium may submit only one proposal per yearly closing date. Participation in a consortium proposal will not affect the eligibility of a member institution or a department within an institution.

Eligible Fields

The Foundation will consider proposals for support of projects in:

- Any field of science and engineering, including but not necessarily limited to: Astronomy, atmospheric sciences, biological and behavioral sciences, chemistry, computer sciences, earth sciences, information science, mathematical sciences, materials science, oceanography, physics, and the social sciences;
- Interdisciplinary fields composed of overlapping areas of two or more sciences;
- Multiple disciplines—in contrast to interdisciplinary fields—only in such instances in which several departments propose to make use of a single major piece of equipment or an assemblage of related pieces of equipment.

Specifically *excluded* from support are:

- Projects addressed to clinical fields associated with the sciences such as medicine, nursing, clinical psychology and physical education;
- Projects which primarily involve social work, home economics and the arts and humanities.

Eligible Activities

Although CSIP proposals are encouraged for formal courses and laboratories traditionally associated with undergraduate instruction, the program is not restricted to these activities. The following are other examples of eligible science activities.

- Projects to improve undergraduate honors programs, student research and independent study. (see also *Research in Undergraduate Institutions* Program Announcement, NSF 83–79);
- Projects aimed at acquainting nonscience majors with principles and methods of science and engineering or the impact of science and technology on society;
- Projects concerned with the undergraduate science education of prospective teachers, which emphasize science content or science teaching methods;
- Projects which seek to reduce the barriers to careers in science and engineering for women, minorities, and the physically handicapped;
- Projects directed at remediation or development of the science background of poorly prepared students;
- Projects which involve the teaching of fundamental science or engineering concepts within technical or professional programs.

Eligible Equipment

The types of equipment eligible for inclusion in a CSIP proposal are listed under the section "Detailed Budget" on page 00.

These restrictions apply to equipment to be purchased with institutional matching funds as well as the NSF grant. As previously noted, no proposal may request more than $50,000 from NSF which means that project costs in excess of $100,000 must be funded by overmatching. Because proposals requesting less than $5,000 from NSF are not eligible, the minimum project cost is expected to be $10,000.

The primary use of each of the equipment items to be acquired must be for the benefit of undergraduate science and engineering instruction. There is no objection to any items serving additional purposes in the department at those times when it is not being used for undergraduate instruction, but these ancillary uses neither form nor augment the justification required for its inclusion in the program.

Neither NSF funds nor institutional matching funds may be applied to any of the ineligible items listed below:

- Teaching Aids (e.g., films, slides, projectors), reference materials, and expendables (e.g., glassware, chemicals);
- Laboratory furnishings or general utility items such as office equipment, benches, tables, desks, chairs, laboratory carts, storage cases, routine supplies, and general expendables;
- Maintenance or service contracts—even though for equipment requested through the CSIP program;
- Salaries, honoraria, consulting fees, travel reimbursement, etc.
- Institutional indirect costs or overhead;
- Costs of building or laboratory modification, construction or equipment installation;
- A flat percentage inflation allowance. Requested funds should be based on the best available vendor's estimate of cost at the projected time of purchase during the grant period.

Preparation and Submission of Proposals

General Information

This announcement sets forth basic information needed to initiate planning for proposal submission. Proposers must also consult the publication *Grants for*

Scientific and Engineering Research (GSER), (NSF 83–57), for additional guidance and forms. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550. Teh GSER should be used with the following understandings:

- For "research" substitute "science and engineering education" or "science and engineering education project" according to the context;
- The terms "new discoveries" or "fundamental advances" in science and engineering include the development of the science and engineering infrastructure toward those goals.

Except as modified by the guidelines set forth herein, standard NSF guidelines on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GSER are applicable. CSIP proposers should use the cover sheet and project summary forms contained herein (pp. 00) and the budget construction described on page 00, not those in GSER.

More comprehensive information is contained in the NSF *Grant Policy Manual,* Revised, (NSF 77–47) available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

In the event that the submitting organization has never been the recipient of an NSF award, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF *Grant Policy Manual,* Revised, which are applicable to most NSF awards. If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the *Manual.*

Proposal Preparation

A successful proposal msut outline the way in which the planned project will improve the present program of undergraduate science instruction. Each proposal should demonstrate that:

- The plan is a logical step in developing the academic program in question;
- Informed, realistic planning has already taken place;
- The staff is competent to carry out the project;
- The improvements proposed lack only the requested equipment for full implementation.

It is important that the equipment requested be appropriate for the project's objectives. The Foundation aims to support projects with maximum potential for continuing impact. Each proposal should, therefore, clearly show how the equipment fits in with current institutional holdings, and should outline the institution's plans for extended care and maintenance of the equipment.

Proposal Format

A proposal to the CSIP program consists of the following parts:

- Cover Sheet
- Detailed Budget (Equipment List)
- Project Summary Form
- Narrative (Limited to 12 double-spaced pages)
- Information on Current and Pending Support (GSER p. 26)
- Appendices

Cover Sheet

The first page of the proposal will be the Cover Sheet prepared in the form found on page 00. This cover sheet should be duplicated and completed. The cover sheet must bear the signatures of the proposed principal investigator and the administative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it. Only one principal investigator may be designated for a CSIP project.

It is important that the Cover Sheet be completed with the full information requested. Most of the items are self-explanatory. Please make note of the following:

- Social Security Numbers are used by the Foundation to monitor and facilitate the receipt and processing of numerous proposals, as well as to maintain award data. The number is solicited pursuant to the general authority of the Foundation under the NSF Act of 1950, as amended. However, submission of social security numbers is voluntary and refusal to disclose a social security number will not affect any proposal's eligibility for an award;
- If funds for this project are being requested from another Federal agency or another Foundation program, this must be indicated in the upper right hand section of the Cover Sheet. If they are not being so requested at the time of proposal submission, but are requested subsequently (prior to Foundation's anticipated CSIP announcement date), a letter so stating should be sent at that time to the CSIP office. This letter should identify the proposal by its NSF number if one has been assigned.

Detailed Budget

A complete, detailed list of anticipated equipment acquisitions with both unit and total costs should immediately follow the cover sheet. It must be limited to the following categories with a subtotal shown for each:

a. Scientific Equipment
b. Computing Equipment
c. Construction of Equipment
d. Safety Equipment
e. Maintenance Equipment
f. Shipping Costs

It is important that reviewers be able to recognize the function of requested equipment. Therefore, the detailed budget should list all individual items by a descriptive name, and the probable brand, model, and price. Where there might still be ambiguity, a one-sentence description of the function of the equipment should be included.

Functional units consisting of a combination of items should be clearly grouped as such in the budget. The scientific equipment category should be subdivided by function or by course so as to correspond as closely as possible with the narrative which is to follow. Each item should be lettered to be consistent with the categories above, and to facilitate reference to and from the justification presented in the narrative.

Following the total amount of project costs, list the actual dollar amount requested from NSF. The amount requested from the National Science Foundation cannot exceed 50% of the total budget, or $50,000 and may not be less than $5,000.

Note.— Any unit of equipment must have a minimum acquisition cost of $500 and a life expectancy of more than 2 years.

See also GSER for details; page 5.

Guidelines for the selection and placement of eligible items within the six budget categories are as follows:

a. Scientific Equipment—to be used in any phase of undergraduate science and engineering education. An item eligible in this category must consist of either a single piece of equipment meeting the minimum cost requirement or a functional unit, where the sum of the components meets the minimum cost requirement. Examples of "functional units" would be an oscilloscope with appropriate probes, or a recording infrared spectrophotometer with a demountable cell assembly and appropriate window. A combination of independent instruments needed for a specific experiment, or for a single

laboratory station, would not normally meet the definition of a functional unit.

Each component of a functional unit must be itemized, and the cost indicated; the subtotal for the entire unit should be entered as the unit cost (at least $500).

b. Computing Equipment—digital, analog, analog-digital hybrid computers, mini- or micro-computers, or ancillary equipment that provides remote access to central digital computing systems. The equipment must be for use in specific curricular improvements; for example, interfacing with scientific instruments to assist student data acquisition and interpretation.

Rental or lease-purchase of such equipment with grant funds will be considered (1) if it can be demonstrated that such arrangements offer clear advantages over outright purchases and (2) if the proposal contains assurances that the grantee is prepared to assume responsibility for the continuation of equivalent services after the grant expires.

Software essential to the scientific and educational objectives of the project is permitted. Each software package must be itemized, justified, and the cost indicated (functional unit at least $500).

c. Construction of Equipment—fabrication, including materials and labor where sufficient justification can be given. Since it is not the purpose of equipment grants to provide for design and development of scientific and educational equipment, a detailed explanation of the advantages of the proposed unit over commercially available items must accompany requests for equipment construction funds.

Requests for equipment construction must be supported by: drawings, diagrams or parts lists as appropriate.

d. Safety Equipment—such as fire control devices, fume hoods, etc., may be purchased under this program where necessary for the safe utilization of the equipment requested in the above categories.

e. Maintenance Equipment—unique items specifically required for calibration, repair and maintenance of the scientific equipment itemized in the categories a., b., and c. above (unit cost at least $500).

f. Shipping Costs—reasonable estimates should be used, as opposed to a flat percentage.

Project Summary Form

The Project Summary Form (page 00) should follow the Budget. The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the Cover Sheet. Please note the following:

Line 4. Major Discipline Code. Choose 1 only, from among those listed on page 00.

Line 5. Field of Science and Engineering Code(s). Choose at least 1, but no more than 5 codes in descending order of importance, from those listed on page 00.

For example, if computer-related activities are being developed for an analytical chemistry laboratory, enter on Line 4, CH, and at line 5, CH 12, NE 55 (or MD21).

Line 10. Summary of Proposed work. This summary should be a concise description of the project (not of the proposal), limited to 22 pica or 18 elite lines. It should contain a statement of objectives, an outline of the project operations, and a description of anticipated outcomes. If the project is supported, the summary may be used by the Foundation to inform the general public about its programs. Therefore, it should be written with considerable care so that a lay person can understand the use of Federal funds in support of the project.

Narrative

The narrative presents most of the information that determines whether or not a grant will be awarded. In composing the narrative, the principal investigator is urged to bear in mind the criteria to be used by reviewers in judging the merits of the proposal. These criteria are discussed in the section on Proposal Evaluation, page 00.

The Narrative section must not exceed 12 numbered double-spaced pages. Reviewers will not be responsible for studying additional pages. Information applicable in more than one place may be referred to by page and paragraph. Appended information should be restricted to tabular presentations of items required to supplement the narrative (also see Item d. in the outline below). Use of tabular form for reporting details is encouraged. Such information should be cross-referenced to the appropriate portions of the narrative.

The narrative should be written to conform to the following outline:

a. The Present Situation. This section should answer the question: "What is currently missing from the curriculum or is not being done effectively in the course which needs to be developed?" It should provide a description of the academic context and the perceived deficiencies, and should include information about the institution, related courses, and the intended student audience. It cannot be assumed that the reviewers are acquainted with the submitting institution and its science education programs.

b. The Development Plan. This section should answer the question: "How is the course or curriculum to be developed through the new instrumentation?" It should consist of a detailed description of the specific developments intended. Specific experiments, student projects, or demonstrations that would be conducted with the new equipment must be presented in terms of the scientific principles or phenomena to be taught, and in terms of the didactic methodologies to be employed. This portion of the narrative must enable a group of colleagues to judge the suitability of the planned change for the intended student audience, in the academic setting described. Both the scientific and pedagogical aspects of the proposed project will be weighed in an effort to assess the relative impact in science education that would be realized through the funding of this project.

c. Equipment—(1) The Equipment Request. This section should answer the question: "Is each item of equipment requested actually needed to implement this development, and is it the right piece of equipment for the job?" It should consist of some brief indication as to exactly how each major equipment item requested will be used to effect what instructional development.

It is the purpose of this part of the proposal to establish the precise correlation between the subject-matter developments described in the previous sections, and the list of equipment requested. In the event of a grant, ineligible items, and those not germane or adequately justified, will be deleted from the authorized list of purchases.

Logical groupings of items should be made to minimize repetition, with each entry cross-referenced to the item numbers given in the Budget (Equipment List). Special arguments may be needed to explain such requests as those for apparatus of a quality or cost not usually encountered in undergraduate instruction, or which is to be fabricated rather than purchased as a unit, or which might appear to be at variance with the academic setting in which the project would operate. Such statements must be keyed to developments desired in undergraduate instruction. Therefore, proposers are cautioned against providing arguments based on enhancements of graduate-level courses, improvement of faculty research capabilities, replacement of equipment,

or other activities outside the scope of CSIP. (But see *Research in Undergraduate Institutions* Program Announcement, NSF 83–79).

(2) The Equipment on Hand. This section should answer the question: "Has there been a thorough survey of the current equipment inventory and does the proposal plan to make full use of it?" It should consist of a list indicating existing or anticipated major equipment that will be available for the project, but is not included in this request.

(3) Equipment Maintenance. This section should answer the question: "Is a reasonable plan presented to ensure a maximum usable lifetime for the equipment?" This relates to the institutional commitment to this project. Each proposal should therefore briefly but clearly outline the institution's plan for extended care and maintenance of the equipment.

d. Personnel. (1) Faculty Expertise. This section should answer the question: "Does the department presently have the personnel and knowledge to complete the project successfully?" It should contain enough information about the present faculty of the academic unit seeking support to convince reviewers that the technical expertise to carry out the proposed project is already present. Special attention should be given to the individual named to direct the project. Since the effective operation of the project depends in large measure on the principal investigator's knowledge of the discipline, the curriculum, and the equipment, this person must be a member of the faculty of the disciplinary unit receiving support. A brief resume must indicate that the principal investigator is an appropriate person to direct this particular project. Only one person may be named as principal investigator for the proposal, but brief resumes of other faculty members involved in the project, emphasizing experience relevant to the project, should also be included. Curricula vitae should be placed in the appendix.

Information on Current and Pending Support

For instructions on completing this section see GSER pp. 7 and 26.

Forms on patterns of sex, race, or ethnicity of Principal Investigators (voluntary) see GSER p. 21.

Appendices

Material that is supplementary to the text of the proposal may be included in the appendices. Each appendix should be printed on colored paper or prepared in some manner to make it easily distinguishable from the body of the proposal.

Appropriate material includes tables of student enrollments, schematic diagrams of equipment to be fabricated, curricula vitae of project personnel, and the like. Voluminous appendices cannot be read by reviewers in the time available for proposal evaluation. It is inappropriate to include institutional catalogues, departmental curricula, whole lab manuals, or other general material.

Proposal Submission

Proposals must be received in the Foundation by 5:00 p.m. January 11, 1985, to insure inclusion in the competitive review process established for this program.

1. Materials Required:

Fifteen (15) legible copies of the complete proposal
Four (4) extra copies of the Cover Sheet
One (1) extra copy of the Budget (Equipment List)
Four (4) extra copies of the Project Summary Form

These materials should be submitted to:

Central Processing Section for College Science Instrumentation Program, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

The following requirements must also be met:

- All materials submitted to the Foundation must be contained in a single package. Secure packaging is mandatory. The Foundation cannot be responsible for the processing of proposals damaged in transit;
- Each copy of the proposal should be on standard size duplicating or mimeograph paper or regular weight. It should be stapled only in the upper left corner. The duplicating process should ensure legibility for at least 5 years. Typing must be double-spaced;
- One copy must be signed by the principal investigator and the administrative official who has been designated as the Authorized Institutional Representative.

Do Not:

- Staple the extra cover sheets, project summary forms, or equipment budget together, or to a proposal;
- Put covers on the proposals;
- Send separate "information" copies or several packages containing parts of a single proposal.

2. A check list of items to remember in preparing and submitting a proposal is located on page 00.

Proposal Evaluation and Award Selection

NSF evaluates proposals on the basis of four general criteria:

1. Performance competence—This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposer's recent research/science education performance.

2. Intrinsic merit—This criterion is used to assess the quality, currency, and significance of the scientific content and related instructinal activity of the project within the context of undergraduate science, mathematics, and engineering education, generally.

3. Utility or relevance of the project—This criterion is used to assess the impact the project will have at the proposing institution, and the appropriateness of the project in the local context.

4. Effect on the infrastructure of science and engineering—This criterion relates to the potential of the proposed project to contribute to better understanding or improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering research, education, and manpower base.

See page 9 of GSER for additional discussion of these criteria.

CSIP grants are awarded on a competitive basis. In selecting proposals to be supported, the Foundation is assisted by peer reviewers, who are scientists/educators, primarily drawn from the academic community, but also from research organizations and professional scientific associations.

Announcement of Awards

The evaluation and processing of proposals will require approximately 7 months. All decisions will be announced simultaneously through notification of the institution and the principal investigator some time in September 1985. No information can be given concerning the probability of support for any proposal prior to this announcement.

Check List

The following check list of steps in completing a CSIP proposal is provided for the convenience of the proposal writer.

Eligibility Determined for:

- Institution
- Department
- Field and/or Project
- Equipment
- Civil Rights Compliance

Forms Completed:

- Cover Sheet
- Project Director' signature on one copy
- Authorized Organizational Representative's signature on same copy
- Project Summary Form
- Principal Investigator sex, race or ethnicity form (GSER p. 21)
- Principal Investigator other support form (GSER p. 26).

Budget (Equipment List) Completed:

- Contains no item with unit cost under $500 unless part of a functional unit with cost of $500 or more
- Equipment items numbered and categorized
- Parts list for instructional equipment
- Subtotals for categories indicated
- Total Cost for project indicated
- Addition accurate
- Amount of request from NSF indicated; request is lesser of 50% of the total project cost or $50,000, but not less than $5,000.

Narrative Completed:

- All points covered
- All required supporting data included
- Schematic diagrams of any equipment to be fabricated
- Equipment on hand discussed
- Personnel resumes
- Information on current or proposed projects
- Does not exceed 12, double-spaced pages.

Appendices:

- Appendices easily distinguished from body of proposal; easily referenced
- All promised material included
- Curriculum vitae.

Format Checked:

- Sections in proper order
- Correct number of copies of proposal and forms included

Submission:

- All materials forwarded in a single package
- Materials submitted in time to reach NSF on or before January 11, 1985.

Addendum

NSF-Required Material to be Inserted Where Appropriate

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly reponsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women and minorities to complete fully in any of the research and research-related Programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or physical handicap shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

Catalog of Federal Domestic Assistance Number 47.063 (College Science Instrumentation Program, NSF 84–66).

Inquiries

Questions not addressed in this publication may be directed to the NSF staff by writing to: College Science Instrumentation Program, Directorate for Science and Engineering Education, National Science Foundation, Washington, D.C. 20550.

Dated: August 28, 1984.

Walter L. Gillespie,

Deputy Assistant Director, Directorate for Science and Engineering Education.

[FR Doc. 84-23284 Filed 8-31-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-247 and 50-286]

Consolidated Edison Co. and Power Authority of the State of New York (Indian Point, Units 2 and 3); Request for Action Under 10 CFR 2.206

On July 23, 1984, the Commission referred a petition dated April 6, 1984 and a supplement to the petition dated June 9, 1984, filed by the New York Public Interest Research Group to the Office of Inspection and Enforcement for appropriate action pursuant to 10 CFR 2.206. The petitioner seeks suspension of the operating licenses for Indian Point Units 2 and 3 in order to relieve an "unacceptable risk to the health and safety to school children in the vicinity of the plants." The petitioner alleges that planning for the evacuation of school age children within the Emergency Planning Zone around the Indian Point plans has not been adequately addressed in the radiological emergency response plans. As provided under 10 CFR 2.206, appropriate action will be taken on the petition within a reasonable time. Copies of the petition and its supplement are available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 and in the Local Public Document Room for the Indian Point Station located at Elmer Holmes Bobst Library, 70 Washington Square South, New York, NY 10012.

Dated at Bethesda, Maryland this 23th day of August 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-23386 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corporation and Jersey Central Power & Light Company (Oyster Creek Nuclear Generating Station); Exemption

I

The GPU Nuclear Corporation and Jersey Central Power & Light Company (the licensees) are holders of Provisional Operating License No. DPR-16 which authorizes operation of the Oyster Creek Nuclear Generating Station. The license provides among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one boiling water reactor located in Ocean County, New Jersey.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, subsection

III.G., is the subject of this exemption request. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirement for separation and barriers could not be met in an area, reasonable interim compensatory measures and/or procedures must be provided in order to grant schedular exemptions from the implementation schedules of 10 CFR 50.48. The schedular requirements of 10 CFR 50.48(c)(4) call for the implementation of modifications before startup after the earliest of the following events commencing 180 days after Commission approval:

(1) The first refueling outage;

(2) Another planned outage that lasts for at least 60 days; or

(3) An unplanned outage that lasts for at least 120 days.

For Oyster Creek this would be the end of the current Cycle 10 refueling outage.

In a submittal dated July 11, 1984, the licensees requested that the implementation schedule for the proposed fire protection modifications in thirteen fire areas at Oyster Creek be extended until the end of the Cycle 11 refueling outage scheduled for the fall of 1985.

III

Reasonable interim post-fire safe shutdown capability or interim fire protection measures must be provided in order to grant schedular exemptions from the implementation schedules of 10 CFR 50.48. By letter dated July 11, 1984 the licensees requested an exemption from 10 CFR 50.48(c)(4) and provided interim measures for the thirteen involved fire areas of the Oyster Creek plant. The thirteen areas are the reactor building (elevation 51 and 23 feet), 1C4160V emergency switchgear vault, 480V switchgear room, MG set room (elevation 35 feet), A and B battery room, tunnel and tray room, office building, monitoring and change room area, turbine lube oil storage, pumping and purification area, switchgear room (west end of turbine building on mezzanine level), basement floor south end, condenser bay, and circulating water intake area. The areas and respective compensatory measures are identified in Appendix A of the July 11, 1984 submittal.

For those fire areas of the plant which require modifications that are affected by the schedular extension, the licensee verified that the following shutdown functions would be available following a fire: reactivity control, primary system make-up control, primary system pressure control, decay heat removal, process monitoring, and support services. If one of these shutdown functions could be potentially lost due to a fire, a procedure to restore the shutdown function was provided using alternate systems. These emergency shutdown procedures constitute the interim shutdown capability in the event of loss of shutdown functions in fire areas FA–3A, 1C4160V emergency switchgear vault, and FA–9, office building.

In the event of fire in FA–3A, controls for drywell cooling are subjected to degradation. As the alternate containment spray and emergency service water systems for cooling will be available, the reactor can be brought to cold shutdown conditions with the unaffected onsite powered systems by utilizing emergency operating procedures. A fire in this area will not affect the safe shutdown of the plant.

In the event of fire in FA–9, controls for two electro-motive relief valves (EMRV's) and the shutdown cooling system are subjected to degradation. A fire in this area will not affect the safe shutdown of the plant. If the two EMRV's stick open, the reactor make-up can be provided by the core spray system and cooling provided by the emergency service water system. If the two EMRV's remain closed, it will have no effect on the safe shutdown of the plant as the other three EMRV's will be available for depressurization. The reactor can be brought to cold shutdown conditions with the above unaffected onsite powered systems by utilizing emergency operating procedures.

In eleven of the areas interim shutdown procedures are not available; they are: (1) FZ–1E, reactor building, 23 foot level, (2) FA–6, 480V switchgear room, (3) FZ–8A, MG set room, 35 foot level, (4) FZ–8C, A and B battery room, tunnel and tray room, (5) FZ–10A, monitoring and change room areas, (6) FZ–11D, basement floor south end, (7) FZ–11E, condenser bay, (8) FA–14, circulating water intake, (9) FZ–1D, reactor building, 51 foot level, (10) FZ–11C, switchgear room, west end of turbine building on mezzanine level, and (11) FZ–11B, turbine lube oil storage, pumping and purification area. The licensees indicate that in each of these areas, the vulnerable systems will be protected by either a continuous fire watch or an automatic fire detection and suppression system.

In FA–14, FZ–1D, FZ–11C, and FZ–11B, a continuous fire watch will be provided until such time that supplemental procedures to the Emergency Operating Procedures (EOPs) are developed. The fire watch consists of the area being continuously monitored by security guards in addition to the area being monitored 24 hours a day by TV cameras. This provides reasonable assurance that a fire will be discovered in its initial stages before significant damage occurs and will be suppressed manually by either the fire watch or the plant fire brigade. Under these circumstances, fire damage will be limited, and no loss of safe shutdown capability should occur.

The remaining seven areas identified above are protected by automatic fire detection and suppression systems. It is the staff's opinion that fires in these areas would be discovered in their initial stage, and would be suppressed by the plant fire brigade. If the fire should propagate rapidly, the automatic fire suppression system should activate to protect the vulnerable systems until eventual extinguishment and no loss of shutdown capability should occur. The additional modifications to be made will ensure that safe shutdown capability will be protected if the suppression system should fail to activate.

For the considerations discussed above, the staff concludes that the licensees have provided reasonable and acceptable interim post-fire safe shutdown capability or interim fire protection measures to support the requested schedular exemptions for the areas identified. Therefore, based on our evaluation the staff has concluded that the requested schedular exemption from the requirements of 10 CFR 50.48(c)(4) should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the schedular exemption requested by the licensees' letter of July 11, 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 licensees an exemption from the schedular requirements of 10 CFR 50.48(c)(4) until prior to startup from the Cycle 11 refueling outage (1985).

Pursuant to 10 CFR 51.32 the Commission has determined that the issuance of the exemption will have no significant impact on the environment (August 23, 1984, 49 FR 33512).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 23 day of August 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23388 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co.: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix E to 10 CFR Part 50 to the Northern States Power Company (the licensee) for the Monticello Nuclear Generating Plant at the licensee's site in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action: The exemption would permit the extension of the emergency preparedness exercise at the Monticello Nuclear Generating Plant, from February to December 1984. The proposed exemption is in accordance with the licensee's request for exemption dated November 7, 1983.

The Need for the Proposed Action: 10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F of Appendix E requires each licensee to conduct emergency preparedness exercises at each site at least annually.

The licensee states that an extended outage is scheduled from February 3, 1984 until September 15, 1984, for the replacement of the recirculation piping, with additional time required for outage preparation and recovery. The licensee contends that the scope of the outage, personnel requirements, and its effect on the site precludes holding an emergency preparedness exercise concurrently. They further state that during this period the reactor will be shut down and defueled.

The licensee states that, in conjunction with State and local governments, they have participated in three previous successful exercises, including the one held on February 23, 1983. The licensee also participated in a small-scale exercise at their Prairie Island Nuclear Generating Plant on March 13, 1984. The licensee further states that the State of Minnesota and the Counties of Wright and Sherburne have agreed to participate in the December 5, 1984 exercise. The licensee contends that during the period between exercises the emergency plan will remain fully operational and the normally required training will continue throughout the period of exemption. The last full scale exercise held at Monticello was on February 23, 1983.

Environmental Impact of the Proposed Action: The proposed exemption affects only the scheduling of the annual emergency preparedness exercise and does not affect the risk of facility accidents. Thus, postaccident radiological releases will not differ from those determined previously, and the proposed relief does not otherwise affect facility radiological effluents, or any significant occupational exposure. Likewise, the relief does not affect facility non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radioligical or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require literal compliance with Section IV.F of Appendix E to 10 CFR Part 50. Such an action would not enhance the protection of the environment and would interfere with the scope of the outage.

Alternative Use of Resources: This action does not involve the use of resources not considered previously in connection with the Final Environmental Statement relating to this facility, *Final Environmental Statement Related to the Monticello Nuclear Generating Plant, Docket No. 50-263,* (November 1972).

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request, the FEMA Final Report of the 1983 exercise at the Monticello Nuclear Generating Plant, and a memorandum from FEMA to the NRC dated March 5, 1984, transmitting the Final Report of the exercise held in 1983 and which states that the exercise demonstrated an adequate level of offsite radiological emergency preparedness to ensure health and safety of the public in areas surrounding the Monticello Nuclear Generating Plant.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Eased upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 29, 1983, as supplemented March 23, 1984 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., D.C. and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 27th day of August, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23385 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[NRC Docket No. 50-338-OLA-1; 50-339-OLA-1 (ASLBP Docket No. 83-481-01 LA) NRC Docket No. 50-338-OLA-2, 50-339-OLA-2 (ASLBP Docket No. 83-482-02 LA)

Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2); Order (Scheduling Supplemental Special Prehearing Conference)

August 28, 1984.

Since oral argument upon proposed contentions was not heard at the initial special prehearing conference held on February 16, 1983, pursuant to 10 CFR 2.751a, the Board will conduct a supplemental special prehearing conference at the following location at 9:00 a.m. on September 7, 1984: NRC Public Hearing Room, East/West Towers Building, 5th Floor, 4350 East/West Highway, Bethesda, Maryland 20014.

Counsel for the Applicant, the NRC Staff and the petitioner, Concerned Citizens for Louisa County (CCLC), are directed to appear. This supplemental special prehearing conference is held in order to:

(1) Permit identification of the key issues in the proceeding:

(2) Take any steps necessary for further identification of the issues;

(3) Consider the contentions of petitioner, Concerned Citizens of Louisa County, as submitted on July 30, 1984 and amended on August 14, 1984, to allow the presiding officer to make an appropriate preliminary or final determination as to whether said petitioner shall be admitted as a party to this proceeding; and

(4) Establish a schedule for further actions in the proceeding.

The public is invited to attend the prehearing conference but members of the public may not participate in this conference. An opportunity will be provided for any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene. Any person may request permission to make a limited appearance pursuant to provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Subject to the conditions set forth in subsequent Orders, limited appearances will be permitted at the time a §2.752 prehearing conference is held and also at the beginning of the hearing, if any. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.[1]

Dated at Bethesda, Maryland, this 28th day of August, 1984.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

[FR Doc. 84-23387 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[1] During the course of a telephonic conference call on August 27, 1984, counsel for CCLC requested that this special prehearing conference be held in Louisa County in order that, as a matter of right, persons could make limited appearance statements at that time lest, if CCLC was not admitted as a party, such limited appearance statements would not be taken. The Chairman stated (a) that 10 CFR 2.715 provides that limited appearance statements may be permitted at the discretion of the presiding offier either at any session of the hearing or any prehearing conference, and b) that, as originally prescribed in the two Notices of Hearing dated December 3, 1982, such limited appearances would be taken at the times set forth in the last paragraph of this Order. All counsel agreed that the special prehearing conference should proceed on September 7, 1984.

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this notice announces submission to OMB for clearance of a proposed revision of a form that collects information from the public. Standard Form 172, Amendment to Application for Federal Employment—SF 171 (formerly Amendment to Personal Qualifications Statement), is used to update applicants' information for consideration for Federal employment. OPM is responsible for open competitive examinations for admission to the competitive service in accordance with section 3302, 5 U.S.C. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6410, Washington, D.C. 20416

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-23275 Filed 8-31-84; 8:45 am]

BILLING CODE 6325-01-M

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this notice announces a proposed extension of a form that collects information from the public. Standard Form 173, Job Qualifications Statement, is a shorter version of the SF 171, Application for Federal Employment, (formerly Personal Qualifications Statement) used for applying for positions that generally require less information than required on the SF 171. OPM is responsible for open competitive examinations for admission to the competitive service in accordance with 5 U.S.C. 3302. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415, and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-23276 Filed 8-31-84; 8:45 am]

BILLING CODE 6325-01-M

Proposed Revision of a Form for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed revision of a form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction act of 1980, this notice announces a proposed revision of a form which collects information from the public. Standard Form 87, Fingerprint Chart, is completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct checks of the FBI fingerprint files as required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or various public laws. These checks are part of background investigations conducted for the purpose of determining suitability for Federal employment/security clearance. For copies of this proposal call John P. Weld, Agency Clearance Office, on (202) 632-7720.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415, and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-23212 Filed 8-31-84; 8:45 am]

BILLING CODE 6325-01-M

Renewal of the Federal Prevailing Rate Advisory Committee

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management is renewing the charter for the Federal Prevailing Rate Advisory Committee (the Committee). It takes this action in accordance with the Federal Advisory Committee Act, which requires rechartering advisory committees at least every 2 years to insure against continuing committees that no longer carry out their original purposes. The Committee will continue to advise the Director of the Office of Personnel Management in matters pertaining to establishing prevailing rates under 5 U.S.C., chapter 53, subchapter IV, as amended.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph P. Reid, (202) 632-4533.

Office of Personnel Management.

Donald J. Devine,

Director.

Federal Prevailing Rate Advisory Committee

CHARTER

A. *Official Designation.* The Federal Prevailing Rate Advisory Committee.

B. *Objectives and Scope.* The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under 5 U.S.C., chapter 53, subchapter IV, as amended.

C. *Duration.* There is no time limit set forth in 5 U.S.C., chapter 53, subchapter IV. The mandate of the Committee is one of a continuing nature, until amended or revoked by appropriate act of Congress.

D. *Responsible Agency and Official.* The Committee makes recommendations to the Office of Personnel Management. The Chairman of the Committee reports to the Director, Office of Personnel Management.

E. *Agency Providing Support.* United States Office of Personnel Management.

F. *Committee Responsibilities.* The Committee is advisory. Its primary responsibility is to study the prevailing rate system and from time to time advise the Office of Personnel Management thereon. The Committee shall submit an annual report to the Office of Personnel Management and the President, for transmittal to Congress, as required by section 5347(e) of 5 U.S.C.

G. *Estimated Annual Operating Costs in Dollars and Staff-Years.* Using current salary schedules, $160,000 and 3 staff-years.

H. *Estimated Number and Frequency of Meetings.* The meeting schedule contemplated for the Committee is one meeting each week throughout a calendar year; more frequent meetings shall be scheduled when deemed necessary.

I. *The Committee's Termination Date.* There is no statutory termination date. The Chairman of the Committee serves for a 4-year term, as set forth in section 5347(a)(1) of 5 U.S.C. Management members serve at the pleasure of the designating authority. Labor membership is reviewed every 2 years to assure entitlement under the criteria set forth in section 5347(b) of 5 U.S.C.

J. *Date Filed.* September 4, 1984.

[FR Doc. 84-23274 Filed 8-31-84; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14109; 812-5729]

In the Matter of Hartford Money Market Fund, Inc. et al. and HVA Stock Fund, Inc., et al.; Filing of Application

Notice is hereby given that Hartford Money Market Fund, Inc., Hartford Plaza, Hartford, Connecticut 06115, Hartford Advisers Fund, Inc., Hartford Government Securities Fund, Inc., Hartford Aggressive Growth Fund, Inc., (hereinafter collectively referred to as "Hartford Family of Funds" or "Applicants") and HVA Stock Fund, Inc., HVA Fixed Income Fund, Inc., HVA Money Market Fund, Inc., HVA Government Securities Fund, Inc., HVA Aggressive Growth Fund, Inc., and HVA Advisers Fund, Inc. (hereinafter collectively referred to as "HVA Family of Funds" or "Applicants") filed an application on December 20, 1983, and amendments thereto on March 15, 1984 and August 20, 1984, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and any other similar investment company which may become a member of the Hartford Family of Funds or the HVA Family of Funds in the future from the provisions of Rule 20a-2(a)(9) under the Act to the extent indicated below. All interested persons are referred to the application on file with the Commission for the complete representations of the Applicants, which are summarized below, and are referred to the Act and the Rules thereunder for a statement of the relevant provisions.

Applicants represent that the Hartford Investment Management Company (hereinafter "HIMCO" or "Adviser"), a wholly-owned subsidiary of Hartford Variable Annuity Life Insurance Company (hereinafter "HVA"), serves as investment adviser to each member of the Hartford Family of Funds and HVA Family of Funds. HVA Advisers Fund, HVA Aggressive Growth Fund, HVA Stock Fund, and HVA Fixed Income Fund have also retained a sub-investment adviser. Certain of the Applicants intend to hold an annual meeting of shareholders on October 31, 1984 for the purpose of, among other things, electing nominees as directors of their funds and approving or disapproving the investment advisory agreements with HIMCO and the sub-adviser. In connection with this meeting, these Applicants intend to mail shareholders required proxy materials and request that they be allowed to omit from such materials the certified balance sheet of HIMCO.

In support of their application, Applicants state that the purpose of the Rule 20a-2(a)(9) requirement that a balance sheet of the adviser be included with proxy materials sent to fund shareholders is to enable fund shareholders to consider whether the adviser is financially able to perform the duties which it has agreed to perform, as set forth in the advisory agreement. Rule 20a-2(a)(9) provides, as here relevant, that the Commission may, upon a showing of good cause, permit the omission of the adviser's balance sheet if the adviser is primarily engaged in a business or businesses other than the underwriting or distribution of investment company securities or the performance of advisory services for registered investment companies. Because HIMCO is primarily engaged in the investment advisory business, it is not eligible for the discretionary relief set forth in Rule 20a-2(a)(9).

Applicants contend, however, that granting the relief requested would be consistent with the standards set forth in Section 6(c) of the Act because it is not necessary for shareholders to know the financial condition of HIMCO, as it may be from time to time, for two reasons.

First, Applicants assert that HIMCO is a wholly-owned subsidiary of HVA, a company with cash and investments totalling some $330,000,000 and assets

totalling some $578,000,000 as of October 31, 1983. To ensure that the financial resources of HVA would be available to HIMCO if HIMCO experienced financial difficulties, HVA has guaranteed to provide sufficient capital if an when necessary to assure that HIMCO could meet all of its obligations as an investment adviser to Applicants until such time as a new investment adviser is selected.

Second, HIMCO renders only investment advice to the funds; the administrative management and distribution functions of the funds are performed by HVA and Hartford Equity Sales Company, Inc. ("HESCO"), respectively. Thus, even assuming HIMCO's financial failure, HVA and HESCO would continue to provide administrative management and distribution services to the funds and their operations would continue uninterrupted until a new adviser could be found.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 18, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for such 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 such 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23321 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23401; 70-7001]

Jersey Central Power & Light Co. et al.; Proposal To Issue and Sell Variable Rate First Mortgage Bonds

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Comapny ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania, 19605, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, wholly owned subsidiaries of General Public Utilities Corporation ("GPU"), a registered holding company, have proposed transactions subject to Sections 6(a), 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

JCP&L, Met-Ed, and Penelec ("Companies") propose to issue and sell for cash up to an aggregate of $20,000,000 principal amount of variable rate first mortgage bonds, to be dated the date of their issue and to mature serially at the rate of 5% of the aggregate original principal amount issued, beginning July 31, 1986, and quarterly thereafter until April 30, 1991 ("Bonds"). The Companies will issue and sell the Bonds to Mellon Bank, N.A., ("Millon"), pursuant to loan agreements between each Company and Mellon ("Agreement"). Of the aggregate $20,000,000 principal amount of Bonds, Met-Ed proposes to sell up to $10,000,000 principal amount of Bonds, and JCP&L and Penelec will issue $5,000,000 per Company. The Bonds are to be issued under the Companies' respective amended and supplemented first mortgage bond indentures, and will not be offered for resale to the public.

At certain times, the Bonds will be prepayable without penalty, and subject to mandatory repurchase by the issuer thereof under certain conditions, including the occurrence of a material adverse change in such issuer's financial condition or prospects. The principal amount of the Bonds will be payable in twenty equal quarterly installments commencing July 31, 1986. Interest on the unpaid principal amount will be payable at least quarterly, commencing October 31, 1984.

Each Company will pay interest on the unpaid principal based on its selection of one or more of three interest rate options, which may apply simultaneously to different portions of the loans for each of the three borrowing periods. The Companies' options are subject to limitations on the minimum principal and time terms, and rights to withdraw, suspend or convert rates reserved to Mellon under the Agreement.

The effective optional rates of interest will be determined on the date of issuance, and will be adjusted for closing fees of .375% of principal calculated annually from July 1, 1984 to the date of first issuance. From the first issuance until April 30, 1986, the Companies (based on rates in effect on August 24, 1984) may choose Mellon's prime rate (13%), a CD formula rate provided by the Agreement (14.7%), or a negotiated fixed rate not exceeding 16%. For the period from May 1, 1986 until April 30, 1989 the options (based on rates in effect on August 24, 1984) are .25% above prime (13.25%), the CD formula rate (15%), or a negotiated fixed rate not exceeding 16%. From May 1, 1989 until April 30, 1991 they (based on rates in effect on August 24, 1984) may select a rate of .5% above prime (13.5%), the CD formula rate (15.2%), or a negotiated fixed rate not exceeding 16%.

In the event that issued Bonds fail to receive an "investment grade" rating, the Companies must limit their payments on common and preferred stock according to a formula provided for each Company in the Agreements.

The proceeds from the sale of the Bonds will be used by the Companies to construct a Control Room Simulator Facility ("CRS") for Unit 1 of the Three Mile Island nuclear generating station, in which they own undivided interests as follows: Met-Ed—50%; JCP&L—25%, Penelec—25%. The Companies anticipate that contruction of the CRS will commence in 1984 and will be completed in the spring of 1986. Until the proceeds of the Bonds are needed for this purpose, they will be left on deposit in an interest bearing account with Mellon. The Companies expect to withdraw approximately $7,000,000 immediately after the issuance and sale of the Bonds and to withdraw the remainder (upon certifying the use to which such funds will be put) as and to the extent needed to meet the construction costs of the CRS.

The proposal 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 September 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specififed above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23323 Filed 8-31-84; 8:45 am]

BILLIING CODE 8010-01-M

[Release No. 21268; SR-Amex-84-23]

American Stock Exchange, Inc.; Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 22, 1984, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York 10006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The rule change would permit Amex to introduce half-point (50 basis points) intervals in strike prices for its Treasury bill ("T-bills") options. Under existing rules, T-bill options have full point (100 basis points) intervals between strike prices. Amex states that the existing full point intervals do not provide adequate hedging opportunities during periods of low volatility. Accordingly, Amex believes the additional flexibility for hedgers, as well as traders, in T-bill options will be provided by narrowing strike prices to half-point intervals. In order to avoid the proliferation of strike prices by the addition of half-point intervals, Amex also proposes to eliminate certain outstanding T-bill options series which have no open interest when the half-point strike prices are introduced.[1]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days, from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof wifh the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to file No. SR-Amex-84-23.

[1] It is the Commission's understanding that the rule change will initially result in the following strike prices for the 13-week T-bill options traded on Amex: September expirations will have strike prices of 89, 89½, 90, 90½, and 91 (strike prices of 92 will be eliminated and 89½ and 90½ added); December and March expirations will both have strike prices of 89, 89½ and 90 (thus, strike prices of 91 will be eliminated and 89½ added).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, 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. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 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 the introduction of half-point strike pirces for T-bill options should enhance the utility of such options for market participants without resulting in an unnecessary proliferation of strike prices. In light of this fact, the Commission believes accelerated approval is appropriate.

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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23322 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21269; File No. SR-MSE-84-4]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Stock Exchange

The Midwest Stock Exchange, Inc. submitted on July 23, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Article XXX, Rule 1, Interpretations and Policies .01 of the MSE rules to increase the number of days the Committee on Specialist Assignment and Evaluation ("the Committee") or a designated subcommittee thereof has to deliberate on and respond to written agreements or proposals to exhcange existing assignments submitted by specialists before such proposals become effective. The proposed rule change would increase the ten day Committee deliberation period to thirty days. The MSE has stated in its filing that, in addition to providing a more adequate time period in which to shcedule a meeting of the Committee or a subcommittee, the proposed amendment will allow a sufficient time period in which to schedule personal appearances when necessary for individuals submitting a proposal to the Committee. According to the MSE, the proposed rule change is consistent with Section 6 of the Act in that it helps remove an impediment to a free and open market and, in general, protects investors and the public interest in that the Committee charged with the responsibility of allocating stocks and evaluating specialist performance is afforded a more reasonable time frame in which to perform certain of these duties.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-MSE-84-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, 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 Puclic Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23324 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21267; File No. SR-MSTC-84-6]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating to a Change in NIDS Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1984, the Midwest Securities Trust Company 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

Attached to the filing as Exhibit A is MSTC's Price Revision Schedule, which modifies MSTC's NIDS Fees.

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

The proposed price modifications, effective with service beginning July 1, 1984, reflect fee increases imposed by the Depository Trust Company (DTC) in connection with the National Institutional Delivery System (NIDS). On June 15, 1984 DTC announced that it would impose a 15% surcharge on its monthly billing to Participants. Consequently, MSTC must pass through this surcharge to its Participants who receive DTC-generated reports through their NIDS activity. This increase is consistent with MSTC's policy that services' fees fairly cover their associated costs.

Additionally, MSTC is clarifying the other NIDS charges. The NIDS service fee previously imposed for a "deliver/receive ticket (for ineligible securities settlement)" is now described as an "ineligible trade report" line item; the service fee is unchanged. As described in the attached MST Administrative Bulletin, NIDS confirms are $0.25, which is the amount previously filed with the Commission (See SR-MSTC-83-20). A new optional service, receipt of a "T+4 cumulative trade report," has been added, with a fee of $0.09 per report. These changes will make MSTC's services consistent with the NIDS system as presently operated by the depositories.

The proposed fee schedule is consistent with Section 17A of the Securities Exchange Act of 1934, in that the fee schedule will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In addition, the price changes provide for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed change in fees will have an impact on competition, but such impact will not impose a burden on competition, but will relieve a burden on or otherwise promote competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

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, and 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 September 25, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 23, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23327 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21270; File No. SR-MSE-84-5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to Committee Quorums

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 23, 1984, the Midwest Stock Exchange, Incorporated 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

Article IV, Rule 9 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Article IV—Committee Quorum

Rule 9. One half of its members, including ex-officio ones, shall constitute a quorum of each committee provided for in this Article, *except for the Committee on Specialist Assignment and Evaluation. For such Committee, one-half of its members, not including ex-officio members, shall constitute the number of committee members required for a quorum. Ex-officio members may be included for purposes of determining a quorum, provided that at least one half of those members present are not ex-officio ones.*

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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article IV, Rule 9, which describes the Committee on Specialist Assignment and Evaluation, provides that the Committee shall be composed of not less than eight members, including ex-officio members. In order for the Committee to act in most instances (except for assignments of issues) a quorum of one-half of the Committee members, including ex-officio ones, is needed. Problems have arisen in the past in obtaining a quorum at any particular meeting due to schedule problems, etc.

The proposed change would continue to allow the Committee to be composed of eight or more members but would lower the required number of members for a quorum from one-half the total number of Committee members including the three ex-officio members to one-half the number of members, but excluding the number of ex-officio members. As presently constituted with ten members a quorum needed for the Committee to act under this proposal would be four. In counting for quorum purposes, ex-officio members in attendance could be included but a quorum would exist only if half of those present were non-ex-officio members of the Committee. For example, under this proposal a quorum for the ten member Committee would be four, two of which could not be ex-officio members.

This change would ensure that at least half or more of the members constituting a quorum which are not directly affiliated with the Exchange as officers would be present whenever any policy decision is needed to be made by the Committee. The change will also give the Committee more flexibility in scheduling meetings and making decisions.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it helps to remove an impediment to a free and open market and, in general, protects investors and the public interest in that the Committee charged with the responsibility of allocating stocks and evaluating specialist performance is given greater flexibility to perform these duties on a more timely basis.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 September 25, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 24, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23326 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21271; File No. SR-PSDTC-84-9]

Self-Regulatory Organizations; Filing of Proposed Rule Change of Pacific Securities Depository Trust Co.

August 28, 1984.

On August 13, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing this notice to solicit comment on the proposal.

The proposal would establish PSDTC as a "qualified registered securities depository" for purposes of Securities Exchange Act Rule 17Ad-14, 17 CFR 240.17Ad-14. Rule 17Ad-14 requires registered transfer agents to open special accounts with qualified registered securities depositories when acting as tender agent or exchange agent in connection with tender or exchange offers for depository eligible securities. Currently, the only qualified registered securities depositories are Depository Trust Company and Midwest Securities Trust Company.

The proposal includes PSDTC procedures governing the special transfer agent accounts, particularly the processing of movements to and from the accounts to reflect tenders and

withdrawals. More specifically, the proposal would establish PSDTC procedures for opening the special accounts, tender of shares by participants, withdrawals from tendered positions, delivery of physical certificates, and payment for tendered shares.

Under the proposal, a tender or exchange agent (the "agent") must contact PSDTC as soon as a tender or exchange offer is announced and must enter into a Letter of Agreement with PSDTC making PSDTC procedures binding on the agent. The special account must be established within two business days after commencement of the tender or exchange offer.

Once an offer commences, participants may tender their share positions by submitting letters of authorization to PSDTC. Each day, for all letters of authorization submitted by 3:00 Pacific time, PSDTC will make book-entry movements of shares from each tendering participant's account to a single PSDTC internal account. After that time, PSDTC will make a single book-entry movement to transfer those shares from the internal account to the agent's account. By 8:00 a.m. Pacific time each day, PSDTC will release to the agent a position report reflecting the prior day's activity and a grand total of all tendered shares since the beginning of the offer. Also, PSDTC will send a weekly letter of transmittal to the agent indicating all shares tendered that week, unless the agent requires letters of transmittal more frequently.[1]

The proposal also enables participants to continue tendering shares directly to the agent by sending the agent a letter of transmittal. Participants then "cover" such letters by sending a copy to PSDTC along with a letter of authorization. PSDTC then would make book-entry movement of the shares in the same manner as shares tendered through PSDTC, *i.e.*, first into the internal PSDTC account and then into the agent's account. The daily position reports to agents will indicate which letters of transmittal are covered by the prior day's movements.

Participants also may withdraw shares previously tendered by submitting withdrawal instructions to PSDTC. The proposal provides that withdrawal instructions must be submitted "timely." PSDTC will submit corresponding instructions to the agent the day after receiving the instructions, together with the daily position report. Upon confirmation of the instructions by the agent, which should be made by noon the same day, PSDTC will return withdrawn shares to participants' accounts by book-entry movement. These movements will be reflected the next day on the agent's position report.

Two business days after the expiration of the offer or any protect period, PSDTC generally will make physical delivery of tendered shares to the agent. These time frames, however, can be adjusted by agreement of PSDTC and the agent. The agent must confirm to PSDTC immediately the total number of shares delivered and verify that all shares are in good deliverable form.

Finally, the proposal provides that agents must inform PSDTC when a date for release of payment to tendering participants is determined. Agents also must provide the proration date for acceptance of shares, if applicable.

PSDTC believes that the proposal is consistent with the requirements of the Act in general, and Section 17A of the Act in particular. Specifically, PSDTC believes that the proposal would reduce processing costs for tender and exchange offers by increasing processing efficiencies. Also, PSDTC believes that the proposal would facilitate prompt and accurate clearance and settlement of securities transactions, and would improve safeguarding of securities and funds, by bringing additional tender and exchange offer activities within the automated securities processing environment.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, comments are invited within 21 days after this notice is published in the **Federal Register**. Please file six copies of comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSDTC–84–9.

Copies of the proposal, all subsequent amendments, all written statements with respect to the proposal which are filed with the Commission, and all written comments relating to the proposal, 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 proposal and any subsequent amendments also will be available for inspection and copying at the principal offices of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–23325 Filed 8–31–84; 8:45 am]

BILLING CODE 8010–01–M

[1] PSDTC will not collect any solicitation fees payable to eligible participants. Rather, PSDTC will identify eligible participants and will forward appropriate documentation of those claims to the agent at the same time letters of transmittal are forwarded to the agent. The agent must pay eligible participants directly.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB July 25–August 21, 1984

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during the period July 25–August 21, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426–1887 or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. As needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and

approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from July 25–Aug. 21, 1984:

DOT No. 2469
OMB No. 2133–0015
By: Maritime Administration
Title: Trustee's Annual Supplemental Certification
Forms: MA–580
Frequency: Annually
Respondents: U.S. Banks and Trust Companies.

Need/Use: Banks and trust companies which wish to serve as Trustees for certain ship financing trusts are required to furnish specified supplemental information annually in order to remain on the roster of approved trustees.

DOT No. 2470
OMB No. 2115–0017
By: U.S. Coast Guard
Title: Application for Approval for Marine Event
Forms: CG–4423
Frequency: On occasion
Respondents: Sponsors of a marine regatta, event, or parade.

Need/Use: This information collection is needed if the event is in navigable waters to provide effective navigational control over regattas and marine events performed on navigable waters of the U.S. It is also used to insure safety of life in the regatta or parade area. The information is used by the Coast Guard to determine the type and degree of supervision needed.

DOT No. 2471
OMB No. 2125–0080
By: Federal Highway Administration
Title: Medical Qualification Requirements
Forms: None
Frequency: Recordkeeping requirements 3 years
Respondents: Motor Carriers/Drivers.

Need/Use: To ensure that each driver regularly employed by a motor carrier is medically qualified to operate on the highways of the U.S. To qualify, a driver must have a physicians' medical certificate or waiver issued by FHWA. Where there is disagreement between physicians concerning a driver's qualifications, a driver or motor carrier must submit an application for the determination by FHWA of the driver's medical qualification.

DOT No. 2472
OMB No. 2133–0036
By: Maritime Administration
Title: Relative Cost of Shipbuilding in the Various Coastal Districts of the United States
Forms: MA–939
Frequency: Annually
Respondents: Shipyards.

Need/Use: To fulfill a Congressional requirement to annually survey the relative cost of building or reconditioning vessels in shipyards in all U.S. coastal districts and to offer recommendations on how shipyards may compete for work on an equal basis.

DOT No. 2473
OMB No. 2115–0016
By: U.S. Coast Guard
Title: Characteristic of Liquid Chemicals Proposed for Bulk Movement (by waterways and ports)
Forms: CG–4355
Frequency: On occasion
Respondents: Chemical manufacturers.

Need/Use: This information collection is needed to administer and enforce the laws and regulations for the safe transportation of hazardous materials by water. The Coast Guard evaluates the information to determine the kind and degree of precaution which must be taken to protect the vessel, operating personnel and those segments of the general public who reside along the proposed route.

DOT No. 2474
OMB No. 2115–0005
By: U.S. Coast Guard
Title: Applications for Waiver Order (Navigation and Vessel Inspection)
Forms: CG–2633
Frequency: On occasion
Respondents: U.S. Flag Merchant Ship Owners and Operators.

Need/Use: This information collection is needed and used to ensure safety of vessels at sea and in U.S. waters. The information collection allows owners and operators to apply for a waiver from the inspection laws based on the urgency of sailing and on national defense considerations.

DOT No. 2475
OMB No. 2125–0027
By: Federal Highway Administration
Title: Speed Monitoring Program Procedural Manual
Forms: None
Frequency: Quarterly and Annually
Respondents: State Highway Agencies.

Need/Use: Needed to provide reliable data to be included in the annual certification of 55 miles-per-hour speed limit enforcement by the States.

DOT No: 2476
OMB No: 2120–0506
By: Federal Aviation Administration
Title: Learning through Aviation—Writing Contest
Forms: None
Frequency: Annually
Respondents: School children—grades 4–12.

Need/Use: This collection of information is a public relations effort on the part of FAA to provide awareness and understanding of aviation.

DOT No: 2477
OMB No: New
By: Federal Highway Administration
Title: Motor Carrier Safety Assistance Program
Forms: None
Frequency: Quarterly
Respondents: State Highway agencies

Need/Use: For FHWA to determine that a State meets the statutory and administrative criteria to be eligible for a grant and to justify grants for succeeding years.

DOT No: 2478

OMB No: 2133–0017
By: Maritime Administration
Title: Application for Operating-Differential Subsidy
Forms: MA–632
Frequency: On occasion
Respondents: Shipowners or operators.

Need/Use: The application is used as an administrative control for the program and to ensure that adequate data is available to determine an applicant's fitness for subsidy.

DOT No: 2479
OMB No: 2115–0035
By: U.S. Coast Guard
Title: Defect/Compliance Report: Campaign Update Report
Forms: CG–4917, CG–4918
Frequency: On occasion
Respondents: Recreational Boat and associated equipment manufacturers.

Need/Use: This information collection is needed to determine if boat manufacturers are complying with 33 CFR Part 179. The Coast Guard uses the information to evaluate the severity of defects and failures to comply with regulations relative to safety of the boating public. Also, this information is used to monitor the progress of the manufacturers relative to recalls of affected products.

DOT No: 2480
OMB No: 2125–0519
By: Federal Highway Administration
Title: Developing and Recording Costs for Utility Adjustments
Forms: None
Frequency: As needed
Respondents: Utility Companies.

Need/Use: Utility companies are required to maintain adequate records to support costs incurred where movements of utilities are to be paid by Federal-aid highway projects along the rights-of-way.

DOT No: 2481
OMB No: 2125–0521
By: Federal Highway Administration
Title: Developing and Recording Costs for Railroad Adjustments
Forms: None
Frequency: As needed
Respondents: Railroad companies.

Need/Use: Railroad companies are required to maintain adequate records to support costs incurred for railroad movements which are required along Federal-aid highway projects in order to complete the highway. Such costs are reimbursable from highway funds.

DOT No: 2482
OMB No: 2115–0528 (combined with 0529, 0530, 0531, 0532)
By: U S. Coast Guard
Title: Financial Responsibility for Water Pollution
Forms: CG–5358–11, CG–5353–8, CGHQ 5358–10, CG–11
Frequency: On occasion
Respondents: Owners and Operators of Vessels over 300 tons.

Need/use: This information collection is needed and used to ensure that the statutory mandates of 33 USC regarding water pollution responsibility are complied with. It combines applications for and issuance of financial responsibility forms and certificates.

DOT No. 2483
OMB No. 2127–0021
By: National Highway Traffic Safety Administration
Title: National Accident Sampling System (NASS) Interview Forms
Forms: HS–428, 429 and 433
Frequency: On occasion
Respondents: Individuals/housholds and State and local governments.

Need/Use: NASS is a nationally representative sample of vehicle damage, occupant injury, and dynamics of accidents. The data is used to support motor vehcile and highway safety research. This revision will enhance the data relative to causes of accidents.

DOT No. 2484
OMB No. 2115–0042
By: U.S. Coast Guard
Title: Certificate of Discharge to Merchant Seamen
Forms: CG–718A
Frequency: On occasion
Respondents: Merchant Seamen.

Need/Use: This information collection is needed and used to establish evidence of sea service for merchant ratings and to establish proof of eligibility for certain union benefits. The information is also used by the Federal Government for merchant marine workload statistics.

DOT No. 2485
OMB No. 2127–0511
By: National Highway Traffic Safety Administration
Title: Child Restraint Systems (49 CFR 571.213, Riding in Vehicles)
Forms: None
Frequency: On occasion
Respondents: Manufacturers of Child Restraints (for riding in vehicles).

Need/Use: Manufacturers are required to provide each child restraint with a permanently attached label and an instruction brochure, giving the model, manufacturer's name, date of manufacture and certifying that the seat conforms with applicable standards.

DOT No. 2486
OMB No. 2120–0015
By: Federal Aviation Administration
Title: FAA Airport Master Record
Forms: FAA Forms 5010–1, 5010–2, 5010–3, 5010–5
Frequency: Annually and on occasion
Respondents: State or Local Governments and Businesses.

Need/Use: The FAA Act of 1958 directs the FAA to collect and disseminate information about civil aeronautics. The information is required to carry out the FAA missions related to safety, forecasting, and airport engineering. The data is the basic source of data for private, state and federal aeronautical charts.

Issued in Washington, D.C. On August 28, 1984.

Jon H. Seymour,

Deputy Assistant Secretary for Administration.

[FR Doc. 84–23369 Filed 8–31–84; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 21–21]

Advisory Circular—Use of Automobile Gasoline in Agricultural Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circular (AC) No. 21–21, Use of Automobile Gasoline in Agricultural Aircraft.

On April 27, 1984, (49 FR 18206) proposed AC 21–DD was published in the **Federal Register** for public comment. Interested persons were given until June 26, 1984, to submit their views on the proposal. The comments were evaluated and it was determined that issuance of the AC, incorporating one clarifying change recommended by a commenter, would be in the public interest and safety would not be compromised.

Notice is hereby given that, after review of the comments and incorporation of the change based on comments, the FAA issued AC 21–21, Use of Automobile Gasoline in Agricultural Aircraft, on August 24, 1984.

Interested persons may obtain the AC from the U.S. Department of Transportation, Subsequent Distribution Section, M–494.3, Washington, D.C. 20590. A copy of the FAA discussion and disposition of comments may be obtained from the Federal Aviation Administration, Office of Airworthiness, Aircraft Manufacturing Division (AWS–200), 800 Independence Avenue, SW., Washington, D C. 20591.

Issued in Washington, D.C., on August 24, 1984.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 84–23277 Filed 8–31–84; 8:45 am]
BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from October 22, at 9 a.m., through October 25, 1984, at 4 p.m., at FAA Headquarters, 800 Independence Avenue, SW., Washington D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than October 19, 1984, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Service, AAT-301, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is scheduled to be held from January 15 through January 18, 1985, in Miami, Florida.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on August 24, 1984.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 84-23280 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. 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 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0682
Form Number: IRS Form 6893
Type of Review: Revision
Title: Tax Counseling for the Elderly (TCE) Test

OMB Number: 1545-0683
Form Number: IRS Form 6894
Type of Review: Revision
Title: Tax counseling for the Elderly (TCE) Retest

OMB Number: 1545-0550
Form Number: IRS Form 6744
Type of Review: Revision
Title: Volunteer Assistor's Test

OMB Number: 1545-0715
Form Number: IRS Form 1099-B
Type of Review: Revision
Title: Statement of Recipients of Broker and Barter Exchange Transactions

OMB Number: 1545-0172
Form Number: IRS Form 4562
Type of Review: Revision
Title: Depreciation or Amortization

OMB Number: 1545-0085
Form Number: IRS Form 1040A
Type of Review: Revision
Title: U.S. Individual Tax Return

Clearance Officer: Garrick Shear, (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Savings Bonds Division

OMB Number: 1535-0001
Form Number: SB-60 and SB-60A
Type of Review: Extension
Title: United States Savings Bonds Payroll Savings Report

Clearance Officer: William McCarney (202) 634-5295, Room 219, 1120—20th Street, NW., Washington, D.C. 20226

OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

James V. Nasche, Jr.,

Departmental Reports, Management Office.

[FR Doc. 84-23318 Filed 8-31-84; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1-3

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:00 a.m., Friday, September 7, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 86 Budget.

The staff and Commission will discuss issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-68000.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-23434 Filed 8-30-84; 2:25 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 6, 1984.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: *NEISS/ Alternate Data Sources: Contractor Briefing*

The Contractor for the Hazard Data Systems Study will brief the Commission concerning their findings for available options for collecting injury data.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-23434 Filed 8-30-84; 2:25 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 5, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Fiscal Year 1986 Budget

The staff and Commission will discuss issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-23435 Filed 8-30-84; 2:25 pm]

BILLING CODE 6355-01-M

Reader Aids

Federal Register

Vol. 49, No. 172

Tuesday, September 4, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

34799-35000.....4

LIST OF PUBLIC LAWS

Last List August 31, 1984

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register**, but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 4214 / Pub. L. 98-409

To establish a State Mining and Mineral Resources Research Institute program, and for other purposes. (August 29, 1984; 98 Stat. 1536) Price: $1.75

H.J. Res. 452 / Pub. L. 98-410

Recognizing the important contributions of the arts to a complete education. (August 29, 1984; 98 Stat. 1543) Price: $1.50

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
September 4	September 19	October 4	October 19	November 5	December 3
September 5	September 20	October 5	October 22	November 5	December 4
September 6	September 21	October 9	October 22	November 5	December 5
September 7	September 24	October 9	October 22	November 6	December 6
September 10	September 25	October 10	October 25	November 9	December 10
September 11	September 26	October 11	October 26	November 13	December 10
September 12	September 27	October 12	October 29	November 13	December 11
September 13	September 28	October 15	October 29	November 13	December 12
September 14	October 1	October 15	October 29	November 13	December 13
September 17	October 2	October 17	November 1	November 16	December 17
September 18	October 3	October 18	November 2	November 19	December 17
September 19	October 4	October 19	November 5	November 19	December 18
September 20	October 5	October 22	November 5	November 19	December 19
September 21	October 9	October 22	November 5	November 20	December 20
September 24	October 9	October 24	November 8	November 23	December 24
September 25	October 10	October 25	November 9	November 26	December 24
September 26	October 11	October 26	November 13	November 26	December 26
September 27	October 12	October 29	November 13	November 26	December 26
September 28	October 15	October 29	November 13	November 27	December 27

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	13.00	Jan. 1, 1984
700-899	13.00	Jan. 1, 1984
900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.50	Jan. 1, 1984
1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	14.00	Jan. 1, 1984
1945-End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	14.00	Jan. 1, 1984
200-399	12.00	Jan. 1, 1984
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	14.00	Jan. 1, 1984
300-499	9.50	Jan. 1, 1984
500-End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1984
140-199	7.00	Jan. 1, 1984
200-1199	13.00	Jan. 1, 1984
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	13.00	Jan. 1, 1984
400-End	12.00	Jan. 1, 1984
16 Parts:		
0-149	9.00	Jan. 1, 1984
150-999	9.50	Jan. 1, 1984
1000-End	13.00	Jan. 1, 1984
17 Parts:		
1-239	8.00	Apr. 1, 1983
*240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	7.00	Apr. 1, 1983
150-399	8.00	Apr. 1, 1983
400-End	6.50	Apr. 1, 1984
19	8.50	Apr. 1, 1983
20 Parts:		
1-399	7.50	Apr. 1, 1984
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1984
100-169	12.00	Apr. 1, 1984
170-199	12.00	Apr. 1, 1984
200-299	4.25	Apr. 1, 1984
300-499	14.00	Apr. 1, 1984
500-599	13.00	Apr. 1, 1984
600-799	6.00	Apr. 1, 1984
800-1299	9.50	Apr. 1, 1984
1300-End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0-199	8.00	Apr. 1, 1984
200-499	8.00	Apr. 1, 1983
500-699	6.00	Apr. 1, 1984
700-1699	12.00	Apr. 1, 1984
1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	10.00	Apr. 1, 1984
§§ 1.301-1.400	7.50	Apr. 1, 1984
§§ 1.401-1.500	13.00	Apr. 1, 1984
§§ 1.501-1.640	12.00	Apr. 1, 1984
§§ 1.641-1.850	12.00	Apr. 1, 1984
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	13.00	Apr. 1, 1984
30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[1] Apr. 1, 1980
600-End	5.50	Apr. 1, 1984
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	6.50	Apr. 1, 1983
28	7.00	July 1, 1983
29 Parts:		
0-99	8.00	July 1, 1983
100-499	5.50	July 1, 1983
500-899	8.00	July 1, 1983
900-1899	5.50	July 1, 1983
1900-1910	8.50	July 1, 1983
1911-1919	4.50	July 1, 1983
1920-End	8.00	July 1, 1983
30 Parts:		
0-199	7.00	July 1, 1983
200-699	5.50	Oct. 1, 1983
700-End	13.00	Oct. 1, 1983
31 Parts:		
0-199	6.00	July 1, 1983
200-End	6.50	July 1, 1983

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	8.50	July 1, 1983
1–39, Vol. II	13.00	July 1, 1983
1–39, Vol. III	9.00	July 1, 1983
40–189	6.50	July 1, 1983
190–399	13.00	July 1, 1983
400–699	12.00	July 1, 1983
700–799	7.50	July 1, 1983
800–999	6.50	July 1, 1983
1000–End	6.00	July 1, 1983
33 Parts:		
1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	6.00	July 1, 1983
400–End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
200–End	12.00	July 1, 1983
37	8.00	July 1, 1984
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	7.50	July 1, 1983
40 Parts:		
1–51	7.50	July 1, 1983
52	14.00	July 1, 1983
53–80	14.00	July 1, 1983
81–99	7.50	July 1, 1983
100–149	6.00	July 1, 1983
150–189	6.50	July 1, 1983
190–399	7.00	July 1, 1983
400–424	6.50	July 1, 1983
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	7.00	July 1, 1983
1, 1–11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3–6	7.00	July 1, 1983
7	5.00	July 1, 1983
8	4.75	July 1, 1983
9	7.00	July 1, 1983
10–17	6.50	July 1, 1983
18, Vol. I, Parts 1–5	6.50	July 1, 1983
18, Vol. II, Parts 6–19	7.00	July 1, 1983
18, Vol. III, Parts 20–52	6.50	July 1, 1983
19–100	7.00	July 1, 1983
101	14.00	July 1, 1983
102–End	6.50	July 1, 1983

Title	Price	Revision Date
42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1983
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
1200–End	9.00	Oct. 1, 1983
46 Parts:		
1–40	9.00	Oct. 1, 1983
41–69	9.00	Oct. 1, 1983
70–89	5.00	Oct. 1, 1983
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

Slip Laws

Subscriptions Now Being Accepted

98th Congress, 2nd Session, 1984

Separate prints of Public Laws, published immediately after enactment, with marginal annotations, legislative history references, and future Statutes volume page numbers.

Subscription Price: **$150.00 per session**

(Individual laws also may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Prices vary. See Reminder Section of the Federal Register for announcements of newly enacted laws and prices).

SUBSCRIPTION ORDER FORM
ENTER MY SUBSCRIPTION TO: PUBLIC LAWS. [P9801-File Code 1L]

☐ $150.00 Domestic, ☐ $187.50 Foreign.

MAIL ORDER FORM TO:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

COMPANY OR PERSONAL NAME

ADDITIONAL ADDRESS/ATTENTION LINE

STREET ADDRESS

CITY STATE ZIP CODE

(OR) COUNTRY

☐ REMITTANCE ENCLOSED. (MAKE CHECKS PAYABLE TO SUPERINTENDENT OF DOCUMENTS.)

☐ CHARGE TO BY DEPOSIT ACCOUNT NO. ☐☐☐☐☐☐-☐

PLEASE PRINT OR TYPE

Customer's Telephone No.'s
Area Code Home Area Code Office

MasterCard and VISA accepted.

Credit Cards Orders Only
Total charges $_____
Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).